IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 40/2024
[2025] NZSC 85

BETWEEN	SAMANTHA JOYCE WOLFE, CLIFFORD MORGAN ROYAL AND TE TEPU OTE WAKAMINENGA O NGA HAPU O NU TIRENI Applicants
AND	GOVERNOR-GENERAL OF NEW ZEALAND First Respondent
	AUCKLAND HIGH COURT Second Respondent
	MINISTER OF IMMIGRATION Third Respondent
	ASSOCIATE MINISTER OF IMMIGRATION Fourth Respondent
	MINISTER OF FINANCE Fifth Respondent
	CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Sixth Respondent
	COMMISSIONER OF POLICE Seventh Respondent
	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Eighth Respondent
	BRITISH HIGH COMMISSIONER TO NEW ZEALAND Ninth Respondent

Counsel: Applicants in person

Judgment: 18 July 2025

JUDGMENT OF ELLEN FRANCE J

A **The application for review of the decision of the Deputy Registrar not to accept the application for leave to appeal received 22 November 2024 for filing is dismissed.**

B **The application for review of the decision of the Deputy Registrar not to accept the application for leave to appeal received 14 March 2025 for filing is allowed.**

C **The question of the Court's jurisdiction is to be considered, if the panel considers that necessary, as part of determination of the application for leave to appeal.**

REASONS

Introduction

[1] The applicants sought to file a notice of application for leave to appeal which was received by the Court on 22 November 2024. The Deputy Registrar rejected the application for filing.

[2] The applicants sought also to file a second notice of application for leave. This application was received by the Court on 14 March 2025. The Deputy Registrar subsequently advised the applicants on 3 April 2025 that, as the Court had no jurisdiction to consider the proposed appeal, the application was rejected for filing.

[3] I have proceeded on the basis that the applicants seek review of both the decisions of the Deputy Registrar by a Judge.[1]

The applications for review

[4] The application for review in relation to the initial application for leave to appeal can be dealt with shortly. That application was not signed by the intended applicant, Ms Wolfe, but by Mr Royal. It was correctly rejected for filing because it

[1] It is not entirely clear whether or not the first application is overtaken by the second.

did not comply with the requirement in the Supreme Court Rules 2004 that, ordinarily, applications for leave are to be signed by the applicant, or their lawyer.[2] There is no reason why an exception to that requirement should be made here.[3] The application could simply have been signed by Ms Wolfe and presented again for filing, as the Deputy Registrar had advised the applicant.[4] The application for review of this decision is formally dismissed.

[5] The second application for leave to appeal challenges two decisions. The first of these is the decision of Lang J of 13 August 2024 dismissing an application for review of the decision by a registry officer at the Auckland High Court not to accept an application for filing. That application was to appeal from a decision of the Minister of Immigration under s 61 of the Immigration Act 2009 not to grant a visa in a special case.

[6] In refusing to accept the application for filing, the registry officer noted that under s 61(2) of the Immigration Act, a decision under s 61(1) to grant a visa is in the Minister's absolute discretion. There were no appeal pathways. The officer pointed out that judicial review was available in relation to the processes of the decision-making under s 61.

[7] Lang J noted that the application before him was an application for judicial review of the registry officer's decision. The Judge dealt with the application as an application for review under r 2.11(1)(b) of the High Court Rules 2016. In dismissing the application for review, the Judge said this:[5]

> [3] Section 184 of the Act states that the purpose of part 7 of the [Immigration] Act is "to provide comprehensively for the system of appeal and review in respect of decision making under [the] Act". The remaining sections in part 7 then prescribe the rights of appeal and review that are available for decisions made under the Act. Importantly for present purposes, part 7 does not contain any provision for a right of appeal or review in respect of a decision by the Minister under s 61 not to grant a visa in a special case. This is not surprising given that the Minister's power under s 61 is expressly

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2 Rule 12(1), and see Schedule 1.

3 See Lawyers and Conveyancers Act 2006, s 27(1)(b)(ii).

4 The Deputy Registrar had initially considered there was no jurisdiction to hear the appeal but subsequently advised Mr Royal that it had been determined, in light of a recent decision, that there was jurisdiction.

5 (Footnotes omitted).

> stated to be exercisable "of the Minister's own volition". Further, the power to grant a visa under s 61 is stated to be "in the Minister's absolute discretion".
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> [4] This issue is obviously relevant to the correctness of the Registrar's decision to refuse to accept the documents for filing. The Registrar was correct to decline to accept the appellants' documents for filing if they were intended to constitute an appeal against a decision by the Minister under s 61. If the appellants seek to appeal against some other decision, they will need to re-file their documents specifying the decision against which they seek to appeal.

[8] The second decision challenged in the application for leave to appeal is a decision of 18 October 2024 by a registry officer at the Auckland High Court to reject documents for filing. These documents were treated as seeking an appeal of a decision made under s 61 of the Immigration Act. Among other matters, the documents were rejected for filing due to a lack of jurisdiction.

[9] The applicants argue the decisions were invalid on a number of bases including a challenge to the validity of legislation, including the Immigration Act, and a failure to consider international law.

[10] In rejecting the application for filing in this Court, the Deputy Registrar said that the decision of 18 October 2024 was not "a decision made in the proceeding" for the purposes of s 69 of the Senior Courts Act 2016. No reference was made to the challenge relating to the decision of Lang J.

[11] The question of what constitutes a "proceeding" for these purposes has been addressed in varying fact situations in the context of leave applications.[6] Consideration of where the present case fits is better addressed if necessary by a panel considering the leave application, rather than by a single Judge on a review application. To permit that consideration to occur, the application for review will be allowed.

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[6] See, for example, *Fehling v West Coast District Health Board* [2016] NZSC 155 and *Slavich v Wellington District Court* [2024] NZSC 30.

Result

[12] The application for review of the decision of the Deputy Registrar not to accept the application for leave to appeal received 22 November 2024 is declined.

[13] The application for review of the decision of the Deputy Registrar declining to accept the application for leave to appeal received 14 March 2025 is allowed. The question of the Court's jurisdiction in relation to this application is to be considered as part of determination of the application for leave to appeal, if the panel considers that necessary.