Federal Court  Cour fédérale

Date: 20160212

Docket: IMM-2680-15

Citation: 2016 FC 196

Ottawa, Ontario, February 12, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

SAJJAD SHAMSI KAZEM ABADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

SUPPLEMENTAL JUDGMENT AND REASONS

[1] On January 8, 2016, I dismissed an application for judicial review brought by Shamsi Kazemi Abadi pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (*Shamsi Kazemi Abadi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 29). I upheld the decision of the Refugee Protection Division [RPD] of the Immigration and Refuge Board that Mr. Shamsi's refugee status had ceased pursuant to s 108(1)(a) of the IRPA because he had re-availed himself of the protection of his country of nationality.

[2] Pursuant to s 74(d) of the IRPA, no appeal from a judgment of this Court that disposes of the merits of an application may be initiated unless the judge "certifies that a serious question of general importance is involved and states the question." Pursuant to Rule 18(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [the Rules], a party who requests certification of a question must specify the precise question.

[3] At the hearing that took place in Vancouver, British Columbia on December 10, 2015, I asked the parties whether they wished to propose any questions of general importance for certification. Counsel for Mr. Shamsi responded that they had not prepared precise questions for certification, but indicated that there "may potentially" be serious questions arising from the case. The Minister of Citizenship and Immigration [the Minister] argued that there was ample jurisprudence addressing the question of re-availment, and no questions of broad significance or general importance arose from the case.

[4] In my judgment dated January 8, 2016, I declined to certify a question for appeal pursuant to s 74(d) of the IRPA. I concluded that the outcome of the case was a function of its particular facts. By letter dated January 13, 2016, Mr. Shamsi sought to make additional submissions and proposed two questions for certification. By letter dated January 28, 2016, the Minister opposed Mr. Shamsi's request that two questions be certified for appeal.

[5] Pursuant to Rule 18(1), parties must be provided with an opportunity to propose a question for certification "before a judge renders judgment." The general rule is that questions cannot be certified for appeal after a judgment is pronounced in writing (*Brar v Canada*

(Minister of Citizenship and Immigration), (1997) 139 FTR 79 at para 4, 76 ACWS (3d) 399 (FC)). A serious question of general importance must arise from the issues in the case and not from the judge's reasons (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 168 at para 9). As the Federal Court of Appeal has observed, a judge who has heard a case should be in a position to identify whether a serious question of general importance arises without circulating draft reasons to counsel (*Valera v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[6] The doctrine of *functus officio* exists to ensure the finality of judgments, and provides that a court cannot reconsider or alter its decision once it has been rendered. There are two exceptions to the general rule that a decision-maker cannot amend its decision: to address a slip and to correct an error in expressing its manifest intention (*Chandler v Association of Architects (Alberta)*, [1989] 2 SCR 848, 62 DLR (4th) 577 (SCC)). Neither exception applies here, therefore the Court is *functus officio*.

[7] Mr. Shamsi relies on my judgment in *Azimi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1291 [*Azimi*] as authority for the proposition that post-judgment submissions may be considered by the Court. My decision to permit additional submissions regarding the certification of questions following the issuance of the Court's judgment in *Azimi* resulted from the unusual circumstances of that case. In *Azimi*, I heard only initial submissions regarding the certification of questions at the hearing, and indicated that I would accept further written submissions if necessary. There was a misunderstanding between the Court and the parties regarding what this would mean in practice. Given the parties' reasonable expectation

that they would be given a further opportunity to propose questions for certification, the Court was not yet *functus officio*.

[8] This may be contrasted with the present case, where the certification of questions was canvassed with the parties at the hearing and no precise questions were proposed. No request was made at the hearing to propose questions for certification by a future date. Nor were any proposed questions received by the Court before judgment was issued.

[9] For the foregoing reasons, the Court is *functus officio* and Mr. Shamsi's request that the Court certify questions for appeal must be denied.

JUDGMENT

THIS COURT'S JUDGMENT is that the Court's previous determination that no question should be certified for appeal is confirmed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SAJJAD SHAMSI KAZEN ABADI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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SUBMISSIONS MADE IN WRITING CONSIDERED AT OTTAWA, ONTARIO.

JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	FEBRUARY 12, 2016

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