Federal Court of Appeal  Cour d'appel fédérale

Date: 20161121

Docket: A-79-16

Citation: 2016 FCA 292

CORAM: **STRATAS J.A.**
WEBB J.A.
WOODS J.A.

BETWEEN:

GJON RROTAJ, ELVANA RROTAJ, SAMUELE RROTAJ AND JOANA RROTAJ

Appellants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Toronto, Ontario, on November 21, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on November 21, 2016.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on November 21, 2016).

STRATAS J.A.

[1] The Federal Court dismissed the appellants' application for judicial review but certified a serious question of general importance: 2016 FC 152. The appellants appeal to this Court under subsection 74(*d*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] In its question, the Federal Court asked whether Article 1E of the *Convention Related to the Status of Refugees*, 28 July 1951, Can. T.S. 1969, No. 6, "as incorporated in the Immigration and Refugee Protection Act," applies "if a claimant's third country residency status (including the right to return) is subject to revocation at the discretion of that country's authorities."

[3] At the outset of the hearing of this appeal, we asked the parties to make submissions on whether the question is proper. We have received those submissions and have considered them. In our view, the question is not proper and so this Court does not have jurisdiction to entertain this appeal.

[4] For a question to be proper, it must be of general importance that transcends the interests of the parties to the litigation and must bear upon the outcome of the appeal: *Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 F.C.R. 129, at paras. 28-29.

[5] In our view, neither requirement is met here.

[6] The question is not of general importance. The respondent submits that *Canada (Minister of Citizenship and Immigration) v. Zeng*, 2010 FCA 118 already answers the question to the extent it can be answered. We agree.

[7] In *Zeng*, this Court held that a decision-maker must inquire into the nature of the rights attached to nationality of the third country (at para. 28). Whether or not there is a right to return is part and parcel of the *Zeng* test. The Federal Court was aware of this (at paras. 34-35) and

properly rejected the appellants' suggested formulation of the question. The Federal Court tried to reformulate the question (at para. 36). But in substance its reformulation is no different from the question it rejected.

[8] Further, in this case, the question has no bearing upon the outcome of the appeal. On critical findings of fact and mixed law and fact made by the Federal Court—findings not challenged in the appellants' notice of appeal—the question does not arise and, thus, does not bear upon the outcome of the appeal.

[9] The Federal Court held (at paras. 24-27) that the appellants did not provide any evidence to meet their burden to demonstrate that they had lost or could lose status in the third country, here Italy. Their absence from Italy for more than 12 months "does not mean they had lost status in Italy" (at para. 24). The Federal Court also held (at para. 27) on the basis of the evidence before it that the appellants "held the right to work without restrictions, to study, to fully access social services, and to return to [Italy]" and, thus, "the evidence does not disclose a serious possibility, let alone a probability, that [the appellants] have no right to return [to Italy]." The Federal Court noted (at para. 27) that the principal appellant conceded during the hearing that all the formal rights of an Italian citizen except the right to vote and the right to a passport were present. In *Zeng*, this Court held (at para. 1) that Article 1E "precludes the conferral of refugee protection if an individual has surrogate protection in a country where the individual enjoys substantially the same rights and obligations as a national of that country." The Federal Court also found (at para. 31) that the appellants had not brought evidence they had lost their right of return and could not renew their status.

[10] Without a serious question of general importance before us under subsection 74(*d*) of the *Immigration and Refugee Protection Act*, we have no jurisdiction to entertain this appeal. Therefore, despite the able submissions of Mr. Levinson, we must dismiss this appeal.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-79-16
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE DINER OF THE FEDERAL COURT DATED FEBRUARY 8, 2016, DOCKET NO. IMM-2919-15.	
STYLE OF CAUSE:	GJON RROTAJ, ELVANA RROTAJ, SAMUELE RROTAJ AND JOANA RROTAJ v. THE MINISTER OF CITIZENSHIP AND IMMEGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	NOVEMBER 21, 2016
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. WEBB J.A. WOODS J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

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