

Federal Court



Cour fédérale

**Date: 20230621**

**Docket: IMM-11009-22**

**Citation: 2023 FC 878**

**Vancouver, British Columbia, June 21, 2023**

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

**BETWEEN:**

**SHEETAL SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

I. Background

[1] The Applicant moves for an extension of time to file his Application Record pursuant to Rule 10 of the *Federal Court Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 (the “Rules”).

[2] The underlying application for leave and judicial review (“ALJR”) was commenced on November 7, 2023. The Court and the parties received tribunal materials under Rule 9 of the Rules on December 12, 2022. The Applicant’s deadline to perfect this ALJR was therefore January 30, 2023.

[3] The Applicant did not perfect this application by that date. Accordingly, the Respondent argues that the application was deemed discontinued pursuant to the Court’s Notice to the Parties and the Profession, amended December 22, 2022 (the “Notice”).

[4] The Applicant is beyond the 30-day extension of time automatically granted to applicants pursuant to the Court’s Practice Direction and Order (amended May 25, 2023) Termination of Administrative Practice: Deemed Discontinuance and Simplified Process for Extension of Time (“Practice Direction and Order”). The automatic extension expired on or about March 1, 2023.

[5] On June 6, 2023, the Applicant brought this motion, requesting an order to extend the time for filing the Application Record.

## II. Issue

[6] Should the Applicant’s motion for an extension of time to file the Application Record be granted?

III. Analysis

[7] The parties agreed that the test to be applied when considering requests for an extension of time is whether the Applicant has demonstrated:

- A. A continuing intention to pursue his or her application.
- B. The application has some merit.
- C. That no prejudice to the Respondent arises from the delay.
- D. That a reasonable explanation for the delay exists.

*(Canada (Attorney General) v Hennelly, 1999 CanLII 8190 (FCA) (Hennelly)*

[8] While an applicant need not demonstrate a positive response to all four *Hennelly* factors to warrant an extension of time, “the overriding consideration. . .is that justice be done between the parties” (*Alberta v Canada, 2018 FCA 83 at paras 44, 45*).

[9] The Federal Court of Appeal has confirmed that an applicant need not satisfy all four *Hennelly* factors:

The decision to grant or refuse an extension of time in which to bring an application for judicial review is a discretionary one typically based on the four factors identified by this Court in *Hennelly*. The *Hennelly* factors are not, however, to be applied in a rigid fashion, and it is not always necessary that the party seeking the extension of time be able to satisfy all four factors. The overriding consideration is whether it is in the interests of justice that the extension of time be granted.

*(Whitefish Lake First Nation v Grey, 2019 FCA 275 at para 3)*

[10] The Federal court's Practice Direction and Order, issued on May 9, 2023 did not retroactively negate matters that had already been deemed discontinued. Therefore, the applicant's ALJR was deemed discontinued on or about March 1, 2023. Without a request to re-open his ALJR, the within litigation is concluded and therefore not entitled to an extension of time.

[11] Moreover, the Applicant has also failed to provide any reason let alone exceptional circumstances, for the re-opening. In *Virk v Canada*, the Court held:

a party should only be relieved from the effects of a deemed discontinuance triggered by the litigant's inaction and the Deemed Discontinuance Practice in circumstances where they can establish that their inaction and failure to perfect their ALJR in a timely manner is the result of exceptional circumstances or fundamental event that affected their ability to perfect their ALJR when required notwithstanding that they were otherwise diligently taking the necessary steps to perfect their ALJR in time.

(*Virk v Canada (Citizenship and Immigration)*, 2023 FC 143 at para 35 [*Virk*])

[12] The Applicant has failed to request that this matter be re-opened and has failed to support his motion with any exceptional circumstances such that the motion should be granted. As such, the motion is denied on that ground alone.

[13] As well, the evidence in the solicitor's affidavit fails to satisfy the *Virk* test to set aside a deemed discontinuance.

[14] That the Applicant failed to file his record due to an error on the part of his solicitor prior to his deadline of January 30, 2023 does not amount to an exceptional circumstance or

fundamental event that affected his ability to perfect their ALJR. Ignorance of the law, inadvertence or potential solicitor negligence do not meet the threshold to establish an exceptional circumstance or fundamental event.

[15] With respect to a continuing intention to proceed, evidence of continuing intention must come from the Applicant himself, unless the Applicant can satisfy the Court that he was unable to do so for reasons outside of his control. The affidavit from the Applicant's counsel fails to disclose any reason why the Applicant has not provided evidence speaking to his continuing intention to proceed (*Viridi v Canada (Minister of National Revenue)*, 2006 FCA 38 at para 3).

[16] With respect to the merit of the underlying application, the Applicant has provided evidence in the solicitor's affidavit to support this motion. The Court was not provided with copy of the decision under review, nor the alleged errors believed to exist in the decision.

**ORDER in IMM-11009-22**

**THIS COURT ORDERS that:**

1. The motion is dismissed.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-11009-22

**STYLE OF CAUSE:** SHEETAL SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA  
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** MANSON J

**DATED:** JUNE 21, 2023

**WRITTEN SUBMISSIONS BY:**

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Camille N. Audain FOR THE RESPONDENT

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