

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200922

Docket: A-1-20

Citation: 2020 FCA 145

**CORAM: STRATAS J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

TIMOTHY E. LEAHY

Appellant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Heard at Toronto, Ontario, on September 22, 2020.
Judgment delivered from the Bench at Toronto, Ontario, on September 22, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 22, 2020).

STRATAS J.A.

[1] A Visa Officer refused Mahbubur Rahman's application for a study permit. With the assistance of the appellant, a disbarred lawyer, Mr. Rahman sought leave in the Federal Court to have the refusal reviewed. The Federal Court refused leave.

[2] The appellant on his own behalf applied in the Federal Court for an order quashing the refusal. He framed his application in the Federal Court as a Charter claim for freedom to associate with Mr. Rahman. He did not seek leave to bring the application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27. By Order dated December 4, 2019, the Federal Court (*per* Manson J.) struck the application.

[3] The appellant now appeals the Order to this Court.

[4] We must go beyond how the appellant framed his application and discern the application's "real essence" and "essential character": *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557 at paras. 49-50.

[5] In real essence and essential character, the application in the Federal Court challenged the Visa Officer's refusal to issue a study permit to Mr. Rahman. The opening language in the notice of application makes this perfectly clear.

[6] Accordingly, leave of the Federal Court had to be sought under subsection 72(1) of the Act. Leave was not sought. Therefore, the Federal Court was correct to quash the application: see, *e.g.*, *Kaur v. Canada (Citizenship and Immigration)*, 2020 FCA 136. Further, the Federal Court has already denied leave to Mr. Rahman and so the matter—the quashing of the refusal of a permit to Mr. Rahman—could not be relitigated. The appellant also lacked direct standing to bring the application.

[7] In oral argument, the appellant submitted that the Federal Court gave insufficient reasons in support of its Order. We disagree. It is true that it would have been better if the Federal Court offered more explanation. But when the Order with its preambles is read in light of the record before the Court, we can discern why it was made: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869.

[8] In quashing the application, the Federal Court did not certify a question of general importance under section 74 of the Act. None of the narrow exceptions set out in this Court's section 74 case law apply: for a summary of them, see *Es-Sayyid v. Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59, [2013] 4 F.C.R. 3. Therefore, this appeal is contrary to section 74 and must be dismissed.

[9] We note that the appellant failed to prepare the appeal book in accordance with the agreement on contents, no more, no less. This is not acceptable.

[10] We note the appellant's unsupported and unfounded allegations of corruption against the Federal Court and the Department of Justice and other intemperate remarks made in his memorandum of fact and law. This is not the first time. We warn that this sort of conduct can trigger a vexatious litigant application under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[11] Where, as here, a notice of appeal is filed in this Court and this Court has no jurisdiction to entertain it, the Registry or the respondent should ask the Court to act immediately under Rule

74 to terminate the appeal. Doing so minimizes the wasteful expenditure of resources by all concerned.

[12] For the foregoing reasons, we consider there to be special circumstances in this immigration matter warranting an award of costs against the appellant.

[13] Therefore, we will dismiss the appeal with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-20

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE MANSON
DATED DECEMBER 4, 2019, DOCKET NO. T-1679-19**

STYLE OF CAUSE: TIMOTHY E. LEAHY v. THE
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 22, 2020

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

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Timothy E. Leahy ON HIS OWN BEHALF

John Loncar FOR THE RESPONDENT

SOLICITORS OF RECORD:

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