

Federal Court



Cour fédérale

Date: 20211126

Docket: IMM-7177-21

Citation: 2021 FC 1314

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 26, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**LUIS ALONSO MENDOZA CHAVEZ
PAOLA JUDITH CALZADA CASTORENA
XANDER ALONSO MENDOZA CALZADA
REYNA YARETHZY MENDOZA
CALZADA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The order in this case deals with the respondent's preliminary motion to strike the application for leave and judicial review [ALJR] filed by the applicants on October 14, 2021, on the ground that the proceedings are time-barred.

[2] The facts underlying the motion are very simple.

[3] On September 7, 2021, the applicants' appeal to the Refugee Appeal Division [RAD] regarding their refugee protection claim was dismissed and the decision of the Refugee Protection Division confirmed.

[4] On the same day, the Immigration and Refugee Board of Canada [Board] mailed the RAD's decision and reasons to the applicants, and sent them to their counsel through the Board's My Account portal.

[5] On October 14, 2021, the applicants filed their ALJR against the RAD's negative decision. In it, they state that they [TRANSLATION] "became aware of the decision on October 14, 2021", 37 days after it was sent to them by the Board.

[6] As this is a motion to strike, the allegations in the Notice of Application must be taken as true. However, according to the undisputed affidavit supporting the motion, there was no delay in sending the decision and reasons.

[7] As a general rule, while the issue of limitation periods may seem straightforward to analyze a priori, a motion to dismiss should not prematurely end a case. This issue should normally be considered at the hearing of the application for review itself. As Justice William Pentney stated in *Krah v Canada (Citizenship and Immigration)*, 2019 FC 361 at paragraph 13:

[13] Applications for leave and judicial review in immigration and refugee matters, like all other applications for judicial review in this Court, are meant to be summary and expeditious

proceedings. The focus is on hearing the matter on the merits without delay rather than contesting procedural questions through preliminary motions and hearings, which normally, and preferably, could all be dealt with at the merits hearing.

[8] Moreover, in *Canada (Health) v Canadian Generic Pharmaceutical Association*, 2007 FCA 375 at paragraph 7, the Federal Court of Appeal cited with approval the trial judge's opinion that "[a]n application for judicial review is supposed to be decided in a summary way", and that "[t]he Court discourages interlocutory motions in applications for judicial review".

[9] However, in *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA), [1995] 1 FC 588, the Federal Court of Appeal recognized that in very exceptional cases, where an application for judicial review "is so clearly improper as to be bereft of any possibility of success", there is jurisdiction in the Court "either inherent or through Rule 5 by analogy to other rules, to dismiss in summary manner" such an application.

[10] In my opinion, the same reasoning applies to an ALJR made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[11] In this case, I am of the opinion that the present situation is plain and obvious, allowing me to conclude without a shadow of a doubt that the application is statute-barred.

[12] Applicants must submit their ALJR within 15 days of the date on which they were notified or became aware of the decision they wish to challenge (paragraphs 72(2)(b) and (d) of

the IRPA). The applicants did not dispute that they submitted their ALJR 37 days after the Board mailed the RAD's decision.

[13] I note that the applicants are not seeking an extension of time in their ALJR, as was open to them under paragraph 72(2)(c). Further, they have not sought to establish special reasons for their delay in their response to this motion.

[14] In light of the foregoing, and especially given that the motion is not contested by the applicants, I consider this case to be exceptional in nature, thus justifying the dismissal of the ALJR.

ORDER in IMM-7177-21

THE COURT ORDERS as follows:

The applicants' application for leave and judicial review is dismissed.

"Roger R. Lafrenière"

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7177-21

STYLE OF CAUSE: LUIS ALONSO MENDOZA CHAVEZ PAOLA
JUDITH CALZADA CASTORENA XANDER
ALONSO MENDOZA CALZADA REYNA
YARETHZY MENDOZA CALZADA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: NOVEMBER 26, 2021

WRITTEN REPRESENTATIONS BY:

Chantal Chatmajian

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barraza Avocats
Montréal, Quebec

FOR THE APPLICANTS

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT