

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 115/2023  
[2024] NZSC 36

BETWEEN RAZDAN RAFIQ  
Applicant

AND CHIEF EXECUTIVE FOR THE  
DEPARTMENT OF INTERNAL AFFAIRS  
First Respondent

AND MINISTER OF INTERNAL AFFAIRS  
Second Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: Applicant in person  
A P Lawson for Respondents

Judgment: 19 April 2024

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondents one set of costs of \$2,500.**
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**REASONS**

[1] On 17 October 2023, Mr Rafiq applied for leave to appeal against a decision of Katz J dismissing his application for review of the Deputy Registrar’s decision to decline to waive security for costs. The Judge also declined Mr Rafiq’s application for a stay of his substantive appeal pending the resolution of a proposed application for leave to appeal to this Court.<sup>1</sup>

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<sup>1</sup> *Rafiq v Chief Executive for the Department of Internal Affairs* [2023] NZCA 495 [CA judgment] at [29]–[30].

[2] Mr Rafiq asked for multiple extensions to file submissions in support of his application for leave to appeal. The last extension granted was to 4 March 2024. Mr Rafiq was told that no further extension would be granted. Mr Rafiq has not filed any submissions. The respondents were directed to file any submissions by 13 March 2024, whether or not Mr Rafiq had filed his submissions. The respondents have filed submissions.

## **Background**

[3] In 2017 the Minister of Internal Affairs (the Minister) declined to grant Mr Rafiq citizenship on the basis that he did not satisfy the good character requirements. In 2022 Mr Rafiq applied for judicial review of the Minister's decision.

[4] On 8 February 2023 Downs J allowed the claim with regard to the error in refusing citizenship (acknowledged by the Minister), but Mr Rafiq's claim for damages was dismissed.<sup>2</sup> The Judge recorded that Mr Rafiq could make a fresh application for citizenship but declined to direct the Minister to grant Mr Rafiq's application for citizenship.<sup>3</sup>

[5] Mr Rafiq sought to appeal to the Court of Appeal against the decision on the basis that his Honour erred in refusing to award damages and to direct that the Minister grant his citizenship application.<sup>4</sup> Security for costs was set at \$7,060. Mr Rafiq applied for security for costs be dispensed with on a range of bases, including impecuniosity.

[6] The Deputy Registrar declined his application. Even if Mr Rafiq were impecunious, the Deputy Registrar considered that the appeal was not one that a reasonable and solvent litigant would pursue as there seemed to be no prospect of the applicant obtaining the remedies he sought on appeal. Further, the appeal did not raise any novel legal question or issue of public importance.

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<sup>2</sup> *Rafiq v Secretary for Internal Affairs and Chief Executive for Department of Internal Affairs* [2023] NZHC 127 at [23]–[24].

<sup>3</sup> At [22]. This was instead of directing the Minister to reconsider the decision, as circumstances may have changed since the Minister's original decision was made in 2017.

<sup>4</sup> CA judgment, above n 1, at [8].

[7] On review, Katz J upheld the Deputy Registrar’s decision. Mr Rafiq sought a review of the Deputy Registrar’s decision under r 5A(3) of the Court of Appeal (Civil) Rules 2005 (the Rules). Justice Katz declined his application.

[8] Katz J held that the Deputy Registrar was correct that, even if the applicant were impecunious, that would not justify dispensing with security in this case because the appeal is not one that a solvent appellant would reasonably prosecute. Specifically, the prospect of the applicant persuading the Court on appeal that the High Court should have made an order requiring the Minister to grant him citizenship and award him \$2 million in damages was negligible.<sup>5</sup>

[9] Mr Rafiq also applied for a stay of his appeal. Katz J declined this application on the basis that r 44A was not the appropriate route for a stay. Instead, the appropriate route was for Mr Rafiq to apply to the Deputy Registrar for an extension of time to file his case on appeal under r 43(1B)(d) of the Rules.<sup>6</sup>

### **Our assessment**

[10] The proposed appeal relates to the particular circumstances of Mr Rafiq’s case. No issue of general or public importance arises.<sup>7</sup> Further, Mr Rafiq has not put forward anything to suggest a risk of a miscarriage of justice in the sense required in civil cases.<sup>8</sup>

### **Result**

[11] The application for leave to appeal is dismissed.

[12] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:  
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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<sup>5</sup> At [22].

<sup>6</sup> At [28].

<sup>7</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>8</sup> Section 74(2)(b). *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].