

Federal Court



Cour fédérale

Date: 20150527

Docket: IMM-4857-14

Citation: 2015 FC 684

Toronto, Ontario, May 27, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

AHMEDNOOR FARAH HUSIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Appeal Division (RAD) dated May 28, 2014 dismissing an appeal from the Refugee Protection Division (RPD) dated January 21, 2014 rejecting the Applicant's claim for refugee protection.

[2] The Applicant is an adult male. His identity is in question. He claims to be from Somalia. The RPD found that he has not established his identity. The RAD affirmed that

finding but, in doing so, made its own determinations based on its view of the record. Therein lies the problem.

[3] At the RPD hearing, the Applicant was represented by Counsel and gave evidence on his own behalf and called a person purportedly to be a great aunt as an identity witness. The Applicant had no documents, such as a passport, to establish his identity.

[4] The RPD found that neither the great aunt nor the Applicant were credible witnesses. Had the matter ended there and a judicial review of that decision made, I am confident that those findings would not be set aside.

[5] However, the matter was appealed to the RAD. At that level, the Applicant was again represented by Counsel who sought to file the affidavit of another relative of the Applicant to establish identity. This other person was in the same city at the same time as the RPD hearing, the excuse for not calling that person as a witness at that time was twofold. First, Counsel thought that identity would not be an issue. Second, that person had started a new job and didn't want to take time off.

[6] These are thin excuses. Counsel bears responsibility, particularly in representing unsophisticated persons such as the Applicant, to prepare the case, know the issues, interview the witnesses and generally be prepared. The fact that Counsel may have overlooked something or has not fully prepared the case is not something that should be able to be remedied at the RAD level.

[7] Concerning the witness who did not appear at the first instance, the excuse that work was more important than a relative's refugee hearing speaks for itself.

[8] Therefore, the RAD was right in rejecting the affidavit.

[9] We come to the basis for sending the matter back to the RAD for re-determination. Had the RAD simply reviewed the findings of the RPD as to the adequacy of the Applicant's evidence and agreed with it, that would have ended the matter. It did not. For whatever reason, the RAD went on to give further reasons, based on its own review of the record, as to why the Applicant's evidence was not to be believed. It held, at paragraph 43, that it was unable to locate any evidence to support the Applicant's claim to also being a member of the Dhawarawayne clan. That was wrong; there is such evidence in the Responses to Information Requests. The comments by the RAD as to the differences in the spelling of the Applicant's name in the US proceedings versus the Canadian proceedings is nonsense: of course, there will be differences where a different alphabet and language is in question such as Somali and English. There are other errors.

[10] The point is that if the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions.

[11] I fully appreciate that if the matter were to be returned to the RAD, the result may be the same. However, these are early days for the RAD and it is on a procedural learning curve. By

sending this back, the RAD will have an opportunity to examine its procedures and perhaps improve them.

[12] No question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is returned for re-determination by a different Member of the Refugee Appeal Division;
3. No question is certified;
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4857-14

STYLE OF CAUSE: AHMEDNOOR FARAH HUSIAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 27, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: MAY 27, 2015

APPEARANCES:

Raoul Boulakia FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raoul Boulakia FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario