

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130308

Docket: A-59-13

Citation: 2013 FCA 73

**Present: SHARLOW J.A.
DAWSON J.A.
WEBB J.A.**

BETWEEN:

TWAIN A. COOTE

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on March 8, 2013.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

**DAWSON J.A.
WEBB J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130408

Docket: A-59-13

Citation: 2013 FCA 73

Present: SHARLOW J.A.
DAWSON J.A.
WEBB J.A.

BETWEEN:

TWAIN A. COOTE

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] The respondent the Minister of Citizenship and Immigration seeks an order striking this appeal because it is barred by paragraph 72(2)(e) or paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] No responding motion record has been filed. However, the appellant Mr. Coote submitted a letter to the Court dated February 18, 2013, which was received on February 20, 2013. Although

there is no evidence that a copy of that letter was sent to counsel for the Minister, it has been treated as a submission by Mr. Coote in response to the Minister's motion.

[3] Based on the material on file, it appears that Mr. Coote is the subject of a deportation order made on December 20, 2007. In a decision dated April 20, 2012, the Immigration Appeal Division rejected Mr. Coote's application for an order permitting him to remain in Canada. On May 17, 2012, Mr. Coote filed an application for leave and judicial review of that decision (Federal Court File IMM-4789-12). That file remains open. There is no order or judgment of the Federal Court dismissing it.

[4] On July 20, 2012, Prothonotary Aalto dismissed the motion of Mr. Coote in which he sought, among other things, an extension of time for filing a record in support of his Federal Court application. On August 21, 2012, Justice Hughes dismissed a motion by Mr. Coote for an order setting aside the order of Prothonotary Aalto. On September 17, 2012, Justice Hughes dismissed a motion by Mr. Coote for reconsideration of his August 21, 2012 order.

[5] On January 23, 2013, Justice O'Keefe directed that a motion by Mr. Coote for reconsideration of the September 17, 2012 order of Justice Hughes would be dealt with under Rule 369, that is, on the basis of the written material filed and without an oral hearing. On January 31, 2013, the reconsideration motion came before Justice Mosley, who dismissed it after concluding that the conditions for reconsideration had not been met.

[6] Mr. Coote is now seeking to appeal the January 31, 2013 order of Justice Mosley. The Minister argues that no appeal lies from that order, and for that reason it should be struck.

[7] Pursuant to paragraphs 27(1)(a) and (c) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, an appeal lies to this Court from any final or interlocutory judgment of the Federal Court. However, those provisions do not apply if an appeal is barred by another statute.

[8] The order sought to be appealed was made in an application for leave and judicial review of a decision made under the *Immigration and Refugee Protection Act*. No appeal lies to this Court against an interlocutory judgment in that application (paragraph 72(2)(e) of the *Immigration and Refugee Protection Act*), or against a final judgment unless the judge rendering the final judgment certifies that a serious question of general importance is involved and states the question (paragraph 74(d) of the *Immigration and Refugee Protection Act*).

[9] Mr. Coote takes the position that the order he seeks to appeal is a final judgment in his Federal Court application. I do not agree, but even if it is a final judgment, it cannot be appealed to this Court because no question of general importance has been certified.

[10] Mr. Coote alleges that Justice Mosley, in making his January 31, 2013 order, acted without jurisdiction or refused to exercise his jurisdiction, or that he had a conflict of interest. These allegations apparently are made in an attempt to bring this matter within the limited class of cases where this Court has entertained an appeal in an immigration matter despite paragraphs 72(2)(e) and

74(d) of the *Immigration and Refugee Protection Act*. However, those allegations are unfounded.

The record discloses no basis upon which this Court can entertain this appeal.

[11] For these reasons, I would grant the Crown's motion to strike this appeal.

“K. Sharlow”

J.A.

“I agree

Eleanor R. Dawson J.A.”

“I agree

Wyman W. Webb J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-59-13

STYLE OF CAUSE: TWAIN A. COOTE v. THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: SHARLOW J.A.

CONCURRED IN BY: DAWSON, WEBB JJ.A.

DATED: March 8, 2013

WRITTEN REPRESENTATIONS BY:

Twain A. Coote

FOR THE APPELLANT (SELF
REPRESENTED)

Tamrat Gebeyehu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT