



[2021] 4 F.C.R. D-15

CITIZENSHIP AND IMMIGRATION

IMMIGRATION PRACTICE

Motion to dismiss application for judicial review of Canada Border Services Agency (CBSA) decision suspending applicant's refugee claim as result of his criminal charges — Applicant, citizen of Russia who made inland refugee claim in 2017 — Immigration and Refugee Board, Refugee Protection Division (RPD) held hearing, accepted applicant's claim under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 96 — Day before RPD hearing, applicant charged with operating conveyance with blood alcohol concentration equal to or exceeding 80 mg of alcohol in 100 ml of blood under *Criminal Code of Canada*, R.S.C., 1985, c. C-46, s. 320 — Charge related to events occurring year prior to RPD hearing — Applicant not disclosing this charge to RPD during or after his hearing — Not convicted of this or any other crime in Canada; no other pending charges — After being notified of applicant's charge, outcome of his claim, respondent brought application to reopen claim, arguing that applicant's failure to disclose criminal charge caused breach of natural justice by preventing respondent from considering whether to suspend applicant's refugee claim pursuant to Act, s. 103 pending outcome of charges — Pursuant to *Refugee Protection Division Rules*, SOR/2002-228, r. 62, RPD decided to reopen applicant's refugee claim on grounds that breach of natural justice occurred since respondent denied opportunity to consider suspending claim — Subsequently, CBSA notified applicant, RPD, that applicant's refugee claim suspended as result of his criminal charges — On motion, respondent arguing that application moot, premature — Whether RPD decision to reopen refugee claim interlocutory decision; whether exceptional circumstances warranting review of decision — RPD's decision to reopen claim not final, but interlocutory decision, could not be subject to judicial review — Decision having effect of allowing applicant's refugee claim to remain suspended until his criminal charge is resolved; not denying applicant's refugee claim — Final decision respecting applicant's claim will come, either if criminal conviction prevents applicant from successfully pursuing his claim or if his claim is accepted or denied on its merits — Parliament has established legislative scheme whereby applicant's proceedings before RPD can be suspended under Act, s. 103(1) on notice by CBSA officer pending outcome of his criminal charge — If applicant's criminal charge is resolved in his favour, respondent may recommend that RPD proceedings resume, that positive outcome may be made — If, on other hand, applicant is convicted, found ineligible or excluded from making refugee claim, other options will be open to him at that time, including application for judicial review of any decision RPD may issue — Here, reopening of refugee claim meaning claim has resumed with CBSA's suspension — This very resumption rendering decision to reopen interlocutory, not final; by extension, decision not subject to judicial review — Thus, suspension of RPD proceedings not signaling end of applicant's refugee claim — Where applicant's claim will end up will depend on number of factors, one of which being outcome of his criminal charge — On second issue, applicant arguing, in particular, that even if decision under review considered interlocutory, facts of present case amounting to special circumstances warranting Court to hear judicial review on its merits — However, recent case law from Federal Court of Appeal stating that even jurisdictional issues not warranting judicial review of interlocutory decisions but rather only decisions whose consequences are so "immediate and radical" that they call into question rule of law — Also found that exception ought not to be made even in cases where practical realities of allowing interlocutory decision to go un-reviewed would cause hardship — No "immediate" or "radical" circumstances existing here to warrant exception — Precipitating event leading to delay in present case was applicant's criminal charge itself — Fact

respondent having other options than to seek to reopen applicant's claim not bringing case above high threshold needed to proceed with judicial review application — Despite uncertainty applicant facing regarding his future in Canada, same uncertainty would have occurred had criminal charges come to light at RPD hearing; delay in RPD proceedings would still have resulted — Motion granted.

ANOSHIN V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-3023-21, 2022 FC 707, Go J., reasons for judgment dated May 12, 2022, 10 pp.)