Federal Court of Appeal  Cour d'appel fédérale

Date: 20130822

Docket: A-235-13

Citation: 2013 FCA 194

Present:

NOËL J.A.
MAINVILLE J.A.
NEAR J.A.

BETWEEN:

WEI ZHOU

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on August 22, 2013.

REASONS FOR ORDER MAINVILLE J.A.

CONCURRED IN BY NOËL J.A.
NEAR J.A.

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REASONS FOR ORDER

MAINVILLE J.A.

[1] The respondent has submitted a motion to this Court in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 for an order striking the appellant's Notice of Appeal.

[2] This Court may grant such a motion in cases where it has no jurisdiction over the appeal, where the appeal manifestly lacks substance as to bring it within the character of a vexatious proceeding, where the appeal serves no practical purpose, or where it is "plain and obvious" that the

appeal has no chance of success: *Sellathurai v. Canada (Minister of Public Security)*, at paras. 7-8; *Arif v. Canada (Citizenship and Immigration)*, 2010 FCA 157, 321 D.L.R. (4th) 760 at para. 9.

[3] The appellant in this case is seeking to appeal to this Court an order of Strickland J. of the Federal Court dated June 19, 2013 (cited as 2013 FC 654) dismissing the appellant's motion to reconsider the judgment dated March 27, 2013 (cited as 2013 FC 313) by which Strickland J. dismissed the appellant's appeal from a decision of a citizenship judge brought pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29.

[4] In her Notice of Appeal, the appellant is seeking four types of relief: (1) that the order dated June 19, 2013 be struck; (2) that the motion for reconsideration which she filed on April 5, 2013 with the Federal Court be re-determined in person within 30 days; (3) that this Court "declare that absent an affidavit from the citizenship judge that *Minister v. Chou* (A-288-00) is applicable with respect to the reliance of the Federal Court on the decision and certified record as evidence of what occurred at the citizenship interview"; (4) that costs be awarded to her.

[5] The principal grounds of appeal raised in the Notice of Appeal are the following:

> 4. The Appellant relies on paragraph 31 of the *Minister of Citizenship and Immigration v Sharareh Saji* (A-311-09) namely that the preclusion of an appeal by subsection 14(6) of the *Citizenship Act* applies only to a procedurally fair determination by the Federal Court of whether the citizenship judge erred in deciding the citizenship application.
>
> 5. The Appellant submits that the learned Federal Court judge was procedurally unfair in dealing with the motion dated April 5, 2103 [*sic*] as she refused to hear the motion in person which was filed pursuant to subsection 359 of the *Federal Court* [*sic*] *Rules* and secondly she did not acknowledge or make a proper determination on

> the legal question as to why the Federal Court of Appeal case of the *Minister v Chou* (A-311-09) did not apply or was somehow distinguished in her reliance on the certified tribunal record as evidence of what occurred at the interview absent an affidavit.

[6] There is no substance whatsoever to the ground of appeal based on procedural unfairness resulting from the absence of a hearing on the motion in the Federal Court. In the appellant's reply submissions with respect to her motion for reconsideration before the Federal Court, counsel for the appellant clearly noted that the "[t]he Applicant [here the appellant] defers to this Court to determine whether this motion can be dealt with in writing or in person": Applicant's Reply Submissions in Federal Court file T-1238-12 dated April 15, 2013, at para. 6, reproduced in the Respondent's Motion Record at p. 100.

[7] Since the appellant deferred to the Federal Court judge on the matter of whether the motion for reconsideration should be dealt with in writing or in person, she can not now raise as a ground of appeal what she herself agreed to. This ground of appeal manifestly lacks substance as to bring it within the character of a vexatious proceeding.

[8] As for the ground of appeal based on the submission that Strickland J. did not make a proper determination of the applicable legal principles in her reasons dismissing the motion for reconsideration before her, this has nothing to do with procedural fairness. Rather, that ground of appeal simply raises a question of law unrelated to the procedural fairness of the reconsideration proceedings.

[9] Moreover, the legal issue raised by that ground of appeal is directly related to the issue of whether Strickland J. erred when she dismissed the appellant's appeal from the decision of the citizenship judge.

[10] Subsection 14(6) of the *Citizenship Act* provides that a decision of the Federal Court on an appeal from a decision of a citizenship judge brought pursuant to subsection 14(5) of that Act is final, and no appeal lies to this Court from such a decision. In *Canada (Citizenship and Immigration) v. Saji*, 2010 FCA 100, [2011] 3 F.C.R. 293 at para. 29, Evans J.A. relied on *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391 to establish the following test as to whether a matter falls under the ambit of that subsection 14(6): "an appeal from the Federal Court to this Court is only precluded by subsection [14](6) as a decision made 'pursuant to an appeal under subsection (5)' if the decision in question relates to the ultimate question, namely, whether the citizenship judge erred in approving or not approving a citizenship application, or in determining a question related to it."

[11] In this case, determining whether Justice Strickland erred in accepting certain evidence within the framework of her judgment dismissing the appellant's appeal under subsection 14(5) of the *Citizenship Act*, and consequently erred in not correcting that alleged mistake in her order dismissing the appellant's motion for reconsideration, is a question closely related to determining the ultimate question of whether or not the citizenship judge erred in not approving the appellant's citizenship application. As a result, this ground of appeal is precluded by the effect of subsection 14(6) of the *Citizenship Act*.

[12] I would consequently order that the appellant's Notice of Appeal be struck. The respondent shall be entitled to costs on the motion.

"Robert M. Mainville"
J.A.

"I agree.
Marc Noël J.A."

"I agree.
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-235-13
STYLE OF CAUSE:	Zhou v. Minister of Citizenship and Immigration

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	MAINVILLE J.A.
CONCURRED IN BY:	NOEL J.A. NEAR J.A.
DATED:	August 22, 2013

WRITTEN REPRESENTATIONS BY:

Mary Lam	FOR THE APPELLANT
Tamrat Gebeyehu	FOR THE RESPONDENT

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