Federal Court of Appeal  Cour d'appel fédérale

Date: 20221020

Docket: A-315-21

Citation: 2022 FCA 179

[ENGLISH TRANSLATION]

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

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

ABDELHAK SEDKI
ZINEB EL AOUD

Respondents

Heard at Montreal, Quebec, on October 18, 2022.

Judgment delivered at Montreal, Quebec, on October 20, 2022.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
LOCKE J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] On December 6, 2017, Mr. Sedki's application for a visitor's visa to Canada was denied because he was inadmissible within the meaning of paragraph 40(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for misrepresenting a fact relating to his work history and financial means.

[2] On October 25, 2019, an officer denied the application for permanent residence as a member of the family class, citing only the fact that the five-year inadmissibility period had not yet expired and that it would continue until December 6, 2022.

[3] The respondents appealed the officer's decision before the Federal Court (2021 FC 1071). The Federal Court allowed the application for judicial review because the officer failed to take into account the humanitarian and compassionate considerations raised in Mr. Sedki's application. The Federal Court therefore referred Mr. Sedki's application to a different officer for redetermination.

[4] This appeal comes before this Court on the basis of a question certified by the Federal Court, which reads as follows:

> Can a foreign national inadmissible for misrepresentation pursuant to subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) apply, during the period set out in paragraph 40(2)(*a*) of the *IRPA*, for permanent resident status on humanitarian and compassionate grounds under subsection 25(1) of the *IRPA*, despite the prohibition on applying for permanent resident status under subsection 40(3) of the *IRPA*?

[5] However, it should be noted that between the decision of the Federal Court and the hearing before this Court, the redetermination rendered in accordance with the Federal Court's decision denied the family class application and the application on humanitarian and compassionate considerations for insufficiency. That decision was appealed to the Immigration Appeal Division.

[6] Against this backdrop, the respondents filed a motion to dismiss the appeal, alleging that it was now moot.

[7] Having heard the parties argue the matter and considered the factors set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231, I am of the view that the appeal is moot because an officer made a redetermination and, after assessing the humanitarian considerations, denied the application. A decision on the merits will therefore have no practical effect on the rights of the parties, regardless of the resulting order.

[8] Furthermore, having decided that the appeal is moot, I would also decline to exercise the Court's discretion to rule on the merits since, on December 6, 2022, less than two months from now, Mr. Sedki's five years of inadmissibility will expire, and he will therefore no longer be inadmissible.

[9] The Attorney General of Canada (AGC) argues that it is imperative that there be a ruling on the legal issue of the interaction between subsections 40(3) and 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, even though the officer's decision of October 25, 2019, was silent on the reasons that led him to decide as he did. The AGC is asking us to give him an abstract legal opinion to create a legal precedent (*Canadian Union of Public Employees (Air Canada Component) v. Air Canada*, 2021 FCA 67 at para. 7). It would be far preferable for this legal issue to be decided on the basis of an administrator's reasoned decision, for [TRANSLATION] "Parliament has vested the administrator with the responsibility of looking at the relevant provisions, interpreting them and deciding upon their meaning with an explanation that permits

meaningful judicial review" *(Bonnybrook Park Industrial Development Co. Ltd. v. Canada (National Revenue)*, 2018 FCA 136 at para. 83, Stratas J.A. dissenting, but not on this point; see also *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 123 and 124).

[10] I would therefore allow the respondents' motion and dismiss the appeal.

[11] That said, these reasons should not be taken to mean that this Court agrees with the reasons of the Federal Court judge.

"Richard Boivin"
J.A.

"I agree.
Yves de Montigny J.A."

"I agree.
George R. Locke J.A."

Certified true translation
Vera Roy, Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-315-21
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. ABDELHAK SEDKI, ZINEB EL AOUD
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	OCTOBER 18, 2022
REASONS FOR JUDGMENT BY:	BOIVIN J.A.
CONCURRED IN BY:	DE MONTIGNY J.A. LOCKE J.A.
DATED:	OCTOBER 20, 2022

APPEARANCES:

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