

Federal Court



Cour fédérale

**Date: 20220623**

**Docket: IMM-6206-21**

**Citation: 2022 FC 944**

**St. John's, Newfoundland and Labrador, June 23, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**FAIZAN ALI MEER  
A.K.A. FAIZAN ALI RASHID ALI MEER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND ORDER**

[1] On September 13, 2021, Mr. Faizan Ali Meer a.k.a. Faizan Ali Rashid Ali Meer (the “Applicant”) commenced an application for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), vacating his status as a Convention refugee.

[2] The Applicant filed his Application Record on November 10, 2021. The Minister of Citizenship and Immigration (the “Respondent”) filed his Memorandum of Argument on December 10, 2021. The Applicant filed his Reply on December 20, 2021.

[3] According to the Index of Recorded Entries that is maintained by the Court, the file was forwarded to the Court for disposition on March 3, 2022.

[4] On March 29, 2022, the Federal Court of Appeal delivered its judgment in *Canada (Minister of Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50.

[5] On March 30, 2022, Counsel for the Applicant wrote to Counsel for the Respondent, asking if this recent decision of the Federal Court of Appeal could be added to the Applicant’s list of authorities “as it directly relates to our arguments raised in this application for leave and judicial review”.

[6] Counsel for the Applicant also asked if “this informal letter will suffice for your purposes”.

[7] Counsel for the Respondent replied by letter dated April 1, 2022 opposing this request from Counsel for the Applicant.

[8] In the absence of agreement from Counsel for the Respondent to an informal request to add this new authority, Counsel for the Applicant was required to file a formal motion, pursuant to Rule 369 of the *Federal Courts Rules*, S.O.R./98-106 (the “Rules”).

[9] The Applicant filed a notice of motion on May 16, 2022. The Respondent filed a responding motion record on May 24, 2022.

[10] In support of his motion the Applicant filed the affidavit of Anabell Sandoval Urquizo, a legal assistant with the law firm which represents the Applicant in this matter. The facts set out above are taken from that affidavit, from the written representations of the Respondent and from the Index of Record Entries.

[11] The basis for the opposition from the Respondent to the Applicant’s request to file a current and relevant decision of the Federal Court of Appeal is set out in paragraphs 6 and 7 of the Respondent’s argument. These paragraphs provide as follow:

The decision that the Applicant now seeks to include in his record is dated March 29, 2022. The appellate court issued this decision months after the application for leave was perfected. As the decision did not exist at the time of the applicant filing his submissions, it is inappropriate for the applicant to now seek to include this case.

Inclusion of a newly-issued caselaw after all of the materials are submitted is prejudicial and unfair to the respondent, as the respondent is denied the opportunity to respond to it at the leave stage. The respondent is deprived of the chance to submit arguments about whether the newly-issued caselaw is applicable to the facts of the underlying tribunal decision, about whether the tribunal committed a reviewable error as alleged by the applicant, and whether the tribunal’s decision continues to meet the test for reasonableness despite the issuance of the proffered new caselaw.

[12] In my opinion, the Respondent's objections are without merit.

[13] In the first place, the "law is always speaking"; see the decisions in *R. v. Amato*, [1982] 2 S.C.R. 418 at paragraph 66 and *Renova Holdings Ltd. v. Canadian Wheat Board* (2006), 286 F.T.R. 201 at paragraph 33.

[14] In the second place, while the judicial review process is adversarial in nature, it is more than a matter of "scoring" points against the opposing party.

[15] In the third place, the Application for Leave will not be decided solely on the basis of jurisprudence but upon the question of whether the Applicant, on the basis of the facts and the law, discloses an arguable case in his Memorandum of argument.

[16] The Respondent adopted a technical stance in making the following argument at paragraph 8 of his submissions in the responding motion record:

The practice of including new caselaw when one party has not had the opportunity to address it before pleadings are perfected at the leave stage is one that should not be allowed.

[17] The request by Counsel for the Applicant in this proceeding is hardly the sign of a "practice of including new caselaw".

[18] If leave is granted in this proceeding, both parties would have the opportunity to file further memoranda of argument, with reference to authorities other than those referenced in the initial memoranda of argument.

[19] Upon considering the submissions of the parties and the recent relevant decision of the Federal Court of Appeal, in the exercise of my discretion I grant the Applicant's motion.

[20] In my opinion, this motion was unnecessary. I refer to Rule 3 of the Rules which provides as follows:

**General principle**

**3** These Rules shall be interpreted and applied

**(a)** so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

**(b)** with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.

**Principe général**

**3** Les présentes règles sont interprétées et appliquées :

**a)** de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

**b)** compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige.

[21] I also refer to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee*

*Protection Rules*, S.O.R./93-22 which provides as follows:

**Costs**

**22** No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

**Dépens**

**22** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[22] In my opinion, the Respondent unreasonably took an aggressive position upon the Applicant's request to file a recent, relevant case authority. The recent decision of the Federal Court of Appeal may well assist in the fair disposition of the leave application.

[23] The presentation of a formal motion required time and effort from the Applicant. It required time from the Respondent. It required time from the Court.

[24] The Respondent's position is contrary to the spirit of Rule 3 of the Rules.

[25] In these circumstances, a token award of costs is merited.

[26] In the exercise of my discretion, I award costs in the amount of \$250.00 to the Applicant, payable forthwith by the Respondent, in any event of the cause.

**ORDER in IMM-6206-21**

**THIS COURT'S ORDER is that** the Applicant's motion is granted, leave is given to file the decision in *Canada (Minister of Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50.

In the exercise of my discretion and for the reasons given above, costs are awarded to the Applicant, payable forthwith by the Respondent, in the amount of \$250.00, in any event of the cause.

"E. Heneghan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6206-21

**STYLE OF CAUSE:** FAIZAN ALI MEER, A.K.A. FAIZAN ALI RASHID  
ALI MEER v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND  
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**REASONS AND ORDER:** HENEGHAN J.

**DATED:** JUNE 23, 2022

**WRITTEN REPRESENTATIONS BY:**

Bjorn Harsanyi FOR THE APPLICANT

Galina Bining FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stewart Sharma Harsanyi FOR THE APPLICANT  
Barristers and Solicitors  
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Attorney General of Canada FOR THE RESPONDENT  
Edmonton, Alberta