

Federal Court



Cour fédérale

**Date: 20140723**

**Docket: IMM-803-14**

**Citation: 2014 FC 735**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 23, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**YOUSSEF BEN CHEIKH BRAHIM, SONIA  
GHALI AND SARAH BEN CHEIKH BRAHIM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Preliminary Comments**

[1] The Court is of the view, based on the detailed transcript of the hearing before the Refugee Protection Division [RPD] of the Immigration and Refugee Board, that the applicants

were not denied a hearing in French; rather, they themselves waived their right to an interpreter by allowing their counsel to deliver part of his oral arguments in English, given that counsel for the applicants' notes were in English and he wished to communicate them in that language.

## II. Introduction

[2] This is an application for judicial review submitted by the applicants pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the RPD, dated January 28, 2014, by which the application to reopen the applicants' file was refused.

## III. Facts

[3] The applicants are citizens of Tunisia. They fear persecution in their country because they are Christians. The principal applicant converted from Islam to Christianity in 1999 and since then claims to have been harassed and questioned by police at his place of employment.

[4] For her part, his spouse, the adult female applicant, allegedly experienced persecution as a teacher. She also purportedly was shunned by the parents and was sanctioned by the school she worked at for having taught the Christian faith to the students.

[5] Their minor daughter also apparently suffered at the school because of her Christian faith. She had to change schools a number of times. Her parents stated that for her psychological well-

being they sent her to Canada in May 2011. They subsequently came to join her in Canada in August 2011.

[6] The family claimed refugee protection on August 19, 2011. Their claim was rejected on October 1, 2013, on the primary ground that there was insufficient evidence establishing a serious possibility that the applicants would face a risk of persecution by reason of their religious beliefs if they were to return to Tunisia. The RPD found that the documentary evidence showed that the current situation in Tunisia had changed considerably since the applicants' departure; Christians now practised their religion largely without restriction in the country. The RPD noted that although the applicants may have been the subject of discrimination in the past, there was little evidence that they would be in the future.

[7] Following that decision, the applicants filed an application for judicial review. They also submitted an application to reopen to the RPD, which was refused on January 28, 2014. The applicants are now asking the Court to intervene in the latter decision on the following grounds:

- a) The RPD violated their right to a hearing in the official language of their choice;
- b) The RPD failed to consider all of the evidence in the record;
- c) The RPD erred in the manner in which it assessed the prospective risk faced by the applicants.

#### IV. Analysis

[8] In the respondent's view, the last two questions are not relevant to this case, as they bear no relation to any breach of the principles of natural justice. The Court shares this view. These

allegations have nothing to do with natural justice; rather, they relate to the reasonableness of the decision. The applicants are essentially attempting to make the same arguments as those submitted in IMM-7118-13 (2014 FC 734) before this Court. In short, the applicants disagree with the manner in which the RPD considered the evidence and the way it reviewed their refugee protection claim. The Court cannot intervene on either of these grounds in this case. Section 62 of the *Refugee Protection Division Rules*, SOR/2012-256, clearly states that the RPD cannot reopen a refugee claim unless it has been established that there was a failure to observe a principle of natural justice (*Lakhani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 612; *Ali v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1153, 228 FTR 226).

[9] As for the matter of the language at the hearing, the Court is of the view that, based on a detailed transcript of the hearing before the RPD, the applicants were not denied a hearing in French; rather, they themselves waived their right to an interpreter when they allowed their counsel to deliver part of his oral arguments in English, given that counsel for the applicants' notes were in English and he wished to communicate them in that language. The RPD was under no obligation to ask the applicants whether they wanted an interpreter at the time or to get them to specifically waive their right to an interpreter. This Court has clearly ruled that a party can implicitly waive the language rights granted to it under the *Official Languages Act*, RS (1985), c 31 (4th supp)) (see *Taire v Canada (Minister of Citizenship and Immigration)*, 2003 FC 877).

## V. Conclusion

[10] For all of the foregoing reasons, the applicants' application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the applicants' application for judicial review be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

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Judge

Certified true translation  
Sebastian Desbarats, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-803-14

**STYLE OF CAUSE:** YOUSSEF BEN CHEIKH BRAHIM, SONIA GHALI  
AND SARAH BEN CHEIKH BRAHIM v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 17 2014

**JUDGMENT AND REASONS :** SHORE J.

**DATED:** JULY 23, 2014

**APPEARANCES:**

Claudia Andrea Molina FOR THE APPLICANTS

Mario Blanchard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Cabinet Molina Inc. FOR THE APPLICANTS  
Attorneys  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec