

Federal Court



Cour fédérale

**Date: 20201019**

**Docket: IMM-4252-19**

**Citation: 2020 FC 978**

**Toronto, Ontario, October 19, 2020**

**PRESENT: Madam Justice Simpson**

**BETWEEN:**

**REMA HARRACKSINGH-MOORE**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench in Toronto, Ontario on October 19, 2020)**

**I. Background**

[1] On March 17, 2017, a deportation order [the Order] was made against the Applicant because she had failed to satisfy the residency requirement for permanent residence in Canada of 730 days in the past five years and because an officer concluded that humanitarian and compassionate [H&C] factors did not overcome her residency shortfall of several hundred days.

On appeal to the Immigration Appeal Division [the IAD and the Appeal], the Appellant raised the validity of the Order as a preliminary issue. The IAD agreed to hear argument on that issue on the basis that, if validity were found, the IAD would reconvene to consider whether to grant a stay of the Order on H&C grounds.

[2] In its decision of June 13, 2017, which it describes as a decision on the preliminary issue [the Decision], the IAD concluded that the Order was valid and that it had been made without a breach of procedural fairness. The IAD therefore directed its Registrar to reconvene the hearing to consider the Appellant's H&C grounds. The applicant seeks judicial review this Decision.

## II. The Issues

[3] In my view, the first issue is whether this application for judicial review should be heard at this time given that the Appeal has not been heard in full and has not been decided.

[4] The second issue is whether the Appellant's Further Affidavit sworn on January 13, 2020 (the Affidavit) should be struck because it includes legal opinions and conclusions.

[5] The third issue is whether the Respondent should have costs.

## III. Discussion

### A. *Issue 1*

[6] This issue can be resolved by deciding whether there is an exceptional circumstance which justifies judicial intervention in the administrative process. This test was established by

the Federal Court of Appeal in *Canada (Border Services Agency) v CB Powell Limited, 2010 FCA 61 [CB Powell]*.

[7] In *CB Powell*, the Court described the principle of judicial non-interference in ongoing administrative processes and noted, at paragraph 33, that this principle is vigorously enforced. This is shown, the Court continued, by the narrow interpretation given to the meaning of exceptional circumstances. The threshold for exceptionality is high and matters such as jurisdiction, bias, fairness and constitutional or other legal questions do not justify bypassing the administrative process as long as those issues can be raised and remedied.

[8] In my view, there are no exceptional circumstances which require this application for judicial review of the IAD's Decision to be heard at this time. If the IAD finds for the Appellant and allows the Appeal on H&C grounds, the issue of validity becomes moot because the Order will be stayed and there will be no need for an application for judicial review.

[9] However, if the IAD dismisses the Appeal, deciding that the H&C factors do not outweigh the shortfall in residence, that decision can be judicially reviewed. At that time, applications for judicial review of the Decision on the preliminary issue of validity and the decision on the H&C grounds can be heard together.

[10] During the hearing, counsel for both parties consented to paragraph 1 of the Judgment herein. For all these reasons, this application will be dismissed as premature.

B. *Issue 2*

[11] The Appellant's Affidavit is 47 paragraphs long and substantial portions read as if they were a Memorandum of Fact and Law. Only paragraphs 1-6, 11, 13, 23-28, 32-37, 42 to the end together with the first sentence of paragraph 20 and the Exhibits arguably contain evidence. For this reason, the entire Affidavit will be struck with leave to file another affidavit, which includes only evidence.

C. *Issue 3*

[12] Counsel for the Respondent asked for \$500.00 in costs but, in the absence of any evidence about the reasons for the request, no costs will be ordered.

IV. Certification

[13] No question was suggested for certification for appeal.

**JUDGMENT in IMM-4252-19**

**THIS COURT'S JUDGMENT is that:**

1. On consent, this application for judicial review of the Decision is hereby dismissed as premature. If, in future, the IAD dismisses the Appeal on H&C grounds, the Applicant may apply for judicial review of the Decision and have that application heard together with an application for judicial review of the negative decision on H&C grounds.
2. The Applicant's Further Affidavit is hereby struck in its entirety with leave to file an affidavit that includes only evidence.
3. There is no order as to costs.

“Sandra J. Simpson”

---

Judge

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

**DOCKET:** IMM-4252-19

**STYLE OF CAUSE:** REMA HARRACKSINGH-MOORE v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 19, 2020

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** OCTOBER 19, 2020

**APPEARANCES:**

Philton Moore FOR THE APPLICANT

Charles Jubenville FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MOORES LAW AND DISPUTE RESOLUTION PRACTICE FOR THE APPLICANT  
Barristers and Solicitors  
Fenwick, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario