Federal Court  Cour fédérale

Date: 20250623

Docket: IMM-13223-24

Citation: 2025 FC 1131

Toronto, Ontario, June 23, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

DEEPAK JOT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Deepak Jot Singh, commenced an application [Original Application] seeking judicial review of a decision of Immigration, Refugees and Citizenship Canada, dated October 30, 2023, refusing his application for a visitor's visa [Decision]. When the Applicant failed to file his Application Record, the Court issued an order dismissing his application [Dismissal Order]. A year later, the Applicant commenced a fresh application [Fresh

Application] for leave and for judicial review of the Decision. The Fresh Application does not refer to either the Original Application or the Dismissal Order. The Court granted leave [Leave Order].

[2] The question is whether the Court may entertain the Fresh Application on its merits in light of the Dismissal Order and the Leave Order.

[3] I find that the Fresh Application should be struck pursuant to the Court's inherent power to prevent an abuse of process. The Fresh Application was misleading in its failure to mention information that should have been disclosed to the judge deciding whether to grant leave and has the effect of circumventing an order of the Court, which diminishes the fairness and integrity of the Court's rules and procedures, which cannot be condoned.

II. Facts

[4] The Fresh Application was initiated by Notice of Application dated July 24, 2024 [Notice of Application], which included a request for an extension of time with the following explanation:

> Applicant chose to file an Application for Leave and for Judicial Review for this matter; however, later, the Applicant could not continue the application for financial reasons; however, now that the Applicant has sufficient financial resources, the Applicant intends to refile the same matter. Applicant believes that there are merits in his application and the application was truly refused unreasonably.

[5] By letter dated October 7, 2024, counsel for the Respondent sent a letter to the Applicant's counsel indicating that the Minister of Citizenship and Immigration did not object to leave being granted. On March 18, 2025, the Leave Order was granted and the application for judicial review was deemed to have been commenced.

[6] In the lead up to the hearing of the Fresh Application, counsel for the Respondent came to appreciate that the application for judicial review referenced by the Applicant in his Notice of Application in fact bears a different court file number (IMM-14435-23) and was the subject of the Dismissal Order. The Respondent filed a Further Memorandum of Argument taking the new position that as a result of the Order, this Court had become *functus officio* and is without jurisdiction to entertain any arguments related to the Decision (citing *Halford v Seed Hawk Inc*, 2004 FC 455 at para 6).

[7] However, the Respondent's Further Memorandum did not address the effect of the Leave Order. Accordingly, at the hearing of this matter, I gave counsel the opportunity to provide post-hearing submissions on the question on how to reconcile the Dismissal Order and the Leave Order, and whether this Court may consider the Fresh Application on its merits.

[8] The Applicant takes the position that there is no basis to refuse to consider the Fresh Application in the face of the Leave Order and the doctrine of *res judicata*. The Applicant relies on the authority of *Guzman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 15 [*Guzman*], which holds that a Court may not "review or set aside, directly or indirectly" a decision to grant leave to commence an application for judicial review since a judge of the

Federal Court cannot review a decision of another judge of the Federal Court without it amounting to a "disguised appeal" (*Guzman* at paras 10, 16).

[9] The Respondent submits that the Federal Court of Appeal has since clarified that only a *refusal* to grant leave is a final/non-reviewable order, whereas an order *granting* leave is an interlocutory/reviewable order given that it does not determine the substantive rights of the parties (*La-Z-Boy Canada Ltd v Allan Morgan and Sons Ltd*, 2004 FCA 368 at para 7 [*La-Z-Boy*]). Accordingly, the Respondent submits that the Court may and should dismiss the Fresh Application, as the Applicant should have sought to re-open the Original Application, including by seeking an extension of time rather than commencing a fresh application.

III. Analysis

[10] I agree with the Respondent that the Court is not barred from striking the Fresh Application in light of the Leave Order, as the Leave Order is not a final order determining the parties' substantive rights on the Original Application (*La-Z-Boy* at para 7).

[11] The Court's ability to strike an application is not expressly provided for under the *Federal Courts Rules*, SOR/98-106; however, it has been recognized as part of the Court's inherent jurisdiction to control its own processes and prevent the abuse of its procedures so as to ensure that the administration of justice is not brought into disrepute (*David Bull Laboratories (Canada) Inc v Pharmacia Inc (CA)* (1994), [1995] 1 FC 588 at 600 (FCA), *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37 and *Turp v Canada (Foreign Affairs)*, 2018 FC 12 at paras 15, 18). While exceptional, this power has been exercised by the Federal Court in

circumstances where an applicant filed a second application for leave and judicial review while simultaneously discontinuing an earlier identical application which had not been perfected on time (*Zanjani v Canada (Citizenship and Immigration)*, 2023 FC 1304 at para 5).

[12] This case involves similar legal maneuvering that cannot be condoned.

[13] The Applicant's Notice of Application was misleading and failed to disclose both the Original Application and the Dismissal Order, which would have permitted the leave judge to fully understand the circumstances in which leave was being sought. I have no hesitation in finding that the Fresh Application is an abuse of process.

IV. Conclusion

[14] The Fresh Application is an abuse of process and is struck.

JUDGMENT in IMM-13223-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is struck; and

2. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13223-24
STYLE OF CAUSE:	DEEPAK JOT SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 16, 2025
JUDGMENT AND REASONS:	WHYTE NOWAK J.
DATED:	JUNE 23, 2025

APPEARANCES:

Kapilkumar P. Rathod	FOR THE APPLICANT
Jake Boughs	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kapilkumar Rathod Barrister & Solicitor Caledon East, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT