

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241008

Docket: A-256-24

Citation: 2024 FCA 165

**CORAM: WEBB J.A.
MACTAVISH J.A.
WALKER J.A.**

BETWEEN:

BALJIT SINGH NANHAR

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 8, 2024.

REASONS FOR ORDER BY:

WEBB J.A.

CONCURRED IN BY:

**MACTAVISH J.A.
WALKER J.A.**

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REASONS FOR ORDER

WEBB J.A.

[1] The appellant made an application to the Federal Court under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the *IRPA*) for leave to commence an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board. The Order of the Federal Court dated July 31, 2024 dismissed this application (Docket: IMM-5754-24, *per* Furlanetto J.).

[2] The appellant filed a notice of appeal purporting to appeal this Order. The Crown, in its letter dated September 12, 2024, stated that there was no statutory basis for the appellant's appeal because "[n]o question of general importance was certified". The appellant, by letter received on September 13, 2024, responded to the Crown's letter but did not address the prohibition on appeals as set out in the *IRPA*.

[3] Paragraph 72(2)(e) of the *IRPA* provides that no appeal lies from a decision of the Federal Court made under subsection 72(1) of the *IRPA* for leave to commence an application for judicial review:

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

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

...

[...]

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

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

[4] As noted by this Court in *Mahjoub v. Canada (Citizenship and Immigration)*, 2011 FCA 294, (*Mahjoub*) at paragraphs 7 and 8 and in *HD Mining International Ltd. v. Construction and Specialized Workers Union, Local 1611*, 2012 FCA 327, at paragraph 14, the right of appeal granted under the *Federal Courts Act*, R.S.C. 1985, c. F-7, may be barred by other statutes. Paragraph 72(2)(e) of the *IRPA* is a provision that bars what would otherwise be a right of appeal to this Court.

[5] The reference to a certified question in the Crown's letter of September 12, 2024 is related to paragraph 74(d) of the *IRPA*:

74 Judicial review is subject to the following provisions:

...

(d) subject to section 87.01, an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

74 Les règles suivantes s'appliquent à la demande de contrôle judiciaire :

[...]

d) sous réserve de l'article 87.01, le jugement consécutif au contrôle judiciaire n'est susceptible d'appel en Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci.

[6] Paragraph 74(d) of the *IRPA* provides that a judgment of the Federal Court rendered on an application for judicial review may only be appealed to this Court if, in rendering that judgment, the Federal Court Judge certifies that a serious question of general importance is involved and states the question (paragraph 74(d) of the *IRPA*). However, since leave to commence the application for judicial review was not granted in this case, there was no judgment rendered on the application for judicial review. As noted by the Supreme Court of Canada in *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21:

The Federal Court does not certify the question until it is rendering its judgment on the application for judicial review.

[7] The applicable bar to the right of appeal, in this matter, is the prohibition on an appeal as set out in paragraph 72(2)(e) of the *IRPA*. As a result of this prohibition on appealing the Order

dismissing the appellant's application for leave to commence an application for judicial review, the appellant's appeal is not properly before this Court.

[8] This Court noted in *Mahjoub*, in paragraph 10, that certain limited exceptions to a statutory bar on an appeal have been accepted, namely, where the Federal Court has refused to exercise its jurisdiction and to decide a case or where there is a reasonable apprehension of bias on the part of the judge. Neither of these limited exceptions are alleged by the appellant in this case.

[9] The appellant also filed a motion for:

1. The dismissal of the order of Judicial Review – IMM-5754-24 and consideration of the contents of the **Appeal Book with evidence and written representation.**
2. Granting of leave and granting of status of protected person.

[Emphasis added by the appellant.]

[10] It is not appropriate to bring a motion requesting essentially the same relief as requested in a notice of appeal. With respect to the consideration of the contents of the appeal book, since the appeal is not properly before this Court, there is no appeal book to be filed.

[11] As a result, I would quash the appellant's appeal and dismiss the appellant's motion, without costs.

“Wyman W. Webb”

J.A.

“I agree.

Anne L. Mactavish J.A.”

“I agree.

Elizabeth Walker J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-256-24

STYLE OF CAUSE: BALJIT SINGH NANHAR 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: MACTAVISH J.A.
WALKER J.A.

DATED: OCTOBER 8, 2024

WRITTEN REPRESENTATIONS BY:

Baljit Singh Nanhar

THE APPELLANT,
ON HIS OWN BEHALF

Jake Boughs

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT