

Federal Court of Appeal



Cour d'appel fédérale

Date: 20201218

Docket: A-255-20

Citation: 2020 FCA 220

**CORAM: GAUTHIER J.A.
WEBB J.A.
LOCKE J.A.**

BETWEEN:

MAHBUBUR RAHMAN

Appellant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 18, 2020.

REASONS FOR ORDER BY:

WEBB J.A.

CONCURRED IN BY:

GAUTHIER J.A.

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR ORDER

WEBB J.A.

[1] The Minister of Citizenship and Immigration (Minister) has brought a motion to quash this appeal. Mr. Rahman filed a notice of appeal from the Order of the Federal Court dated March 6, 2020 (IMM-6143-19). The Federal Court dismissed his application for leave to commence an application for judicial review of the decision of a Visa Officer dated October 10, 2019. Instead of filing written representations in response to the Minister's motion, Mr. Rahman

filed a notice of motion for an order dismissing the Minister's motion and for several other declarations, directions and orders. To the extent that the representations included with this notice of motion address the Minister's motion, they will be considered as reply submissions to the Minister's motion.

[2] The first sentence of the Minister's written representations is as follows:

Subsection 74(d) of the Immigration and Refugee Protection Act (IRPA) is clear: a certified question is a pre-condition to a right of appeal at the Federal Court of Appeal (FCA).

[3] However, Mr. Rahman's application for leave to commence an application for judicial review was brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA). Subsection 72(2) of IRPA states, in part:

(2) The following provisions govern an application under subsection (1):

[...]

(e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.

(2) Les dispositions suivantes s'appliquent à la demande d'autorisation:

[...]

e) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

[4] Paragraph 72(2)(e) of IRPA does not provide a right of appeal even if a certified question is raised (*Canada (Minister of Citizenship and Immigration v. Edwards*, 2005 FCA 176, at para. 10).

[5] Mr. Rahman submits that his appeal should be allowed to continue because the Federal Court, in dismissing his application for leave, refused to exercise its jurisdiction. His basis for this submission is that, in his view, there were more than sufficient grounds for his application for leave to have been granted.

[6] While this Court in *Wong v. Canada (Minister of Citizenship and Immigration)*, 2016 FCA 229, acknowledged that the refusal of the Federal Court to exercise jurisdiction is an exception to the paragraph 72(2)(e) bar, it also confirmed that when the Federal Court decides a case on its merits, the Federal Court is exercising its jurisdiction:

12 A number of well-defined, limited exceptions to the para. 72(2)(e) bar have been recognized in this Court's jurisprudence. One is the refusal of the Federal Court to exercise jurisdiction: see, e.g., *Subhaschandran v. Canada (Solicitor General)*, 2005 FCA 27, [2005] 3 F.C.R. 255. The appellants contend that this exception applies here. It does not: the Federal Court made an order dealing with the merits of the reconsideration motion and thus exercised its jurisdiction.

[7] It is clear that Mr. Rahman does not agree with the decision to dismiss his application for leave to commence a judicial review. However, the disagreement with a decision of the Federal Court does not mean that the Federal Court refused to exercise its jurisdiction. In considering his application for leave and dismissing it, the Federal Court exercised its jurisdiction.

[8] Although Mr. Rahman has also alleged bias, his only basis for this claim is that the Federal Court did not grant him leave. Denying Mr. Rahman's leave application is not a valid basis to allege bias. It is not appropriate to make allegations of bias without a valid basis for such allegations.

[9] The Minister is seeking costs in this matter as a result of various disrespectful and inflammatory comments made by Mr. Rahman in his Notice of Appeal and in his written representations. These comments are listed in paragraph 14 of the Minister's reply submissions.

[10] Costs were awarded by this Court in *Leahy v. Canada (Minister of Citizenship and Immigration)*, 2020 FCA 145:

10 We note the appellant's unsupported and unfounded allegations of corruption against the Federal Court and the Department of Justice and other intemperate remarks made in his memorandum of fact and law. This is not the first time. We warn that this sort of conduct can trigger a vexatious litigant application under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

11 Where, as here, a notice of appeal is filed in this Court and this Court has no jurisdiction to entertain it, the Registry or the respondent should ask the Court to act immediately under Rule 74 to terminate the appeal. Doing so minimizes the wasteful expenditure of resources by all concerned.

12 For the foregoing reasons, we consider there to be special circumstances in this immigration matter warranting an award of costs against the appellant.

[11] The decision in *Leahy* was rendered on September 22, 2020. Mr. Rahman's written representations were filed approximately two months later on November 30, 2020. That Mr. Leahy was involved with Mr. Rahman's motion and accompanying submissions is evident from the fact that Mr. Rahman included Mr. Leahy's affidavit (sworn on November 30, 2020) in his motion record.

[12] For the same reasons that costs were awarded in *Leahy*, costs should also be awarded in this motion.

[13] I would therefore, allow the Minister's motion, with costs, fixed in the amount of \$750.00, all inclusive, and quash Mr. Rahman's appeal. Since Mr. Rahman's appeal would be quashed, his motion filed on November 30, 2020 would be dismissed.

"Wyman W. Webb"

J.A.

"I agree
Johanne Gauthier J.A."

"I agree
George R. Locke J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-255-20

STYLE OF CAUSE: MAHBUBUR RAHMAN v.
THE MINISTER OF
CITIZENSHIP AND
IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: WEBB J.A.

CONCURRED IN BY: GAUTHIER J.A.
LOCKE J.A.

DATED: DECEMBER 18, 2020

WRITTEN REPRESENTATIONS BY:

Mahbubur Rahman ON HIS OWN BEHALF

Alison Engel-Yan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada