

Federal Court



Cour fédérale

**Date: 20160908**

**Docket: IMM-739-16**

**Citation: 2016 FC 1017**

**Ottawa, Ontario, September 8, 2016**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**AYA MATSUBARA  
MILIA MATSUBARA**

**Applicants**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

[1] Aya Matsubara and her daughter sought judicial review of a decision of an enforcement officer with the Canada Border Services Agency. The enforcement officer refused their request to defer their removal from Canada pending determination of their application for permanent residence on humanitarian and compassionate grounds [the H&C application] or, alternatively, until the end of the daughter's school year.

[2] On February 19, 2016, Justice Manson granted a stay of removal pending determination of the application for leave and judicial review. On June 3, 2016, Justice Manson granted leave to commence the application.

[3] At the hearing of the application for judicial review on September 1, 2016, counsel for the Applicants informed the Court and the Respondent, for the first time, that the H&C application had been approved in principle in April 2016. The parties agreed that the effect of the approval was to vacate the removal order, thereby rendering the application for judicial review moot (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 37; *Amsterdam v Canada (Citizenship and Immigration)*, 2008 FC 244 at para 11).

[4] Counsel for the Applicants argued that this Court should decide the case, notwithstanding that it had become moot, in order to provide judicial guidance on the application of the Supreme Court of Canada's decision in *Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 to requests to defer removal from Canada. He made this assertion despite the statement in the Applicants' memorandum of fact and law that "[t]here is no doubt that hardship plays no role in the analysis of a child's best interests. Even before *Kanthisamy*, the jurisprudence was unanimous" (citing *Williams v Canada (Minister of Citizenship and Immigration)*, 2013 FC 166 and *Akyol v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1252).

[5] The Court retains discretion to decide moot cases, but only in limited circumstances. The Court must consider the fundamental role of the adversarial context in our legal system, concern

for judicial economy, and the need for the Court to demonstrate awareness of its proper law-making function (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342).

[6] Deciding this case on its merits would have no practical effect on the rights of the parties (*Palka v Canada (Minister of Citizenship and Immigration)*, 2008 FC 342 at paras 64-70).

Furthermore, because the H&C application is not yet resolved, the Court should refrain from doing anything that may interfere with an ongoing process involving the parties. This is not an appropriate case for the Court to exercise its discretion to decide a matter that has become moot, and I decline to do so (*Villafuerte Ramirez v Canada (Minister of Public Safety & Emergency Preparedness)*, 2010 FC 500 at para 13; *Ally v Canada (Minister of Citizenship and Immigration)*, 2015 FC 560 at para 20).

[7] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal, and none arises in this case.

[8] It is regrettable that counsel for the Applicants did not inform the Court or the Respondent that the H&C application had been approved in principle prior to this Court's decision to grant leave to commence the application for judicial review in June, 2016, or the hearing of the application on September 1, 2016. This resulted in the needless expenditure of time and scarce judicial resources.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-739-16

**STYLE OF CAUSE:** AYA MATSUBARA MILIA MATSUBARA v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 1, 2016

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** SEPTEMBER 8, 2016

**APPEARANCES:**

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