Federal Court  Cour fédérale

Date: 20240919

Docket: IMM-8614-23

Citation: 2024 FC 1473

Ottawa, Ontario, September 19, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ARDALAN GHAFOOR ARIF

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

UPON the Applicant's motion in writing, dated August 12, 2024, pursuant to Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], appealing the Order of Associate Judge Crinson dated August 2, 2024 [Order], requesting that it be set aside and, in its place, an order be made granting leave to file an additional affidavit pursuant to Rule 312;

AND UPON reading the parties' motion materials, including their written representations;

AND UPON determining, for the reasons below, that the Court does not have the jurisdiction to entertain this motion and, thus, it will be dismissed; and, further, even if the Court were to have the requisite jurisdiction, the motion would be dismissed because the Applicant has not persuaded the Court that the Associate Judge made a palpable and overriding error;

[1] While recognizing that the outcome of this motion will be disappointing to the Applicant, I nonetheless agree with the Respondent that paragraph 72(2)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] precludes the motion. That provision is clear: "no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment."

[2] Further, the Federal Court of Appeal holds that the order of a judicial officer of this Court dismissing a motion for leave to file a further affidavit in an immigration matter is an interlocutory judgment that cannot be appealed: *Froom v Canada (Minister of citizenship and immigration)*, 2003 FCA 331 at paras 1-3. *Froom* is binding on this Court and, in my view, none of the jurisprudence on which the Applicant relies here displaces it.

[3] Even if it were otherwise, I would have found that the Associate Judge made no palpable and overriding error warranting the Court's intervention.

[4] The Order dismisses the Applicant's motion in writing, dated February 26, 2024, to file an additional affidavit to support a request for an extension of time contained in the Applicant's

application for leave and judicial review filed on July 7, 2023. The extension request was made under paragraph 72(2)(c) of the *IRPA*.

[5] Noting the law applicable to a motion under Rule 312 as outlined in *Rosenstein v Atlantic Engraving Ltd*, 2002 FCA 503 [*Rosenstein*], the Associate Judge provides three reasons for the Order. First, the evidence was available prior to the service and filing of the Applicant's Application Record. Second, there was a period of several months before the Respondent served and filed a Memorandum of Argument during which the Applicant could have moved for leave to file the additional affidavit. Third, the filing of the additional affidavit after the service and filing of Respondent's Memorandum of Argument would result in improper reply evidence.

[6] There is no dispute that the appellate standard of review applies to an appeal of an associate judge's order under Rule 51: *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 63-65, 79, and 83, citing *Housen v Nikolaisen*, 2002 SCC 33 (see paras 7-36). This means that "questions of fact and mixed questions of fact and law are subject to the palpable and overriding error standard while questions of law, and mixed questions where there is an extricable question of law, are subject to the standard of correctness": *Worldspan Marine Inc v Sargeant III*, 2021 FCA 130 at para 48; see also *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 33.

[7] The Applicant has not persuaded me that there is any question of law here; thus, the highly deferential, palpable and overriding standard applies.

[8] There also is no dispute that the Associate Judge identified the applicable jurisprudence laying out the test for filing additional affidavits under Rule 312. The Applicant takes issue with lack of reference to the requirements of the test described in para 8 of *Rosenstein*. The Applicant overlooks, however, the significant caveat in para 9 to the effect that "Rule 312 is not there to allow a party to split its case and a party must put its best case forward at the first opportunity." The Order addresses this caveat by finding that the Applicant essentially sought to file reply evidence (i.e. thus, the Applicant impermissibly attempted to split their case). In my view, there was no need, therefore, for the Associate Judge to address the factors described in para 8 of *Rosenstein*. In other words, I find he made no palpable and overriding error in this regard.

[9] The Applicant also asserts that the Associate Judge provided inadequate reasons. I disagree.

[10] The Federal Court of Appeal guides that the distillation and synthesis of reams of evidence into brief, comprehensible reasons will not be construed necessarily on appeal as misunderstandings of the legal principles or instances of faulty application of the law to the facts: *Millennium Pharmaceuticals Inc v Teva Canada Limited*, 2019 FCA 273 [*Millennium*] at para 9, citing *South Yukon Forest Corp v Canada*, 2012 FCA 165 at para 49; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] at para 69. Stated another way, "[a]n inquiry into palpable and overriding error overlooks matters of form and gets at the substance of what the first-instance court did": *Millennium*, at para 10.

[11] Further, “a non-mention in reasons does not necessarily lead to a finding of palpable and overriding error”: *Mahjoub,* above at para 66. An objective in fulfilling an appellate function is to perform a holistic, organic and fair review of the first-instance decision: *Apotex Inc v Eli Lilly and Company*, 2018 FCA 217 at para 97, citing *Pfizer Canada Inc v Teva Canada Limited*, 2016 FCA 161 at paras 68-69.

[12] In the end, I find that the Applicant, in disagreeing with the Order, attempts to reargue the Rule 312 motion on this appeal, and, in the process, the Applicant asks the Court to reweigh the evidence which is not the role of an appellate court: *Alcon Canada Inc v Actavis Pharma Company*, 2015 FCA 191 at para 26.

AND UPON concluding, for the above reasons that the Applicant’s motion will be dismissed;

AND UPON considering the Respondent’s request and submissions for costs under Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, and determining that, in the circumstances, the exercise of the Court’s discretion is warranted to award a modest lump sum amount of $500 to the Respondent, payable by the Applicant.

ORDER in IMM-8614-23

THIS COURT ORDERS that:

1. The Applicant's motion appealing the August 2, 2024 Order of Associate Judge Crinson is dismissed.
2. The Respondent is awarded lump sum costs in the amount of $500 payable by the Applicant.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8614-23
STYLE OF CAUSE:	ARDALAN GHAFOOR ARIF v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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

ORDER AND REASONS:	FUHRER J.
DATED:	SEPTEMBER 19, 2024

APPEARANCES:

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Veronica Cham	FOR THE RESPONDENT

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