Federal Court of Appeal Cour d'appel fédérale

Date: 20160425

Docket: A-370-15

Citation: 2016 FCA 126

CORAM: **DAWSON J.A.**
STRATAS J.A.
NEAR J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

JOHN JOSEPH GOODMAN

Respondent

Heard at Toronto, Ontario, on April 25, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on April 25, 2016.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 25, 2016).

DAWSON J.A.

[1] By order dated August 13, 2015, issued in Court file No. IMM-1633-15, a judge of the Federal Court stayed the respondent's application for judicial review of a decision of the Immigration Division of the Immigration and Refugee Board. The Board found the respondent to be inadmissible to Canada as a person described in paragraphs 34(1)(*f*) and 36(2)(*b*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act). The stay is to continue until 15

days after the respondent receives a final decision by the Minister of Public Safety and Emergency Preparedness (Minister of Public Safety) about whether to grant ministerial relief from the finding of inadmissibility pursuant to what was formerly subsection 34(2) of the Act. This is an appeal from the order granting the stay.

[2] Paragraph 72(2)(*e*) of the Act bars appeals from interlocutory orders of the Federal Court rendered in proceedings commenced under the Act. Subsection 74(d) of the Act bars appeals to this Court in the absence of a stated and certified question of general importance.

[3] A narrow exception exists to these provisions: an appeal lies where the Federal Court refuses to exercise its jurisdiction or commits a jurisdictional error (*Canada (Solicitor General) v. Subhaschandran*, 2005 FCA 27, [2005] 3 F.C.R. 255, at paragraphs 13-15; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 223, [2012] 2 F.C.R. 243, at paragraph 15).

[4] The Minister of Citizenship and Immigration submits that this appeal falls within the narrow exception because the Federal Court committed a jurisdictional error and failed to exercise its jurisdiction.

[5] The Federal Court's jurisdictional error is said to be exceeding its jurisdiction by taking away from the Minister of Public Safety his discretion to await the outcome of the judicial review of the finding of inadmissibility before making his own decision on the ministerial relief application. The refusal to exercise jurisdiction is said to arise because by staying the application

for judicial review, the Court refused to exercise its jurisdiction to hear the application in an expeditious manner as mandated by paragraph 72(2)(*d*) of the Act.

[6] We see no merit in either submission.

[7] With respect to the first asserted error, we accept the respondent's submission that in order to interfere with the Minister's discretion to render his ministerial relief decision after the inadmissibility finding has been judicially reviewed, the appellant must demonstrate the Minister possesses such a right. In our view, he does not.

[8] The Federal Court has held that nothing in section 34 of the Act dictates whether a ministerial relief decision under subsection 34(2) should be made before determination of inadmissibility under subsection 34(1), or vice versa (*Hassanzadeh v. Canada (Minister of Citizenship and Immigration*), 2005 FC 902, [2005] 4 F.C.R. 430, at paragraph 25; *Shahzad v. Canada (Citizenship and Immigration Canada)*, 2015 FC 1245, [2015] F.C.J. No. 1291, at paragraph 14). As well, the Federal Court possesses jurisdiction to compel the Minister to render his decision where there has been unreasonable delay (see, for example, *Esmaeili-Tarki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 697, [2010] F.C.J. No. 1020). It follows that the Minister has no discretion to determine the order in which decisions under section 34 of the Act are made.

[9] Further, any error by the Judge was an error of law – not an error of jurisdiction.

[10] To the extent the Minister relies on a passage in *Poshteh v. Canada (Minister of Citizenship and Immigration)* 2005 FCA 121, [2005] 3 F.C.R. 511 at paragraph 10 to effect that subsection 34(2) does not fetter the discretion of the Minister as to when he might grant a ministerial exemption, this must be read in the context that the Minister was arguing that a ministerial exemption was not available once a finding of inadmissibility was made.

[11] With respect to the second asserted error, paragraph 72(2)(*d*) of that Act does not limit the jurisdiction of the Federal Court under paragraph 50(1)(*b*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 to stay an application initiated under the Act when it is in the interest of justice that the proceeding be stayed. A judge considering a motion for a stay must always take into account the need for proceedings to be conducted with celerity – in no sense can this be seen as a failure to exercise the Court's jurisdiction.

[12] For these reasons, the appeal will be dismissed for lack of jurisdiction. In our view, special circumstances do not exist so as to warrant an award of costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-370-15

(APPEAL FROM AN ORDER OF THE FEDERAL COURT, DATED AUGUST 13, 2015, DOCKET NO. IMM-1633-15)

STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. JOHN JOSEPH GOODMAN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	APRIL 25, 2016
REASONS FOR JUDGMENT OF THE COURT BY:	DAWSON J.A. STRATAS J.A. NEAR J.A.
DELIVERED FROM THE BENCH BY:	DAWSON J.A.

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