Federal Court  Cour fédérale

**Date: 20240412**

**Docket: IMM-9930-23**

**Citation: 2024 FC 580**

**Vancouver, British Columbia, April 12, 2024**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**LICETH NATHALIA SALAZAR ANGULO**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] Liceth Nathalia Salazar Angulo [Applicant] filed a motion appealing a decision of Associate Judge Kathleen Ring pursuant to Rules 8 and 51 of the *Federal Courts Rules*, SOR/98-106. The Respondent is the Minister of Public Safety and Emergency Preparedness [Respondent].

[2] The Applicant seeks the following relief: an Order setting aside the March 4, 2024 Order of Associate Judge Ring which dismissed the Applicant's request for an extension of time to perfect her Application for Leave and Judicial Review [Leave Application]; an Order condoning the delay in perfecting the Leave Application; and an Order extending the time to file the Applicant's Record to 30 days from the date the Order for extension of time is granted.

[3] For the reasons that follow, the motion is dismissed.

## II. Background

[4] The Applicant is a citizen of Colombia who arrived with her spouse and infant daughter from the United States at the Douglas Port of Entry on July 14, 2023 and made a claim for refugee protection based on a guerilla group targeting the family for extortion. A Border Services Officer [Officer] determined that their claims were ineligible for referral to the Refugee Protection Division [RPD] pursuant to paragraph 101(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] due to the Safe Third Country Agreement.

[5] The Officer also prepared an inadmissibility report pursuant to subsection 44(1) of *IRPA*. The subsection 44(1) report was sent to a Minister's delegate for review who agreed that their claims were ineligible for referral to the RPD and found that the family members were inadmissible to Canada for attempting to establish permanent residence without the proper permanent resident visas. All family members were issued exclusion orders, which prohibited them from returning to Canada for one year, and removed back to the United States.

[6] On or around July 14, 2023, the Applicant and her family members re-entered Canada without reporting at a port of entry. On August 4, 2023, the Applicant commenced the underlying Leave Application, as the Applicant believed she had a blood relative in Canada, which may exempt the Applicant under the Safe Third Country Agreement. Afterward, it became apparent to the Applicant that she did not have any family members in Canada to qualify for an exemption. As such, the Applicant began preparing an application for permanent residence on humanitarian and compassionate [H&C] grounds.

[7] On December 31, 2023, the Applicant discovered that she had a half-brother in Canada. The Applicant subsequently had translations prepared of her birth certificate and her half-brother's birth certificate, as well as obtained a copy of the RPD decision confirming that her half-brother is a Convention refugee.

[8] On February 6, 2024, the Applicant's counsel contacted the Respondent's counsel to seek consent for an extension of time to perfect the Leave Application. The Respondent did not consent. The Applicant filed the notice of motion to seek an extension of time to perfect the Leave Application on February 15, 2024.

## III. Associate Judge Ring's Order

[9] On March 4, 2024, Associate Judge Ring dismissed the motion. Associate Judge Ring thoroughly applied the four-part test from *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) [*Hennelly*] and after careful analysis, found that three out of four factors weighed against granting the Applicant's motion. First, that the Applicant did not demonstrate a

continuing intention to pursue the application. Second, the Applicant failed to establish an arguable case on judicial review as she failed to articulate how new evidence concerning her half-brother, which was not before the Officer, could form the basis of a reviewable error. Third, there was no evidence before the Court of any prejudice arising from the delay, so this criterion favoured the Applicant. Fourth, the Applicant's explanation for the delay demonstrated a choice to abandon the Leave Application in favour of an H&C application as before December 30, 2023, the Applicant and her family were in the process of finalizing an H&C application. After December 31, 2023, the Applicant's explanation for the delay was that they were gathering new evidence that was not before the Officer.

## IV. Preliminary Issue

[10] The Respondent raises a number of objections, but in my view, the determinative issue in is the Respondent's preliminary objection that this Court has no jurisdiction to entertain the Applicant's motion.

[11] The Respondent submits that pursuant to paragraph 72(2)(e) of *IRPA*, no appeal lies from an interlocutory order in an immigration matter. It is well established that an Associate Judge's Order refusing an extension of time to file an application record is an interlocutory decision and is captured by paragraph 72(2)(e), unless jurisdictional or bias issues are alleged (*Ntoco v Canada (Citizenship and Immigration)*, 2022 FC 894 at paras 4-5 [*Ntoco*]; *Mendez v Canada (Citizenship and Immigration)*, 2021 FC 1237 at paras 17-24 [*Mendez*]). Neither exception applies to this matter, meaning the Court has no jurisdiction to entertain this appeal.

[12] In written submissions, the Applicant did not allege a jurisdictional error that would be an exception to paragraph 72(2)(e). At the hearing, the Applicant submitted that Associate Judge Ring made an error in law by conducting a checklist analysis of the *Hennelly* factors and not giving effect to the overriding considering of ensuring that justice is done between the parties, which amounts to a jurisdictional error.

[13] I agree that this Court has no jurisdiction as Associate Judge Ring's Order of March 4, 2024 is interlocutory and covered by paragraph 72(2)(e) of *IRPA*. Section 72 provides as follows:

> **Application for judicial review**
>
> 72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.
>
> **Application**
>
> (2) The following provisions govern an application under subsection (1):
>
> …
>
> (e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.
>
> [Emphasis added.]

[14] I will make a few observations about Associate Judge Ring's Order. The Order provides an explanation about the *Hennelly* factors including the overriding consideration that justice be done between the parties (citing *Whitefish Lake First Nation v Grey*, 2019 FCA 275 at para 3; *Canada (Attorney General) v Larkman*, 2012 FCA 204 paras 62, 85). There is also a fulsome

analysis about each of the parties' submissions on each of the *Hennelly* factors. The Order does not specifically state that it would not be in the interests of justice to refuse the relief sought.

[15] After questioning from the Court about whether the interests of justice was a stand-alone requirement in relation to the *Hennelly* factors, the Applicant stated that it was not but that this is a consideration that guides the application of the *Hennelly* factors. I do not dispute this. However, I do not view the lack of a specific finding on the "interests of justice" to be a fatal error after reviewing the analysis set forth in the Order. From my review of the Order, there was a careful consideration and balancing of each factor, demonstrating an awareness of the fact that the interests of justice were guiding the application of the *Hennelly* factors.

[16] This Court has consistently found that paragraph 72(2)(e) bars this Court from hearing an appeal of an Associate Judge's order dismissing a motion for an extension of time to perfect an application for leave (*Ntoco* at para 4; *Mendez* at paras 20-24; *Lovemore v Canada (Citizenship and Immigration)*, 2013 FC 171 at para 2; *Canada (Public Safety and Emergency Preparedness) v Ewen*, 2023 FCA 225 at para 15). I am not persuaded by the Applicant's submissions that there is a jurisdictional error giving rise to an exception from paragraph 72(2)(e). Associate Judge Ring's analysis of the *Hennelly* factors illustrated careful consideration of the test and the overall circumstances.

## V. Conclusion

[17] The Applicant's motion appealing Associate Judge Ring's March 4, 2024 Order is dismissed.

**JUDGMENT in IMM-9930-23**

**THIS COURT'S JUDGMENT is that**

1. The Applicant's motion is dismissed.

"Paul Favel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-9930-23 |
| **STYLE OF CAUSE:** | LICETH NATHALIA SALAZAR ANGULO V THE MINISTER OF PUBLIC SAFETY AND EMERGENCY MANAGEMENT |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | APRIL 9, 2024 |
| **JUDGMENT AND REASONS:** | FAVEL J. |
| **DATED:** | APRIL 12, 2024 |

**APPEARANCES:**

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| Gurpreet Badh | FOR THE APPLICANT |
| Suzy Flader | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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