

Federal Court



Cour fédérale

Date: 20110819

Docket: IMM-1763-11

Citation: 2011 FC 1011

Ottawa, Ontario, August 19, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

**SHEEMA SADIA, TALHA NOMAN SAIYED
AND SUMRA RAIHAN SAIYED**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] By Notice of Motion dated July 19, 2011, Sheema Sadia, Talha Noman Saiyed and Sumra Raihan Saiyed (the “Applicants”) are seeking an extension of time and reconsideration of my Order issued July 8, 2011 (the “Order”), dismissing their Application for Leave and Judicial Review (the “Application”) at the leave stage. The Applicants sought the judicial review of a decision of an overseas Visa Officer (the “Officer”) of the Visa Post in Singapore, dated January 24, 2011,

wherein that Officer decided that the application for permanent residence filed by the Applicants was refused.

[2] The Application was disposed of without personal appearance pursuant to paragraph 72(2) (d) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the “Act”). As it is the usual practice of this Court, the Order determining the Application was issued without reasons. As provided in paragraph 72(2) (e) of the Act, no appeal lies from a judgement on an application for judicial review.

[3] The Applicants are represented. They submitted a Notice of Motion for extension of time pursuant to Rule 369 and a Notice for reconsideration pursuant to Rule 397 of the *Federal Courts Rules*, SOR/98-106, in writing and without personal appearance. Both parties have filed written submissions.

[4] Rule 397(1) of the *Federal Courts Rules*, SOR/98-106, provides as follows:

397(1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that:

- (a) the order does not accord with any reasons given for it; or
- (b) a matter that should have been dealt with has been overlooked or accidentally omitted.

[5] Since the order dismissing the application for leave was issued without reasons, Rule 397(1) (a) cannot apply.

[6] The issue for reconsideration is then whether I should reconsider the terms of my order because a matter that should have been dealt with has been overlooked or accidentally omitted.

[7] In support of their motion, the Applicants have filed written representations which I have reviewed carefully. The Applicants allege one reason why the Officer has, in their view, acted unfairly and illegally. Unfortunately, this reason does not meet the criteria established by the jurisprudence of this Court (see *Lee v Canada (Minister of Citizenship and Immigration)*, 2003 FC 867).

[8] The Applicants' counsel also filed an appeal of the officer's decision, on March 18, 2011, before the Immigration Appeal Division [IAD].

[9] Rule 397(1) (b) is a technical rule, meant to address situations where a matter that should have been addressed by the Court was overlooked or accidentally omitted. It is not the case in the present matter.

[10] The Applicants are now using this motion to appeal the Order I have rendered on their Application for Leave and Judicial Review, which is contrary to the jurisprudence of this Court (see *Kibale v Canada (Department of Transport)*, [1988] FCJ No 485).

[11] The Applicants assert that their appeal before the IAD cannot be entertained for lack of jurisdiction yet they have brought their recourse before the IAD. Section 72(2) (a) of the Act is clear, no parallel proceedings can be brought before the IAD and this Court, challenging the same

decision at the same time. Under such circumstances, the Court has no alternative (see *Huot v Canada (Minister of Citizenship and Immigration)*, 2011 FC 180).

[12] The motion for an extension of time and reconsideration is dismissed, no order at costs.

ORDER

THIS COURT ORDERS that:

1. The Notice of Motion dated July 19, 2011 is dismissed;
2. The Order rendered on July 8, 2011 stays; and
3. There is no issue as to costs.

"André F.J. Scott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1763-11

STYLE OF CAUSE: SHEEMA SADIA, TALHA NOMAN SAIYED
AND SUMRA RAIHAN SAIYED
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369**

**REASONS FOR ORDER
AND ORDER:** SCOTT J.

DATED: August 19, 2011

WRITTEN REPRESENTATIONS BY:

Asiya Hirji	FOR THE APPLICANTS
Khatidja Mooloo	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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