Federal Court  Cour fédérale

Date: 20190911

Docket: IMM-1109-18
IMM-1998-18

Citation: 2019 FC 1165

Ottawa, Ontario, September 11, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

BASHIR ABDI MOHAMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Bashir Abdi Mohamed (the "Applicant") seeks judicial review of two decisions made pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the "Act").

[2] In cause number IMM-1109-18, the Applicant seeks judicial review of the decision of an Immigration Officer (the "Officer").

[3] In cause number IMM-1998-18, the Applicant seeks judicial review of the decision made by Immigration, Refugees and Citizenship Canada ("IRCC"). In that decision, dated April 18, 2018, the IRCC refused to reconsider the Applicant's application for refugee protection.

[4] In the decision, dated February 27, 2019, the Officer found that the Applicant was ineligible to make a claim in Canada for refugee protection, pursuant to the Act, on the grounds that he has been recognized as a Convention Refugee in the United States of America and can return to that country. The Officer relied on paragraph 101 (1) (d) of the Act in finding that the Applicant's claim was not eligible to be referred to the Refugee Protection Division (the "RPD") of the Immigration and Refugee Board.

[5] In its decision, the IRCC refused to reopen the Applicant's refugee claim, for the following reasons:

> Client appeared at Etobicoke IRCC on April 18, 2018 with a representative. Client indicated that they wanted to have their refugee claim reopened. Client has already filed an appeal with Federal Court. Awaiting decision from Federal Court. No appointment given.

[6] The Applicant filed an affidavit in support of each of his applications for judicial review. He deposed that he is a citizen of Somalia and a member of the Ashraf clan, an oppressed minority clan in Somalia.

[7] The Applicant deposed to the death of his father when he was 10 years old, the subsequent breakup of his family and the provision of his care by a woman named "Asha," a friend of his mother. Ultimately, the Applicant settled in the United States of America in 1998 as

a derivative refugee, under the sponsorship of Abdirizak Ahmed Warsame, the husband of Asha. At this time, the Applicant was known under the name "Hamud Abdirizak Ahmed." He acquired permanent residence in the United States under that name.

[8] The Applicant deposed that on May 2, 2016, he applied for naturalization in the United States. He deposed that on January 3, 2018, he received a letter from the American authorities advising that he did not qualify for naturalization. Paragraph 34 of his affidavit filed in cause number IMM-1109-18, provides as follows:

> 34. In the section entitled "Statement of Facts and Analysis" it states that I obtained permanent residence status in immigration classification AS6. Class AS6 comprises of a principal/spouse/child of an Asylee. The asylee in this case is Abdirizak. In particular I was the beneficiary of a refugee/asylee relative petition (From I-730), which was filed by Abdirizak.

[9] The Applicant argues that both decisions are unreasonable. He further submits, respecting the decision of IRCC, that the decision maker failed to consider the new evidence that he had submitted and failed to give adequate reason.

[10] The Minister of Citizenship and Immigration (the "Respondent") argues that the Officer reasonably decided that the Applicant was ineligible to apply for Convention refugee status in Canada, on the basis that he has status in the United States.

[11] The Respondent also submits that the decision-maker from IRCC reasonably refused the reconsideration request since there was no evidence that the status of the Applicant in the United States had changed.

[12] Insofar as the decisions of the Officer and of the decision-maker from IRCC involve questions of mixed fact and law, those decisions are reviewable on the standard of reasonableness; see the decision in *Dobson v. Canada (Citizenship and Immigration),* 2011 FC 121 at paragraphs 15-16.

[13] According to the decision in *Dunsmuir v. New Brunswick,* [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent, and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[14] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa,* [2009] 1 S.C.R. 339.

[15] In my opinion, the Officer reasonably found that the Applicant was not eligible to apply for Convention Refugee status in Canada since he held status in the United States, that is as a permanent resident. The finding is supported by the Applicant's evidence that he presented to the Officer.

[16] The Officer referred to paragraph 101 (1) (d) of the Act which provides as follows:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	101 (1) La demande est irrecevable dans les cas suivants:
(d) the claimant has been recognized as a	d) reconnaissance de la qualité de réfugié par un

Convention refugee by a country other than Canada and can be sent or returned to that country;	pays vers lequel il peut être renvoyé;

[17] The Officer's decision meets the applicable standard of reasonableness, as discussed in *Dunsmuir*, *supra*. The evidence submitted by the Applicant supports the finding of the Officer that he fell within the scope of paragraph 101 (1) (d) of the Act.

[18] I turn now to the decision made by the IRCC, in refusing to reconsider the decision of the Officer.

[19] The Applicant argues that this decision maker erred by failing to consider the new evidence that he presented with his reconsideration request and unreasonably fettered the available discretion to reconsider a prior decision.

[20] The new evidence submitted by the Applicant does not change the fact that the Applicant, at the time he sought reconsideration of the Officer's decision, still enjoys status in the United States as a permanent resident.

[21] That finding is central to both the decision of the Officer and of the IRCC decision-maker.

[22] The reasons of the IRCC decision-maker, quoted above, are economical. However, those reasons clearly say the initial decision will not be reconsidered since the Applicant had

commenced an application for judicial review of the original denial by the Officer of his application for protection.

[23] The question for the Court is whether the rationale meets the *Dunsmuir* test of justifiability, transparency, and intelligibility.

[24] In my opinion, the reasons do meet that test.

[25] The critical fact, as found by the Officer, is that the Applicant had status in the United States, as a permanent resident, when he sought protection in Canada. By operation of paragraph 101(1)(d) of the Act, the Applicant was not eligible to have his claim for refugee protection referred to the Refugee Protection Division.

[26] On the basis of the evidence submitted by the Applicant to both the Officer and to IRCC, he had status in the United States.

[27] Any change in that status is speculative at this time.

[28] The evidence submitted by the Applicant shows that he has status in the United States as a permanent resident. By operation of law, that is pursuant to paragraph 101(1)(d) of the Act quoted above, his claim for refugee protection in Canada is not eligible to be referred to the Refugee Protection Division.

[29] In my opinion, the factual finding of the Officer is supported by the evidence. The decision meets the relevant standard of review and is inextricably linked to the decision made by the IRCC.

[30] There is no basis for judicial intervention and the applications for judicial review will be dismissed. There is no question for certification arising.

JUDGMENT in IMM-1109-18 and IMM-1998-18

THIS COURT'S JUDGMENT is that the applications for judicial review are dismissed in both cause number IMM-1109-18 and IMM-1998-18 and there is no question for certification arising in either proceeding.

The Judgment and Reasons shall be filed in cause number IMM-1109-18 and placed on the file in cause number IMM-1998-18.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1109-18, IMM-1998-18
STYLE OF CAUSE:	BASHIR ABDI MOHAMED v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
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