

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150522

Docket: A-116-14

Citation: 2015 FCA 133

**CORAM: GAUTHIER J.A.
RYER J.A.
NEAR J.A.**

BETWEEN:

**MR. SAYED GEISSAH & MRS SOUAD
KHALAF**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on May 12, 2015.

Judgment delivered at Ottawa, Ontario, on May 22, 2015.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**RYER J.A.
NEAR J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Sayed Geissah and his wife, Souad Khalaf, appeal the decision of Justice Simon Noël (the judge) of the Federal Court dismissing their application for judicial review of the February 12, 2013 decision concluding that they were ineligible for the pension and guaranteed income supplement they had been receiving pursuant to the *Old Age Security Act*, R.S.C., 1985, c. O-9 (the Act), and that the amount already paid to them was to be reimbursed.

[2] The judge held that the appellants' application was premature since the appellants had not yet completed the administrative review process provided for in the Act, particularly the statutory appeal to an administrative tribunal provided for at subsection 28(1).

[3] It is clear from the transcript of the hearing before the judge that the administrative process to be followed was explained to the appellants. The respondent's counsel was also quite helpful in ensuring that the February 12, 2013 decision would be reconsidered as soon as possible, pursuant to subsection 27.1(1) of the Act. The parties informed this Court that on April 15, 2014, a new decision was issued confirming the February 12, 2013 decision. The appellants have launched an appeal of that decision, albeit out of the 90 day period provided for in the Act, and are awaiting a decision in that respect.

[4] The issues the appellants raised before us, particularly that there was no legislative authority permitting the Minister and the department to reinvestigate them and that there was no new evidence that could justify reversing the decision issued in June 2010, can be decided by the administrative tribunal in the context of the statutory appeal.

[5] The appellants argue that they have had and still have the right to choose how they will proceed to challenge the February 12, 2013 decision, given the clear wording of section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. I disagree. The judge was entitled to dismiss the application as premature. In reaching this conclusion, he did not err in law, nor did he make any palpable and overriding error in assessing the facts.

[6] I propose that the appeal be dismissed. The respondent did not seek costs.

"Johanne Gauthier"

J.A.

"I agree
C. Micheal Ryer J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-116-14

STYLE OF CAUSE: MR. SAYED GEISSAH & MRS
SOUAD KHALAF v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: MAY 12, 2015

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: RYER J.A.
NEAR J.A.

DATED: MAY 22, 2015

APPEARANCES:

Mr. Sayed Geissah ON THEIR OWN BEHALF

Ms. Vanessa Luna FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPELLANTS

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada