

IN THE SUPREME COURT OF NEW ZEALAND

SC 20/2017
[2017] NZSC 67

BETWEEN RAM CHANDER DAHIYA
 Applicant

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

Court: Elias CJ, William Young and Ellen France JJ

Counsel: Applicant in person
 M J Hodge and N E Copeland for Respondent

Judgment: 8 May 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay costs of \$2,500 to the respondent.

REASONS

[1] The applicant seeks leave to appeal to this Court from a decision of the Court of Appeal refusing to grant him an extension of time.¹ The Court of Appeal judgment related to Mr Dahiya's application for leave to appeal out of time from a judgment of the High Court declining him leave to appeal² from a decision of the Immigration and Protection Tribunal.³

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

² *Dahiya v Chief Executive of the Ministry of Business, Innovation and Employment* [2016] NZHC 1217 (Lang J) [*Dahiya* (HC)].

³ *Re AM (Permanent Resident)* [2016] NZIPT 202924 (Member Vervoort) [*Dahiya* (IPT)].

[2] The background is summarised in the judgment of O'Regan J declining to grant the applicant's application for a review of the Registrar's decision declining fee waiver.⁴ For present purposes we need only note that the applicant and his wife (citizens of India) applied for permanent resident visas in September 2012 whilst outside of New Zealand. He thought they had spent sufficient time in New Zealand to qualify but in fact they had not. Because he failed to qualify, Immigration New Zealand gave the applicant a second or subsequent resident visa (SSRV), not a permanent resident visa. New visa labels were included in the applicant's passport and that of his wife but Immigration New Zealand did not write to the applicant to tell him he had been granted a SSRV with travel conditions. He was told to apply for a transfer of the visa when his passport expired.

[3] When the applicant's passport expired, he applied for a transfer of what he thought was his permanent resident visa. He was told he would have to apply for a SSRV or a permanent resident visa. He did so but, by then, because he had spent only four days in New Zealand over the previous 12 months he was not eligible for either visa and his application was declined.

[4] The applicant appealed to the Immigration and Protection Tribunal on the basis there were special circumstances warranting an exception to the relevant residence instructions.⁵ The appeal was dismissed.⁶

[5] The applicant sought leave to appeal to the High Court. Under s 245 of the Immigration Act 2009 leave to appeal to the High Court is limited to a question of law which by reason of its general or public importance or for any other reason ought to be submitted to the High Court. Leave was declined on the basis the proposed appeal did not raise a question of law of the requisite importance.⁷

[6] The applicant applied out of time to the Court of Appeal for leave to appeal. The Court of Appeal said the delay was not long and there was no prejudice to the

⁴ *Dahiya v Chief Executive of the Ministry of Business, Innovation and Employment* [2017] NZSC 15.

⁵ Immigration Act 2009, s 187(1) and (4)(b).

⁶ *Dahiya* (IPT), above n 3.

⁷ *Dahiya* (HC), above n 2.

respondent but those factors were outweighed by the fact the appeal had no merit.⁸ That was because the matters raised by the applicant (the failure to advise by letter and the imposition of costs in the High Court) did not raise any question of law.⁹

[7] In this Court, Mr Dahiya wishes to pursue the two matters raised in the Court of Appeal, that is, the effect of the failure of Immigration New Zealand to inform him of the nature of his visa and the imposition of costs.

[8] Neither matter gives rise to a question of law. That conclusion is determinative in this case given the appeal right the applicant sought to exercise in the Court of Appeal is limited to questions of law.

[9] The application for leave is accordingly dismissed. The respondent has filed written submissions and seeks costs. There is no reason why costs should not be awarded to the respondent as the successful party. The applicant is to pay the respondent costs of \$2,500.

Solicitors:
Meredith Connell, Auckland for Respondent

⁸ *Dahiya (CA)*, above n 1, at [14]–[15].

⁹ At [16].