Federal Court  Cour fédérale

Date: 20150812

Docket: IMM-770-15

Citation: 2015 FC 964

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 12, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

MANUEL DE JESUS ALTAMIRANO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dismissing the appeal from a decision of the Refugee Protection Division [RPD] by which the RPD rejected the applicant's refugee protection claim. The RAD rejected the

applicant's notice of appeal for lack of jurisdiction pursuant to paragraph 110(2)(*d*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[2] The applicant is a Honduran citizen who arrived in Canada on June 12, 2014, after first transiting through the United States. On that same date, he made a claim for refugee status. Pursuant to that claim, the RPD processed the applicant's file jointly with that of his spouse, who was already waiting for a hearing before the RPD. After the RPD's decision dated September 19, 2014, the applicant and his spouse filed an appeal to the RAD.

[3] On January 22, 2015, the RAD dismissed the applicant's appeal under paragraph 110(2)(*d*) of the IRPA, which provides that, absent certain exceptions which do not apply here, a refugee protection claimant cannot appeal to the RAD if he or she is a "foreign national who. . . 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*)". The United States is such a designated country, and as was mentioned, the applicant arrived in Canada by first transiting through the United States.

[4] Since the applicant's spouse did not pass through the United States before entering Canada, her refugee protection claim was not rejected as the applicant's was.

III. Analysis

[5] The applicant submits that the RAD breached its duty of procedural fairness by processing the files of the applicant and his spouse separately, after the RPD decided to join them.

[6] The applicant also submits that the different treatment afforded to his spouse, simply because he transited through the United States before arriving in Canada, is contrary to section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 [the Charter].

[7] In support of the argument regarding the breach of the duty of procedural fairness, the applicant does not cite any authorities showing

1) that the RAD was not entitled to consider the files of the applicant and his spouse separately after the RPD decided to join them; or

2) that if the RAD had considered the files of the applicant and his spouse together, it would not have been open to the RAD to dismiss the applicant's appeal on the basis of paragraph 110(2)(*d*) of the IRPA while at the same time allowing his spouse's appeal.

[8] On these points, I side with the respondent. The RAD was entitled to handle the applicant's file separately from his spouse's file. Moreover, the RAD would also have been entitled to dismiss the applicant's appeal if his appeal had been heard with that of his spouse, on the basis of paragraph 110(2)(*d*) of the IRPA.

[9] Regarding the issue of the validity of paragraph 110(2)(*d*) of the IRPA, the respondent notes that the applicant failed to issue a notice of constitutional question in accordance with section 57 of the *Federal Courts Act*, RSC, 1985, c F-7. The applicant did not respond to this argument and did not submit any reasons for not complying with this section. Nor did he ask to be exempted from the requirements of section 57. I therefore conclude that neither paragraph 110(2)(*d*) of the IRPA nor the RAD's decision can be declared invalid in this application.

[10] Furthermore, the respondent notes that the decision of the Federal Court on which the applicant relies to support his argument that paragraph 110(2)(*d*) of the IRPA is invalid (*Y.Z. v Canada (Citizenship & Immigration)*, 2015 FC 892 [*Y.Z.*]), concerns a different paragraph of the IRPA, namely, paragraph 110(2)(*d.1*) and not paragraph 110(2)(*d*). This difference is relevant, since paragraph 110(2)(*d.1*) concerns the rights of appeal of nationals from countries designated under subsection 109.1(1), and *Y.Z.* analyzes the issue of discrimination under section 15 of the Charter based on national origin.

[11] The fact that the applicant's appeal was dismissed because, after leaving Honduras, he transited through the United States before arriving in Canada is not indicative of discrimination based on national origin. I therefore conclude that *Y.Z.* does not apply to the facts in this case.

[12] I conclude that this application for judicial review should be dismissed.

[13] Both parties stated that they had no serious question of general importance to be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-770-15
STYLE OF CAUSE:	MANUEL DE JESUS ALTAMIRANO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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