

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220518

Docket: A-221-20

Citation: 2022 FCA 87

**CORAM: STRATAS J.A.
BOIVIN J.A.
DE MONTIGNY J.A.**

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

MIRON ISSANOV

Respondent

Heard at Ottawa, Ontario on May 18, 2022.
Judgment delivered from the Bench at Ottawa, Ontario, on May 18, 2022.

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 Ottawa, Ontario, on May 18, 2022).

STRATAS J.A.

[1] In an application for judicial review in the Federal Court, the respondent challenges a visa officer's decision to cancel the respondent's Canadian multiple-entry visa. The officer concluded that the purpose of the respondent's visit to Canada "was in doubt". In the course of that application, the Minister of Citizenship and Immigration moved for an order prohibiting the

disclosure of certain information to the respondent. The Minister relied upon section 87 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Federal Court interpreted section 87, applied it to the facts of this case, and dismissed the motion: 2020 FC 864 (*per* Gagné A.C.J.). The Minister now appeals.

[3] We are all of the view that the appeal must be dismissed.

[4] To obtain an order under section 87, the Minister must show that disclosure of the information “would be injurious to national security or endanger the security of any person”. The evidence filed in support of the Minister’s motion, most especially the affidavit of the visa officer and his testimony on cross-examination, rises no higher than “may...endanger”. Thus, at the level of evidence, the Minister has fallen short of the mark and cannot succeed. We note that the Federal Court also so found (at paras. 43-45). Its factual findings supporting this can only be set aside on the basis of palpable and overriding error and there is none here.

[5] The Minister submits that the Federal Court did not review the evidence sufficiently to make the finding it did. However, on appeal, we are to presume the Federal Court considered the evidence absent some further indication: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 at para. 45. Here there was evidence to support the Federal Court’s finding.

[6] In the course of its reasons, the Federal Court interpreted section 87. We find it unnecessary and unwise to do so in this case. Section 87 should be interpreted in a case that

requires it. Further, the issues of interpretation are somewhat challenging and facts that set up more directly these issues would help to inform the Court in its decision.

[7] In saying this, we should not be taken to accept or reject the interpretation adopted by the Federal Court or its reasoning. Indeed, when the interpretation issues again arise in this Court, this Court would be assisted both by the decision of the Federal Court in this case and by the Federal Court's decisions in other cases. To this end, without suggesting anything about the reasons of the Federal Court in this case, until this Court resolves the issues of interpretation definitively, we encourage the Federal Court in future cases to regard the issues of interpretation—quite important ones—as unresolved and to give them an independent, fresh look on the facts of their particular cases, offering whatever additional insight it can.

[8] Our judgment in this appeal does not preclude any party in the application for judicial review in the Federal Court from seeking a confidentiality order under Rule 151 or seeking any other protective order that is necessary in the circumstances.

[9] For the foregoing reasons, we will dismiss the appeal.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-221-20

APPEAL FROM THE JUDGMENT DATED JUNE 24, 2020 OF ASSOCIATE CHIEF JUSTICE GAGNÉ OF THE FEDERAL COURT IN FILE CONF-4-20

STYLE OF CAUSE: MINISTER OF CITIZENSHIP
AND IMMIGRATION v. MIRON
ISSANOV

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 18, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
BOIVIN J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Bernard Assan
Monmi Goswami

FOR THE APPELLANT

Lorne Waldman

SPECIAL ADVOCATE
REPRESENTING THE
INTERESTS OF THE
RESPONDENT

SOLICITORS OF RECORD:

A. François Daigle
Deputy Attorney General of Canada

FOR THE APPELLANT

Lorne Waldman

SPECIAL ADVOCATE
REPRESENTING THE
INTERESTS OF THE
RESPONDENT