

Date: 20081008

Docket: IMM-1397-08

Citation: 2008 FC 1143

Toronto, Ontario, October 8, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

EDGAR HERNAN CLAVIJO ALBARRACIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns the quality of the decision-making of a member of the Refugee Protection Division (RPD) in rejecting an application by the Applicant to have a refugee claim abandonment decision re-opened on the ground that it is made in denial of natural justice. The fact matrix resulting in the abandonment decision exposes a course of conduct on the Applicant's part to meet the *Immigration Division Rules (Rules)* with respect to the proper prosecution of a refugee claim. This course of conduct is capable of providing a compelling argument that the *Rules* should be judiciously applied to the Applicant's claim. That is, there is evidence that, despite being

unable to speak English, and despite not having the wherewithal to launch and advance his refugee claim in conformity with the usual procedural requirements, nevertheless, he showed a strong interest in maintaining his claim. Therefore, the question for determination in the present Application is: Was the RPD on the re-opening alive to this course of conduct in determining that no denial of natural justice occurred in reaching the abandonment decision? For the reasons which follow, I find that the answer to this question is “no”.

[2] The course of conduct leading to the abandonment decision is as follows: the RPD delivered a Personal Information Form (PIF) to the Applicant on September 25, 2007; the form cited the *Rules* that stipulate that the Applicant had 28 days to complete and return the form; the PIF was filed on October 24, 2007, 1 day past the deadline; the RPD placed the Applicant’s lawyer on notice that the PIF was deficient because it was missing the Applicant’s narrative (see Tribunal Record, p. 77); the Applicant was required to attend an abandonment hearing on November 7, 2007; on November 6th, a case officer of the IRB telephoned the lawyer to inform him that the abandonment hearing was scheduled for the following day (see Tribunal Record p. 71-72); in response, by fax on November 6, 2007, the lawyer sent the required narrative, in Spanish, to the RPD and informed the RPD that the English translation would be sent the next day, he was unable to attend the abandonment hearing; and the Applicant was not contactable because he does not have a phone and would not be able to read any notice to attend because he only speaks and reads Spanish (Tribunal record p. 71-72); the RPD received and apparently considered the November 6, 2007 fax prior to making the abandonment decision on November 7, 2007; and on November 7, 2007, the lawyer faxed the English translation to the RPD.

[3] With respect to the reopening application made by the Applicant, the limit of the RPD's understanding of the course of conduct leading to the making of the abandonment decision is contained in the following paragraphs of the decision:

The Applicant made his claim for refugee protection and was provided with a Personal Information Form (PIF) on September 25, 2007. By a *Notice to Appear, Abandonment of a Claim for Refugee Protection*, dated September 26, 2007. The RPD advised the claimant by regular mail at the address on file, 552 Blackthorn Avenue, Apt. 1, Toronto, Ontario M6M 3C8, that a hearing would take place on November 7, 2007, to give the claimant an opportunity to explain why the RPD should not determine that his claim be Abandoned. Neither the claimant, nor a representative appeared at that hearing and his claim was abandoned for failure to provide the PIF.

By Application dated January 22, 2008, the Applicant brought an Application to the Refugee Protection Division to reopen his claim, alleging a failure to observe a principle of natural justice. There is no indication that the Applicant has contacted the authorities regarding his alleged activities of his previous counsel. Alternatively, the Board determines that the Applicant has not established that there was failure to observe a principle of natural justice in the abandonment proceedings.

The Applicant acknowledges having received the PIF and instructions regarding completion of same. [Emphasis added]

(Decision, p.1)

[4] It is evident from these statements that the RPD only saw part of the picture of the course of conduct in scrutinizing for a denial of natural justice in the making of the abandonment decision. In my opinion, in rendering a decision on such an important issue as denial of natural justice, the RPD must demonstrate that it has knowledge of the full picture of the course of conduct leading to the making of an abandonment decision. It is obvious on the face of the decision under review that the

RPD failed to reach a determination on all the evidence before it, and, as a result, I find that the decision under review is made in reviewable error.

ORDER

Accordingly, the re-opening decision under review in the present Application is set aside and is sent back to a differently constituted panel of the RPD for redetermination.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1397-08

STYLE OF CAUSE: EDGAR HERNAN CLAVIJO ALBARRACIN v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 7, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: OCTOBER 8, 2008

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