

Federal Court



Cour fédérale

Date: 20211021

Docket: IMM-5664-20

Citation: 2021 FC 1120

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 21, 2021

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

ALMAN DOUKOURE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] On November 4, 2020, Alman Doukoure applied for judicial review of the rejection of his Pre-Removal Risk Assessment (PRRA) by an officer of Immigration, Refugees and Citizenship Canada. For the reasons that follow, I am dismissing the application for judicial review for mootness.

[2] On September 13, 2021, a week before the application hearing scheduled for September 20, 2021, Mr. Doukoure’s counsel, Mr. Touré, submitted an informal request to be removed as counsel. Mr. Touré stated that he had not heard from Mr. Doukoure for several months and that his client was no longer reachable by telephone and was no longer answering his emails. Mr. Touré had also been informed the previous day that it seemed that Mr. Doukoure was no longer in Canada.

[3] The fact that Mr. Doukoure may have left the country immediately raises the issue of whether his application for judicial review of the rejection of his PRRA application is moot. Section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, states that only “[a] person in Canada” may apply for protection through a PRRA application: *Solis Perez v Canada (Citizenship and Immigration)*, 2009 FCA 171 at para 5. The Court of Appeal confirmed that an application for judicial review of the rejection of a PRRA application becomes moot if the applicant leaves the country: *Solis Perez* at paras 5–6.

[4] At the same time, this Court does not want to dismiss such an application for judicial review for mootness unless there is evidence establishing that the applicant has left the country. The Court therefore convened a case management conference with the parties via teleconference following Mr. Touré’s request to learn more about the situation and determine what to do. During this case management conference, Mr. Touré confirmed that Mr. Doukoure’s telephone number was no longer in service. Moreover, Mr. Doukoure’s former roommate informed him that Mr. Doukoure no longer lived at his address and that he was unaware of his whereabouts. It

was suggested that Mr. Doukoure might be in the United States, where his son lives. However, Mr. Touré was unable to confirm with certainty that Mr. Doukoure had left the country.

[5] During the case management conference, the Minister's counsel, Ms. Lazaroff, agreed to file before the Court the Minister's most recent information regarding Mr. Doukoure's whereabouts. On September 21, 2021, the Minister filed the affidavit of a legal assistant from Justice Canada. Appended as an exhibit to this affidavit is an email from a Canada Border Services Agency (CBSA) justice liaison officer. The liaison officer states that on March 29, 2021, [TRANSLATION] "a PRRA officer from CBSA decided not to issue a warrant for removal against the applicant because the removal officer was satisfied, on the basis of the information in the file, that the subject was no longer in Canada." The CBSA confirmed that Mr. Doukoure had not been admitted to Canada legally since March 29, 2021, but could not confirm in which country he is currently located.

[6] The liaison officer attached to her email a screen shot from the National Case Management System (NCMS) regarding Mr. Doukoure, dated September 15, 2021. The entry in that database, at the line entitled "disposition", is the following: "Person not in Canada: Confirmed". The comments box contains the following entry (in French) "Serait aux USA" [Reportedly in the USA].

[7] Following the receipt of this affidavit, the Court invited the parties to file submissions on the mootness of the application. The Minister, relying on *Solis Perez*, among other cases, submits that the application is moot and must be dismissed. Mr. Touré submits that the affidavit filed is

not based on any direct evidence or concrete document establishing that Mr. Doukoure is outside of Canada. However, he admits that he cannot confirm Mr. Doukoure's current whereabouts either and that his attempts to reach him following the case management conference, including the contact with the former roommate, bore no fruit. Mr. Touré therefore asked the Court to postpone the judicial review hearing to allow the parties to provide clear and convincing evidence as to Mr. Doukoure's whereabouts.

[8] In my view, the evidence before the Court, while not irrebuttable, as the Minister admits, does establish on a balance of probabilities that Mr. Doukoure is no longer in the country. I am satisfied that the information provided indicating that Mr. Doukoure was out of the country in March 2021 is reliable, despite the fact that the CBSA officer who made the entry into the NCMS did not file an affidavit to this effect. Mr. Doukoure has not been legally admitted to Canada since then. This is consistent with the fact that his counsel, Mr. Touré, is unable to locate him. It should be noted that a party to a proceeding before the Court has an obligation to ensure that his or her counsel can contact him or her to enable the case to be heard in an orderly and efficient manner.

[9] I agree that Mr. Touré's request to have the hearing postponed to allow the parties to present more definitive evidence as to Mr. Doukoure's whereabouts is not unreasonable. However, I have no reason to believe that a further postponement, even of a few months, would lead to the production of any new information regarding Mr. Doukoure. According to Mr. Touré, he has been unable to reach his client for months and has taken all possible steps to locate him. The evidence filed by the Minister indicates that Mr. Doukoure left the country six months ago,

and there is nothing to suggest that further information is or will become available. In this context, the possibility of more concrete evidence becoming available is purely speculative. I am therefore not prepared to postpone the hearing to wait for his arrival.

[10] Having found that Mr. Doukoure is no longer in the country, I accept the Minister's position that the application for judicial review of his PRRA is moot: *Solis Perez* at paras 5–6. The Court may nonetheless address a moot issue if the circumstances warrant: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at pp 353, 358–63. However, Mr. Touré is not claiming that this Court should hear the case despite its mootness. I agree with the Minister's submission that the current circumstances do not warrant that the case be decided despite its mootness.

[11] The application for judicial review is therefore dismissed as moot. No questions were put forward for certification in this case, and none arose.

[12] All that remains is for me to thank counsel, Mr. Touré and Ms. Lazaroff, for their professionalism and practicality in addressing the situation created by Mr. Doukoure's disappearance.

JUDGMENT in IMM-5664-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed as moot.

“Nicholas McHaffie”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5664-20

STYLE OF CAUSE: ALMAN DOUKOURE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

**JUDICIAL REVIEW DECIDED IN OTTAWA, ONTARIO, ON THE BASIS OF
WRITTEN SUBMISSIONS**

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: OCTOBER 21, 2021

WRITTEN SUBMISSIONS:

Aboubacar Touré

FOR THE APPLICANT

Lynne Lazaroff

FOR THE RESPONDENT

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