Federal Court Cour fédérale

Date: 20250508

Docket: IMM-5274-25

Citation: 2025 FC 837

Ottawa, Ontario, May 8, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JIAN XUE

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Respondent brings this motion to strike the Applicant's application for leave and for judicial review under Rule 369 of the *Federal Courts Rules*, SOR/98-106. The Applicant seeks an order of *mandamus* compelling the Respondent to decide their study permit application submitted on March 1, 2024.

[2] The Respondent argues that the present application is an abuse of process because the Applicant filed twice previously for *mandamus*, in respect of the same study permit, yet failed to perfect their record. Furthermore, the Respondent seeks the Court's "guidance on the practice of bringing motions to strike in immigration proceedings": Respondent's Written Representations at para 2.

[3] I decline to strike the underlying judicial review application. The jurisprudence is clear that motions to strike judicial review applications must only be brought in exceptional circumstances. Furthermore, abuse process is a discretionary remedy designed to achieve fairness in the circumstances of each case. I am not persuaded that allowing the within application to proceed would bring the administration of justice into disrepute.

II. Background

[4] The Applicant submitted a study permit application on March 1, 2024. After 180 days, they filed an application for leave and for judicial review seeking an order of *mandamus* (Court file no. IMM-15879-24). The Applicant did not perfect this application within the requisite time set out in section 10 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Immigration Rules*]. A Notice of Discontinuance was filed on March 26, 2025.

[5] On January 2, 2025, the Applicant filed a second application for leave and for judicial review in respect of the same study permit (Court file no. IMM-94-25). By that time, 307 days had elapsed since they had submitted their study permit application. According to the Court record, in response to Rule 9 of the *Immigration Rules*, the Embassy of Canada in Beijing advised that no

decision had been made and, as such, no reasons exist. The Applicant requested written reasons on February 10, 2025. The Registry advised them to "review the next steps as records show that the tribunal" sent reasons on January 10, 2025: Recorded Entry Summary, Respondent's Motion Record at 27.

[6] The Applicant filed their Application Record in Court file no. IMM-94-25 on February 28, 2025. It was rejected for non-compliance with Rule 10(2)(a)(ii) of the *Immigration Rules*, being late, and missing proof of service. On March 3, 2025, the Applicant advised the Court Registry that they had not received written reasons. The Registry explained that the Embassy's letter indicating that no decision exists is the written reasons: Recorded Entry Summary, Respondent's Motion Record at 26. That same day, the Applicant requested the Respondent's consent to an extension of time to file their Application Record.

[7] Respondent's counsel refused to consent to an extension of time because the Applicant had "not provided any reason for the delay in filing an applicant's record". The Applicant responded that they were unable to find the January 9, 2025 email mentioned by the Respondent regarding the written reasons and they again requested the Respondent's approval to an extension of time. However, Respondent's counsel reiterated that she was unable to consent to an extension: Emails dated March 5 & 6, 2025, Respondent's Motion Record at 29–30.

[8] On March 17, 2025, the Applicant tried to file a motion record for an extension of time. That record was refused for various reasons, including no proof of service, no table of contents,

and not being filed as one document: Recorded Entry Summary, Respondent's Motion Record at 26. On March 26, 2025, the Applicant discontinued the application.

[9] The within application for leave and for judicial review was filed on March 10, 2025 (Court file no. IMM-5274-25). At the time of filing, approximately 374 days had elapsed since the Applicant's study permit was submitted. On March 19, 2025, a Rule 9 response was filed indicating that no decision had yet been made and thus no reasons for decision exist. The day after, on March 20, 2025, the Applicant perfected this application by filing their Application Record.

[10] The Respondent filed their motion to strike the underlying application on April 17, 2025.

III. Analysis

A. *A fact-based inquiry*

[11] The Respondent asks this Court for guidance on whether it is appropriate to bring motions to strike in immigration proceedings, and more particularly motions based on abuse of process. It is not possible to provide a binary answer because such motions are fact-based inquiries. However, there are two fundamental legal principles that that should guide both parties and the Court.

[12] First, as a starting point, the jurisprudence is clear that motions to strike judicial review applications should only be brought in exceptional circumstances: *Alliance nationale de l'industrie musicale v Canada (Canadian Radio-Television and Telecommunications Commission)*, 2022 FCA 156 at para 4; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 at

para 139 [*Tsleil-Waututh Nation*]; *Odynsky v League for Human Rights of B'Nai Brith Canada*, 2009 FCA 82 at para 5 [*Odynsky*]. The reason is that judicial review applications are to be determined in a summary and expeditious fashion, whereas motions to strike may unduly delay that expeditious determination: *Tsleil-Waututh Nation* at para 140; *Odynsky* at para 6.

[13] As Justice Grammond points out in *Khinda v Canada (Citizenship and Immigration)*, 2022 FC 1430 [*Khinda*], paragraph 74(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 expressly provides that applications for leave and for judicial review are to be adjudicated "without delay and in a summary way". As a result, he held that "bringing a motion to strike in immigration cases should be strongly discouraged": *Khinda* at para 10.

[14] Second, abuse of process is a discretionary remedy grounded in a court's inherent and residual jurisdiction to prevent misuse of its processes: *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 35; *Behn v Moulton Contracting Ltd*, 2013 SCC 26 at para 39 [*Behn*]; *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at paras 35, 37 [*CUPE*]; *Canada v Csak*, 2025 FCA 60 at para 18. The principles underpinning the doctrine include judicial economy and the integrity of the administration of justice: *Behn* at para 40; *CUPE* at para 37. The focus is whether the conduct at issue "risks undermining the integrity of the justice system": *Canada (Attorney General) v Barnaby*, 2015 SCC 31 at para 10. Consequently, whether conduct constitutes an abuse of process is a fact-specific inquiry.

[15] Justice Régimbald recently emphasized the evolving nature of *mandamus* in that the underlying delay continues to accrue: *Liu v Canada (Immigration, Refugees and Citizenship)*, 2025

FC 575 at paras 11–12 [*Liu*]. In *Liu*, the applicant had filed four previous unperfected applications in respect of the same temporary residence visa. By the time of the fifth application, the Respondent's delay had accrued to more than 749 days. In the circumstances, Justice Régimbald opined that to preclude the applicant from seeking the Court's intervention cannot be appropriate: *Liu* at para 13. Consequently, he held that it was not an abuse of process to request that the Court review the respondent's delay: *Liu* at para 14.

[16] Based on the inherently factual nature of the inquiry, a "hard and fast" rule is not appropriate in the context of motions to strike for an abuse of process. The ultimate question is whether, in the circumstances, the conduct at issue brings the administration of justice into disrepute.

B. *The Court's recent jurisprudence*

[17] The Respondent asserts that "[r]ecent jurisprudence has been split as to whether multiple, identical ALJRs constitute an abuse of process, and if so, whether filing multiple, identical ALJRs meets the exceptional basis to grant a motion to strike": Respondent's Written Representations at para 2. I do not agree with the Respondent's characterization of these cases as "competing lines of reasoning": Respondent's Written Representations at para 17. Rather, the result in each case was based on the application of the relevant legal principles to the particular facts at play.

[18] Notably, in the past two months alone, the Respondent has brought at least nine (9) motions (including the within motion) to strike judicial review applications for *mandamus* in immigration matters. This approach belies the governing principle that motions to strike should only be brought

in exceptional circumstances. The Court dismissed the motions in the following four cases: *Li v Canada (Immigration, Refugees, and Citizenship)*, 2025 FC 762 (Ngo, J); *Chen Mengyan v Minister of Immigration, Refugees and Citizenship Canada* (April 3, 2025), IMM-1496-25 (unreported) (Grammond, J) [*Chen Mengyan*]; *Liu* (Régimbald, J); *Jiayi Huang v Minister of Citizenship and Immigration* (March 21, 2025), IMM-801-25 (unreported) (Sadrehashemi, J).

[19] On the other hand, the Respondent's motions were granted in *Saiyang Zhuo v Minister of Immigration, Refugees and Citizenship Canada* (April 29, 2025), IMM-23524-24 (unreported) (St-Louis, ACJ); *Xiaoran Liu v Marc Miller, The Minister of Immigration, Refugees and Citizenship Canada* (April 9, 2025), IMM-908-25 (unreported) (MacDonald, J) [*Xiaoran Liu*]; and *Jian Han v The Minister of Citizenship and Immigration* (April 3, 2025), IMM-22821-24 (unreported) (MacDonald, J) [*Jian Han*]. In addition, while the Court dismissed the application as moot in *Chen v Canada (Immigration, Refugees and Citizenship)*, 2025 FC 425, in *obiter*, Justice Ahmed agreed that the new application was an abuse of process.

[20] Prior to these recent cases, the Court addressed the issue of striking immigration applications in *Zanjani v Canada (Citizenship and Immigration)*, 2023 FC 1304 [*Zanjani*], and *Khinda*. In *Khinda*, the Respondent sought to strike the application, arguing it was out-of-time. Justice Grammond dismissed the motion, finding it was "premature and complicate[d] rather than simplifie[d] the proceedings": *Khinda* at para 1.

[21] Justice Gleeson granted the Respondent's motion to strike based on abuse of process in *Zanjani* because the applicant had not provided any justification for failing to perfect their

application: *Zanjani* at para 10. Indeed, he found that the sole basis for the filing of a new application was to avoid the requirement to seek an extension of time in the original application: *Zanjani* at para 8.

[22] These decisions illustrate that the Court will undertake a fact-specific inquiry in each case to determine whether the threshold of exceptional circumstances to strike an application for judicial review has been met, and whether the applicant's conduct is such that it undermines the integrity of the administration of justice. Based on the governing legal principles, motions to strike should be brought sparingly, not as a matter of course. By the same token, applicants should avoid bringing new *mandamus* applications to cure procedural defects in the original applications.

C. *The underlying application is not an abuse of the Court's process*

[23] In this case, the Respondent has failed to meet the threshold of "exceptional circumstances" to bring a motion to strike the application for leave and for judicial review. In the circumstances of the case, it is not an abuse of the Court's process to allow the underlying application to proceed.

[24] I find that the Respondent's suggestion that the Court should strike the application "without prejudice to [the Applicant's] right to bring a motion seeking standing to re-open the original 2024 ALJR" is not an efficient use of the Court's scarce resources: Respondent's Written Representations at para 25. I recognize that this was the Court's approach in *Zanjani*, *Xiaoran Liu* and *Jian Han*, but in those cases the applicants did not seek an extension of time to file their application records.

[25] Here, the Applicant tried to seek an extension of time to file their second judicial review application. As set out above, the Applicant first sought the Respondent's consent to an extension of time. However, the Respondent refused despite the Applicant's apparent confusion about the lack of reasons. Had the Respondent consented to the brief extension of time sought, that second application could have proceeded and there would have been no need for this proceeding. Notwithstanding the Respondent's refusal, the Applicant attempted to file a motion to extend the time, but it was rejected due to procedural non-compliance.

[26] While the proper recourse would have been for the Applicant to pursue their motion for an extension of time in the second application, I am unable to find that, in failing to do so and instead pursuing the within application, they have brought the administration of justice into disrepute. In my view, the Applicant has shown a continued intention to challenge the Respondent's failure to issue a decision on their study permit application. I accept their submission that they were not trying to "game the system": Applicant's Written Representations at para 14.

[27] In this case, rather than bringing a preliminary motion, the Respondent should have made submissions regarding abuse of process in responding to the Applicant's leave application: *Chen Mengyan* at 2. That would have been the more expeditious way in which to proceed, and thus more consistent with the summary nature of judicial review proceedings.

IV. Conclusion

[28] For these reasons, the Respondent's motion to strike the application for leave and judicial review is dismissed. The Respondent has 30 days from the date of this Order to file any affidavits and their memorandum of argument in accordance with Rule 11 of the *Immigration Rules*.

ORDER in IMM-5274-25

THIS COURT ORDERS that:

1. The Respondent's motion to strike is dismissed, without costs.
2. The Respondent is granted 30 days from the date of this Order to file any affidavits and their memorandum of argument in accordance with Rule 11 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5274-25
STYLE OF CAUSE:	JIAN XUE v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	TURLEY J.
DATED:	MAY 8, 2025

WRITTEN REPRESENTATIONS BY:

Jian Xue	FOR THE APPLICANT ON THEIR OWN BEHALF
Stephanie Nedoshytko	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDANT