Federal Court  Cour fédérale

Date: 20220902

Docket: IMM-7839-21

Citation: 2022 FC 1252

BETWEEN:

UMESH SINGH RATHAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

BELL J.

[1] The Applicant brings a motion in writing pursuant to Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106, seeking to appeal the decision of Prothonotary Horne dated August 4, 2022, in which the Prothonotary dismissed a motion for reconsideration of an earlier decision made by him on February 28, 2022.

[2] The facts can briefly be summarized as follows. On October 25, 2021, Immigration, Refugees and Citizenship Canada (IRCC) refused the Applicant's application for permanent

residency, which application was based on the public policy for refugee claimants working in Canada's health care sector during the COVID-19 pandemic. The Applicant did not meet the minimum number of hours of work required by the policy. Following IRCC's decision, the Applicant, on November 1, 2021 filed an Application for Leave and for Judicial Review, which was perfected on December 2, 2021. On November 19, 2021, following the IRCC decision of October 25, 2021, the Applicant's employment status changed. Three and a half months after the IRCC decision was rendered, the Applicant, on February 7, 2022, sought an order from this Court to admit the new evidence of his changed employment status. It is important to note that the Applicant does not contend that his employment status changed prior to the IRCC decision.

[3] Prothonotary Horne dismissed the motion to admit the new evidence on the judicial review application. As already indicated, he dismissed the motion for reconsideration of that decision, on August 4, 2022. In his initial decision of February 28, 2022, the Prothonotary concluded that evidence that was not before the tribunal should not generally be introduced at the judicial review. To do so, would, in the Prothonotary's terms convert a "judicial review hearing into a trial de novo". Horne, P cited *Tl'azt'en First Nation v Joseph,* 2013 FC 767 and *Shoan v Canada (Attorney General)*, 2018 FC 476, affirmed at 2020 FCA 174.

[4] In his decision on the reconsideration motion, Prothonotary Horne stated:

> [4] The scope of Rule 397 is set by its strict text. Under Rule 397, the Federal Court may correct the terms of an order if "the order does not accord with any reasons given," "a matter that should have been dealt with has been overlooked or accidentally omitted," or the order contains "[c]lerical mistakes, errors or omissions." To paraphrase, Rule 397 is available only for slips, errors and oversights in the preparation of the document expressing the Court's order. It is not a means by which the Court can revisit any

> part of the substance of its decision (*Janssen Inc v Abbvie Corporation*, 2014 FCA 176 at para 36).
>
> [5] Rule 397 is not a rule under which a litigant may argue an issue for a second time in the hope that the Court will change its mind (*Bell Helicopter Textron Canada Limitée v. Eurocopter*, 2013 FCA 261 at para 15).
>
> [6] The applicant's motion does not identify any slips, errors and oversights in the February 28, 2022 order, rather makes essentially the same argument regarding the same document. It is, in essence, an appeal presented as a Rule 397 motion. The motion will therefore be dismissed.1

[5] A motion to reconsider engages a very broad exercise of discretion on the part of a Prothonotary. The test for the standard of review is that discretionary orders of prothonotaries ought not to be disturbed on appeal unless: (a) the questions raised in the motion are vital to the final determination of the case; or (b) the order is clearly wrong, in the sense that the exercise of discretion by the Prothonotary was based upon a wrong principle or a misapprehension of the facts. See, *Merck & Co Inc v Apotex Inc*, 2003 FCA 488 at para 19.

[6] Furthermore, the general rule is that appeals from orders of prothonotaries are to be decided on the basis of the material that was before the Prothonotary. See, *Shaw v. Canada*, 2010 FC 577 at para 8 citing *James River Corporation of Virginia v Hallmark Cards*, [1997] FCJ No 152 (QL), 126 FTR 1.

[7] Prothonotary Horne acknowledged that there are exceptions to this general rule, but that these exception are narrow: they exist only in situations where the receipt of evidence by the Court is not inconsistent with the differing roles of the judicial review court and the

[1] *Rathaur v MCI*, IMM-7839-21, August 4, 2022 (FC)

administrative decision-maker. See, *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22. I agree with Prothonotary Horne that none of these exceptions apply in the present matter.

[8] I am not satisfied the Applicant meets the test for overturning a decision of a Prothonotary in the circumstances. I dismiss the appeal, without costs.

"B. Richard Bell"
Judge

Toronto, Ontario
September 2, 2022

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7839-21
STYLE OF CAUSE:	UMESH SINGH RATHAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR JUDGMENT:	BELL J.
DATED:	SEPTEMBER 2, 2022

IN WRITING:

Umesh Singh Rathaur	SELF-REPRESENTED APPLICANT
Asha Gafar	FOR THE RESPONDENT

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