

Federal Court



Cour fédérale

Date: 20150203

Docket: IMM-6545-13

Citation: 2015 FC 131

Ottawa, Ontario, February 3, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MARIA BRIGITTE DIAZ CASTRO
JULIETTE JOHANA ESPITIA DIAZ
BRIGGETTE LORENA BALLESTEROS DIAZ
MARIANA ESPITIA DIAZ
JUAN ALEJANDRO MONTOYA ESPITIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dismissing the Applicants' appeal for lack of jurisdiction.

II. Background

[2] The Applicants left Colombia, travelled to the United States and came directly to Canada where they claimed refugee protection. Their claim was dismissed by the Refugee Protection Division [RPD] principally on grounds of state protection.

[3] The RAD held that because the Applicants came directly from the United States, their appeal of the negative decision of the RPD could not be considered because of the operation of s 110(2)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and the Safe Third Country Agreement between Canada and the United States.

III. Analysis

[4] Sections 102(1) and (2) of the IRPA, deal with Safe Third Countries.

102. (1) The regulations may govern matters relating to the application of sections 100 and 101, may, for the purposes of this Act, define the terms used in those sections and, for the purpose of sharing responsibility with governments of foreign states for the consideration of refugee claims, may include provisions

(a) designating countries that comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture;

(b) making a list of those

102. (1) Les règlements régissent l'application des articles 100 et 101, définissent, pour l'application de la présente loi, les termes qui y sont employés et, en vue du partage avec d'autres pays de la responsabilité de l'examen des demandes d'asile, prévoient notamment :

a) la désignation des pays qui se conforment à l'article 33 de la Convention sur les réfugiés et à l'article 3 de la Convention contre la torture;

b) l'établissement de la liste de

countries and amending it as necessary; and	ces pays, laquelle est renouvelée en tant que de besoin;
(c) respecting the circumstances and criteria for the application of paragraph 101(1)(e).	c) les cas et les critères d'application de l'alinéa 101(1)e).
(2) The following factors are to be considered in designating a country under paragraph (1)(a):	(2) Il est tenu compte des facteurs suivants en vue de la désignation des pays :
(a) whether the country is a party to the Refugee Convention and to the Convention Against Torture;	a) le fait que ces pays sont parties à la Convention sur les réfugiés et à la Convention contre la torture;
(b) its policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture;	b) leurs politique et usages en ce qui touche la revendication du statut de réfugié au sens de la Convention sur les réfugiés et les obligations découlant de la Convention contre la torture;
(c) its human rights record; and	c) leurs antécédents en matière de respect des droits de la personne;
<u>(d) whether it is party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection.</u>	<u>d) le fait qu'ils sont ou non parties à un accord avec le Canada concernant le partage de la responsabilité de l'examen des demandes d'asile.</u>

[Emphasis by Court]

[5] The only country with an agreement with Canada, as provided for in s 102(2)(d), is the United States.

[6] IRPA s 110(2) precludes appeals to the RAD in a number of circumstances; sub-paragraph 2(f) being the relevant provision.

110. (2) No appeal may be made in respect of any of the following:

(a) a decision of the Refugee Protection Division allowing or rejecting the claim for refugee protection of a designated foreign national;

(b) a determination that a refugee protection claim has been withdrawn or abandoned;

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

(d) subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

(i) the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

(ii) the claim — by virtue of regulations made under

110. (2) Ne sont pas susceptibles d'appel :

a) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile d'un étranger désigné;

b) le prononcé de désistement ou de retrait de la demande d'asile;

c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

d) sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d'asile qui, à la fois :

(i) est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

(ii) n'est pas irrecevable au titre de l'alinéa 101(1)e)

paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the Refugee Protection Division;

par application des règlements pris au titre de l'alinéa 102(1)c);

(d.1) a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a country designated under subsection 109.1(1);

d.1) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile du ressortissant d'un pays qui faisait l'objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

(e) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

e) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l'asile;

(f) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

f) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l'annulation d'une décision ayant accueilli la demande d'asile.

[Emphasis by Court]

[7] Regulation 159.3 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, specifically names the United States as the designated country under IRPA s 102(1).

[8] It is immaterial whether the standard of review is correctness or reasonableness, the result is the same.

[9] The RAD was correct in determining that it had no jurisdiction to entertain the Applicants' appeal.

[10] The Applicants made the absurd argument that despite the acknowledged expressed bar to jurisdiction, the RAD ought to have exercised its discretion to hear the appeal. This is an untenable proposition which suggests that the RAD should fly in the face of the law.

IV. Conclusion

[11] Therefore, this judicial review will be dismissed. There is no certified question.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6545-13

STYLE OF CAUSE: MARIA BRIGITTE DIAZ CASTRO, JULIETTE JOHANA ESPITIA DIAZ, BRIGGETTE LORENA BALLESTEROS DIAZ, MARIANA ESPITIA DIAZ, JUAN ALEJANDRO MONTOYA ESPITIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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