

**Date: 20081128**

**Docket: IMM-2418-08**

**Citation: 2008 FC 1331**

**Ottawa, Ontario, November 28, 2008**

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

**BETWEEN:**

**Tahir Hussain KHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Pursuant to rule 51 of the *Federal Courts Rules*, SOR/98-106, the applicant is appealing from the decision of Prothonotary Morneau who, on October 2, 2008, dismissed his motion for an extension of time to file his motion record.

[2] However, no appeal lies from such an interlocutory order of the prothonotary, in view of paragraph 72(2)(e) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (IRPA):

**72.** (1) Judicial review by the Federal Court

**72.** Le contrôle judiciaire par la Cour fédérale

with respect to any matter – a decision, determination or order made, a measure taken or a question raised – under this Act is commenced by making an application for leave to the Court.

(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.

de toute mesure – décision, ordonnance, question ou affaire – prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

(2) Les dispositions suivantes s'appliquent à la demande d'autorisation :

[. . .]

e) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

[3] In *Yogalingam v. The Minister of Citizenship and Immigration*, 2003 FCT 540, this Court specifically determined that a decision of a prothonotary dismissing a motion for an extension of time in order to perfect a record is an interlocutory decision and, pursuant to paragraph 72(2)(e) of the IRPA, it lacks jurisdiction to hear an appeal from such a decision (see also *Yawar Abbas Syed v. Minister of Citizenship and Immigration* (September 9, 2003), IMM-2551-03). This interpretation was repeated and confirmed by the Federal Court of Appeal in *Froom v. The Minister of Citizenship and Immigration*, 2003 FCA 331, in which it referred to *Yogalingam*, *supra*, among others.

[4] Consequently, this motion to appeal is dismissed.

[5] In view of the relevant and unequivocal case law above, there is no question for certification arising.

**ORDER**

The motion to appeal from the decision dated October 2, 2008, by Prothonotary Morneau is dismissed.

“Yvon Pinard”

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Judge

Certified true translation  
Susan Deichert, LLB

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

**DOCKET:** IMM-2418-08

**STYLE OF CAUSE:** Tahir Hussain KHAN v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 17, 2008

**REASONS FOR ORDER  
AND ORDER:** PINARD J.

**DATED:** November 28, 2008

**APPEARANCES:**

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Patricia Nobl FOR THE RESPONDENT

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