

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 115/2023
[2024] NZSC 69

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: 17 June 2024

JUDGMENT OF THE COURT

- A** The application for recall of this Court's judgment of 19 April 2024 (*Rafiq v Chief Executive for the Department of Internal Affairs* [2024] NZSC 36) is dismissed.
- B** There is no order as to costs.
-

REASONS

Introduction

[1] Mr Rafiq applies for recall of this Court's refusal¹ to grant him leave to appeal against a decision of Katz J in the Court of Appeal.²

¹ *Rafiq v Chief Executive for the Department of Internal Affairs* [2024] NZSC 36 (Glazebrook, Ellen France and Miller JJ) [Leave decision].

² *Rafiq v Chief Executive for the Department of Internal Affairs* [2023] NZCA 495 [CA decision].

Background

[2] In 2017 the Minister of Internal Affairs 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. The High Court allowed Mr Rafiq's claim with regard to the error in refusing him citizenship. Mr Rafiq's claim for damages was dismissed.³ 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.⁴

[3] Mr Rafiq appealed against that decision to the Court of Appeal and security for costs was set. In the decision referred to above, Katz J dismissed an application for review of the Deputy Registrar's decision declining to waive security for costs and declining to grant Mr Rafiq a stay of his appeal.⁵

[4] 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.⁶ As to the stay, Katz J held that the proper route was for Mr Rafiq to apply to the Deputy Registrar for an extension of time to file his case on appeal.⁷

[5] Leave to appeal to this Court against Katz J's decision was refused by this Court on the basis that the appeal related entirely to the circumstances of Mr Rafiq's case, no issue of general or public importance arose and the standard for miscarriage of justice in civil cases was not met.⁸

³ *Rafiq v Secretary for Internal Affairs and Chief Executive for Department of Internal Affairs* [2023] NZHC 127 at [23]–[24] (Downs J).

⁴ At [22].

⁵ CA decision, above n 2.

⁶ At [22].

⁷ At [28].

⁸ Leave decision, above n 1, at [10].

[6] As further background, Mr Rafiq had asked for and been granted multiple extensions to file submissions in support of his application for leave to appeal. The last extension granted had been to 4 March 2024. Mr Rafiq had been told that no further extension would be granted. Mr Rafiq did not file any submissions. The respondents had been directed to file any submissions by 13 March 2024, whether or not Mr Rafiq had filed his submissions. They did so.

Recall application

[7] Mr Rafiq submits that this Court was wrong to dismiss the leave application as there was a real force in the merits of the intended appeal warranting dispensation for security for costs in the Court of Appeal. He says that this Court failed to consider a number of matters, including his right to judicial review under section 27 of the New Zealand Bill of Rights Act 1990 and the multiple errors made by the Minister in refusing him citizenship. Mr Rafiq seeks damages “on the basis of harm and significant injury to the feelings suffered due to the adverse decisions of [the Minister]”. Overall, he says that the orders he seeks are in the interests of justice.

[8] Mr Rafiq also submits that this Court should have granted him an extension of time to file his submissions.

Our assessment

[9] We do not accept the submission that this Court should have granted Mr Rafiq an extension of time to file his submissions in support of his leave application. As noted above, he had been granted numerous extensions and warned there would be no further extensions. He chose not to file submissions.

[10] We have nevertheless considered the grounds put forward in his recall application. His grounds relate in large part to errors in the decision of the Minister not to grant him citizenship. Mr Rafiq’s claim in that regard has been allowed. Nothing put forward by Mr Rafiq throws doubt on Katz J’s assessment that the prospects of success are negligible with regard to the refusal to award damages and to make an order directing the Minister to grant him citizenship.

[11] Recall is an exceptional procedure; recall apart, a decision of this Court — whether concerned with leave to appeal or a substantive appeal — is, and must be, final.⁹ A judgment will only be recalled in exceptional circumstances, being those identified in *Horowhenua County v Nash (No 2)*, as applied by this Court in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)*.¹⁰

[12] Mr Rafiq’s application does not meet the high threshold necessary for a recall application to be granted.

Result

[13] The application for recall of this Court’s judgment of 19 April 2024 (*Rafiq v Chief Executive for the Department of Internal Affairs* [2024] NZSC 36) is dismissed.

[14] The respondents opposed the recall application but were content to rely on their submissions on Mr Rafiq’s leave application. In these circumstances, we make no order as to costs.

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

⁹ *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [20].
¹⁰ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].