

**Date: 20080710**

**Docket: A-244-08**

**Citation: 2008 FCA 234**

**Present: NOËL J.A.**

**BETWEEN:**

**Qianhui DENG,  
Administrator on behalf of the  
Estate of Shiming Deng (deceased)**

**Appellant  
(Applicant in the Federal Court)**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent  
(Respondent in the Federal Court)**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 10, 2008.

**REASONS FOR ORDER BY:**

**NOËL J.A.**

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**Respondent  
(Respondent in the Federal Court)**

**REASONS FOR ORDER**

**NOËL J.A.**

[1] The respondent brings an application for an order dismissing the appellant's appeal, on a preliminary basis, on the ground that this Court is without jurisdiction to hear it. The appeal was brought under the *Immigration and Refugee Protection Act* and the application is based on the fact that no question was certified by the Federal Court pursuant to subsection 74(4) of that Act.

[2] It is not clear to me that this case does not come within the exceptional circumstances where this Court will nevertheless assume jurisdiction to hear the appeal because there was a refusal to exercise jurisdiction (see *Canada (Solicitor General) v. Subhaschandran*, 2005 FCA 27).

[3] In declining to deal with the application for judicial review, the Applications Judge relied on several decisions of the Federal Court which, according to him, suggest that the grant of leave by a fellow judge, without mention of an extension of time where one is sought in the application for leave, preserves the right of the judge hearing the application for judicial review to deal with the extension of time (the only decision directly on point appears to be *Nayyar v. Canada (Citizenship and Immigration)*, 2007 FC 199 at paragraph 7). That is the basis upon which the Applications Judge declined to extend the time in this case, thereby denying the judicial review application without dealing with its merits.

[4] Given that the Applications Judge was bound to deal with the merits of the application subject only to his view that the leave granted earlier did not have the effect of extending the time in conformity with the request to that effect which had been made in the leave application, and given that the case on point which is relied upon as authority has yet to be considered by this Court, it is

preferable to allow the appeal to proceed, and let the panel scheduled to hear the appeal determine whether this Court has jurisdiction in this matter.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-244-08

**STYLE OF CAUSE:** Qianhui DENG, Administrator on behalf of the Estate of Shiming Deng (deceased) and The Minister of Public Safety and Emergency Preparedness

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** Noël J.A.

**DATED:** July 10, 2008

**WRITTEN REPRESENTATIONS BY:**

Lawrence Wong

FOR THE APPELLANT

R. Keith Reimer

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPELLANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT