

IN THE SUPREME COURT OF NEW ZEALAND

SC UR 15/2016
[2017] NZSC 15

BETWEEN

RAM CHANDER DAHIYA
Applicant

AND

CHIEF EXECUTIVE OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Respondent

Counsel: Applicant in person

Judgment: 22 February 2017

JUDGMENT OF O'REGAN J

The application for review of the Registrar's decision declining to waive the payment of filing fee is dismissed.

REASONS

[1] The applicant has applied for a review under s 40 of the Supreme Court Act 2003 of the decision of the Registrar to refuse to waive the filing fee in respect of his intended application for leave to appeal against a decision of the Court of Appeal.¹

[2] The history of the proceeding can be summarised as follows:

- (a) The applicant and his wife applied to Immigration New Zealand for permanent resident visas. Their applications were declined on 30 April 2015.

¹ *Dahiya v Chief Executive of the Ministry of Business, Innovation and Employment* [2016] NZCA 546 (Miller, Asher and Brown JJ) [*Dahiya* (CA)].

- (b) They appealed to the Immigration and Protection Tribunal, which dismissed their appeal on 18 January 2016.²
- (c) They then applied to the High Court for leave to appeal to that Court under s 245 of the Immigration Act 2009. That application was dismissed on 8 June 2016.³
- (d) The applicant wished to appeal to the Court of Appeal against the High Court decision refusing him leave to appeal to the High Court. However he did not file his appeal on time, and so had to apply for an extension of time. The Court of Appeal considered it had jurisdiction under r 5(2) of the Court of Appeal (Civil) Rules 2005 to extend time, but refused to do so.⁴
- (e) The Court of Appeal noted that the extension of time sought by the applicant was not extensive and there was no prejudice to the Chief Executive. However it considered that his proposed appeal to the High Court against the decision of the Immigration and Protection Tribunal lacked merit. It concluded:⁵

In our view there is simply no point in this Court extending the time for making an application for leave to appeal when the criteria to which regard must be had on such an application could not be established. In those circumstances we are satisfied that it is not in the interests of justice to grant an extension of time. The application for an extension of time is accordingly declined.

[3] If the Court of Appeal had extended time and dealt with the applicant's appeal against the High Court's refusal of leave, its decision would have been final.⁶ However, there does not appear to be any jurisdictional bar to this Court considering an application for leave to appeal against the Court of Appeal's decision refusing to extend the time to apply for leave to that Court.

² *Re AM (Permanent Resident)* [2016] NZIPT 202924 (Member Vervoort).

³ *Dahiya v Chief Executive of the Ministry of Business, Innovation and Employment* [2016] NZHC 1217 (Lang J).

⁴ *Dahiya* (CA), above n 1.

⁵ At [19].

⁶ Immigration Act 2009, s 245(1A).

[4] However, the scope of the present application for leave is narrow. If this Court were to grant leave and then to allow the applicant's appeal, the result would be that the Court of Appeal's refusal of an extension of time to appeal to that Court would be overturned. In that event the applicant would be permitted to argue his appeal in the Court of Appeal against the refusal of the High Court to give leave. The Court of Appeal has already indicated that such an appeal would not have merit.

[5] The applicant's application for waiver of fees invokes reg 5(2)(b) of the Supreme Court Fees Regulations 2003. Under that provision, the Registrar may waive the fee if satisfied that the intended appeal concerns a matter of genuine public interest and that it is unlikely to be commenced or continued until the fee is waived.

[6] The Registrar concluded that no question of law that is of significant interest to the public or a substantial section of the public is engaged by the application for leave to this Court. In reaching that conclusion, he was referring to the criteria set out in reg 5(4) of the Supreme Court Fees Regulations. Having considered the material submitted to the Court by the applicant, I agree with the Registrar's assessment. The decision against which the applicant wishes to appeal is an orthodox application of the principles applied by the Court of Appeal in deciding whether to extend time. The underlying appeal is simply an appeal to obtain leave to appeal to the High Court. The appeal that would be pursued in the High Court if leave to appeal to that Court were granted, would involve only matters that relate to the specific facts of the applicant's case. I do not see that proposed appeal as involving any issue of more general importance that would be significant for the public or a section of the public.

[7] In those circumstances I conclude that the decision of the Registrar to refuse to waive the fee was correct and I dismiss the application for review.