

Federal Court



Cour fédérale

Date: 20191003

Docket: IMM-3546-18

Citation: 2019 FC 1259

Ottawa, Ontario, October 3, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

MUHAMMAD AFZAL WATTO

Applicant

and

**IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL
AND
MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

ORDER AND REASONS

[1] In a Judgment and Reasons dated July 30, 2019, the Court dismissed the applicant's application for judicial review concerning a preliminary ruling in a discipline proceeding brought against him by the respondent Immigration Consultants of Canada Regulatory Council [ICCRC] (*Watto v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1024 [Watto]). In a Supplementary Judgment and Reasons dated August 20, 2019, the Court declined to certify any

serious questions of public importance under paragraph 74(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see 2019 FC 1085).

[2] By Notice of Motion dated August 9, 2019, the respondent Minister of Citizenship and Immigration moves in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], for reconsideration under Rule 397(1)(b) of the Rules of the Court's refusal to remove the Minister as a party to the judicial review. The Minister also seeks an extension of time to allow the Minister to propose a certified question, if warranted.

[3] The applicant and the ICCRC take no position on the motion.

[4] Rule 397(1)(b) provides that a party may request that the Court reconsider the terms of an order it has made on the grounds that “a matter that should have been dealt with has been overlooked or accidentally omitted.”

[5] The purpose of a motion under Rule 397(1)(b) is to permit a party to raise with the Court the question of whether it had failed (inadvertently or accidentally) to deal with something that was put to it: see *Taker v Canada (Attorney General)*, 2012 FCA 83 at paras 3-4 [*Taker*] and *Yeager v Day*, 2013 FCA 258 at para 9. It cannot be used to reverse what has already been ordered (*Taker* at para 4).

[6] The Minister submits that the Court overlooked the use of Rule 104(1)(b) to remove the Minister as a respondent from the judicial review.

[7] While Rule 104(1)(b) is not mentioned in the Court's reasons, it was not overlooked.

[8] In any event, the issue before the Court was whether the Minister, who had been named as a respondent, should be removed from the proceeding. The Minister framed the request, properly, as a motion under Rule 104(1)(a). The question under that Rule was whether the Minister was "a proper or necessary party." For the reasons given, the Court answered this question in the affirmative. Rule 104(1)(b), on the other hand, concerns the joinder of parties who were not named but who ought to have been. It cannot provide a basis for the relief the Minister was seeking, nor did it alter the Court's understanding of Rule 104(1)(a).

[9] In the Court's decision of July 30, 2019, the parties were exceptionally given the opportunity to provide written submissions concerning the certification of questions after having had an opportunity to review the Court's reasons for judgment (see *Watto* at para 44). The parties were asked to provide their respective positions within ten days of receipt of the Court's reasons. The parties were also invited to contact the Court if more time was required.

[10] The applicant and the ICCRC provided timely submissions concerning the certification of a question under paragraph 74(d) of the *IRPA*.

[11] The Minister has asked for additional time to provide submissions, if so advised, concerning a certified question. This request is linked to the motion for reconsideration under Rule 397(1)(b). For the reasons given, that motion is without merit. Apart from submitting that he would be "in a better position to determine whether a certified question is warranted" after

receiving the present decision, the Minister has not explained why, unlike the applicant and the ICCRC, he could not have provided timely submissions on a certified question on the basis of the Court's July 30, 2019 judgment.

[12] Nevertheless, the question of the role of the Minister in proceedings such as this is obviously of concern to the Minister and, to be fair, the Court has observed that the present state of affairs is quite unsatisfactory (although it should be rectified soon by the *College of Immigration and Citizenship Consultants Act* (being Division 15 of the *Budget Implementation Act, 2019, No. 1*, SC 2019, c 29) – see in particular sections 71-73). Thus, with great reluctance, the Court is prepared to give the Minister until October 15, 2019, to provide submissions, if so advised, with respect to the certification of a question under paragraph 74(d) of the *IRPA*. The applicant and the ICCRC are asked to provide any responding submissions no later than seven days after receipt of the Minister's submissions. The submissions may be in the form of correspondence.

ORDER IN IMM-3546-18

THIS COURT ORDERS that

1. The motion for reconsideration is dismissed.
2. If so advised, the Minister shall serve and file submissions with respect to the certification of a question under paragraph 74(d) of the *IRPA* no later than October 15, 2019.
3. The applicant and the ICCRC shall serve and file any responding submissions no later than seven days after receipt of the Minister's submissions.

“John Norris”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3546-18

STYLE OF CAUSE: MUHAMMAD AFZAL WATTO v IMMIGRATION
CONSULTANTS OF CANADA REGULATORY
COUNCIL AND MINISTER OF CITIZENSHIP AND
IMMIGRATION

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: NORRIS J.

DATED: OCTOBER 3, 2019

WRITTEN REPRESENTATIONS BY:

Prathima Prashad

FOR THE RESPONDENT, MINISTER OF
CITIZENSHIP AND IMMIGRATION

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