Federal Court of Appeal | Cour d'appel fédérale

Date: 20210202

Docket: A-79-20

Citation: 2021 FCA 20

Present: **LASKIN J.A.**

Docket: A-79-20

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

MARIA CAMILA GALINDO CAMAYO

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 2, 2021.

REASONS FOR ORDER BY: LASKIN J.A.

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REASONS FOR ORDER

LASKIN J.A.

[1] This appeal involves the interpretation and application of the cessation of refugee protection provisions in section 108 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. In the judgment under appeal (2020 FC 213, Fuhrer J.), the Federal Court set aside on judicial review a decision of the Refugee Protection Division granting an application by the Minister of Citizenship and Immigration to cease the respondent's refugee status. The Federal Court determined that the RPD acted unreasonably in failing to give the respondent an

opportunity to rebut the presumption of state protection that arose from her acquisition and use of a passport issued by Colombia. It certified three questions. A requisition for hearing was recently filed, but a hearing date for the appeal has not yet been assigned.

[2] Before the Court are three motions for leave to intervene in the appeal: one by the United Nations High Commissioner for Refugees (UNHCR), one by the Canadian Association of Refugee Lawyers (CARL), and one jointly brought by Justice for Children and Youth (JFCY) and the Inter-Clinic Immigration Working Group (ICIWG). The appellant Minister does not oppose the motion by UNHCR, but opposes the other two. For the reasons set out briefly below, I will grant the motions by UNHCR and CARL and dismiss the motion by JFCY/ICIWG.

I. Test for granting leave to intervene

[3] Over the past few years, there have been several articulations of the test for granting leave to intervene under rule 109. The most recent of these can be found in *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 13 at paras. 2-11. However, I need not discuss these various articulations at any length. In my view, the disposition of the motions here turns on an element of the test that is in substance common to, and a critical factor in, all of these articulations. That is whether the proposed intervener will make submissions or add insights and perspectives that will be useful to the Court – "that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues": *Canadian Council for Refugees* at para. 6; see also *Sport Maska Inc. v. Bauer Hockey Corp*., 2016 FCA 44 at para. 40; *Gordillo v. Canada (Attorney General)*, 2020 FCA 198 at para. 14.

II. UNHCR's motion

[4] UNHCR is a subsidiary organ of the United Nations. Its primary purpose is to safeguard the rights and well-being of refugees. Its responsibilities include supervising the application of international covenants for the protection of refugees. Among these conventions is the 1951 *Convention Relating to the Status of Refugees*, 28 July 1951, [1969] Can. T.S. No. 6 (entry into force 22 April 1954). Paragraph 108(1)(a) of the IRPA directly incorporates Article 1C(1) of this Convention into Canadian law. By paragraph 3(3)(f) of the IRPA, the IRPA is to be construed and applied in a manner that complies with human rights instruments to which Canada is a signatory.

[5] UNHCR's supervisory responsibility is exercised in part by the issuance of interpretive guidelines. Both parties in the Federal Court, and the Federal Court judge in her reasons, referred to the UNHCR's published guidance on Article 1C. The Supreme Court of Canada and other courts have also found UNHCR's guidance to be of significant assistance. UNHCR has been granted intervener status in the Supreme Court of Canada and the Court of Appeal for Ontario.

[6] Based on its extensive experience with the subject-matter of the cessation provisions of the IRPA, and on the nature of its responsibilities, UNHCR is well-positioned to assist this Court with the determination of the issues raised in the appeal. Its outline of its proposed submissions reinforces this conclusion. I see no disqualifying factors.

III. CARL's motion

[7] CARL's membership includes lawyers, academics, articling students and law students from across Canada with an interest in legal issues related to refugees, asylum seekers, immigrants and the human rights of migrants. It has a mandate to research, litigate and advocate on behalf of these groups. It actively engages in public interest litigation (including interventions), on behalf of refugees, asylum seekers, immigrants and other migrants. It has been granted intervener status many times before the Supreme Court of Canada, this Court, and the Federal Court.

[8] CARL has set out in its motion material an outline of the submissions it would make if granted leave to intervene. Some of its proposed submissions appear to overlap with the submissions set out in the respondent's memorandum of fact and law, and with the proposed submissions of UNHCR. On this basis, the Minister opposes its motion.

[9] I have some sympathy for the Minister's position. However, in my view CARL is likely to bring a perspective, grounded in its members' daily experience with the Canadian immigration and refugee protection system, that is distinct from that of the respondent and of UNHCR and is useful to the Court. If this expectation is not borne out, the Court will be able to limit the adverse consequences of duplication when it determines how much time, if any, interveners are allocated for oral argument.

IV. The JFCY/ICIWG motion

[10] JFCY is the operating arm of the Canadian Foundation for Children, Youth and the Law. It is constituted to promote the rights of children and youth, and their recognition as rights-holders under the law. Its core activities include casework and test case litigation. It provides services and representation to young people, including those engaged in the immigration system or with precarious immigration status. It has extensive experience as an intervener, including in cases considering the rights of young people in the immigration system.

[11] ICIWG is a group of immigration and refugee lawyers, articling students, law students, paralegals, and community legal workers practising in community legal clinics and student legal aid societies in Ontario. Member clinics provide a wide range of poverty law services to protected persons. Members assist protected persons with permanent residence applications and advice concerning cessation applications, including those based on applying for or travelling on a passport from their country of origin.

[12] I do not doubt that JFCY and ICIWG have experience and expertise in relation to the impact of the IRPA on children and youth. However, the submissions they propose to make if granted intervener status raise new issues that would impermissibly expand the scope of the appeal.

[13] For example, they state (at paragraph 57 of their written representations) that “dependant children are a unique subset of protected people, and should be treated accordingly,” and that “individuals who are recognized as [Convention refugees] or protected persons when they are

children should generally not be subject to cessation applications under s. 108(2) by the Minister." This issue was not raised in the Federal Court, and is not raised in the certified questions or in the parties' memorandums in the appeal.

[14] As further examples, JFCY and ICIWG also propose (at paragraphs 49 and 65) to invoke the *Convention on the Rights of the Child*, November 20 1989, Can. T.S. 1992 No. 3 (entry into force 2 September 1990), including the best interests of the child principle, and the *Canadian Charter of Rights and Freedoms*, Part I of *the Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11, in support of their submissions. Neither was raised in the Federal Court, and there is no reference to either in the parties' memorandums. In addition, they contemplate (at paragraph 51) that this Court will "evaluate: the unique procedural, evidentiary and substantive considerations of refugee claims involving dependant children […]." But the record before the Federal Court, which is the record before this Court on appeal, does not appear to have been developed with an evaluation of this kind in mind. As important as the issues that JFCY and ICIWG wish to address may be, this appeal is not a proper forum in which to address them.

V. Disposition

[15] For these reasons, the motions by UNHCR and CARL are granted, on the terms set out in the order accompanying these reasons. The motion by JFCY and ICIWG is dismissed.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-79-20
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. MARIA CAMILA GALINDO CAMAYO

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	LASKIN J.A.
DATED:	FEBRUARY 2, 2021

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