

Federal Court



Cour fédérale

Date: 20120627

Docket: IMM-8318-11

Citation: 2012 FC 818

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 27, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

OSCAR ARMANDO PADILLA HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by the Refugee Protection Division (the panel), by which the application to reopen the applicant's file was refused.

[2] On December 9, 2007, the applicant, a citizen of El Salvador, arrived in Canada and filed a claim for refugee protection on February 14, 2008. On February 25, 2008, he presented himself for an interview before the Immigration and Refugee Board of Canada (IRB).

[3] On March 20, 2008, he submitted his Personal Information Form (PIF) indicating his current address.

[4] On February 12, 2010, the IRB sent him a Confirmation of Readiness to Proceed to the address that was on file. This form contains a section that a refugee claimant can fill out in the event of a change of address. The applicant signed the form without filling out this section, and sent it back to the IRB.

[5] On November 1, 2010, he moved to another address and informed Immigration Canada of his change of address, but not the IRB.

[6] On April 20, 2011, the IRB sent him a first Notice to Appear at a hearing that was scheduled for June 8, 2010, to the address it had on file. The same notice was also sent to his counsel. On the day of the hearing, counsel appeared without the applicant. Abandonment proceedings were subsequently commenced with regard to the refugee claim.

[7] On July 6, 2011, the IRB sent the applicant and his counsel a Notice to Appear to the same address to notify him that a hearing was scheduled for July 27, 2011, to provide him with an opportunity to contest the abandonment proceedings against his claim. On the day of the hearing, counsel for the applicant once again appeared by himself. The IRB then ruled on the abandonment of the matter, having received no word from the applicant.

[8] On August 5, 2011, the applicant informed the IRB of his change of address, and filed an application to reopen on September 28, 2011, in accordance with Rule 55 of the *Refugee Protection Division Rules*.

[9] The panel refused to allow the application to reopen because it did not have the jurisdiction to do so, given that the applicant had not demonstrated that there had been a breach of a principle of natural justice.

[10] In fact, the panel was of the view that the fact of having failed to notify the IRB of his change of address was not the same as a failure to observe a principle of natural justice, and that the applicant had only himself to blame for his failure to act..

[11] The panel also noted that it is customary for the IRB to advise refugee claimants to notify it of any change of address, and that the kit provided to them includes a form for this purpose. In this case, the form entitled “Résumé de l’appel du rôle”, dated March 13, 2008, indicates that the IRB officer had checked off the box next to which was written “Explications des documents contenus dans la trousse”, which shows that normal procedures had been followed.

[12] Moreover, the panel noted that on page 12 of the PIF it is clearly written, in bold print: “**You must notify the IRB immediately of any change to your address.**” It did not believe that the applicant’s interpreter would have provided an exact translation of each section of the PIF, but not the section about notification of any change of address.

[13] The panel further noted that the applicant had received a letter from the IRB asking him to confirm his availability for the hearing. The form, which he signed and returned to the IRB, included a section for him to provide his new address. Although the applicant had not yet moved when he received the form, the tribunal found that this constituted a further reminder from the office to which he was to communicate this information.

[14] It further noted that the applicant provided no explanation for his failure to contact his counsel after the declaration of abandonment, and drew a negative inference about his credibility with regard to his ignorance about the process.

Was the panel's decision reasonable?

[15] According to Rule 55 of the *Refugee Protection Division Rules*, the panel can only reopen a refugee claim in cases where a claimant is able to demonstrate a failure to observe the principles of natural justice.

[16] The applicant claims the panel's decision was unreasonable because it determined that he had only himself to blame for failing to notify the IRB of his change of address. He submitted an affidavit in support of his application to reopen in which he stated that the officer had not explained to him that he was required to notify the IRB of any change of address, a statement that was not refuted. In addition, the applicant notes that he had not read the notice on page 12 of the PIF because the document had been prepared by his counsel without an interpreter. The applicant also

refers to a letter sent to him by the IRB, dated April 29, 2011, which indicated that his PIF had not been translated for him.

[17] For its part, the respondent argues that the applicant lacked diligence, and that the panel was correct in finding that he had only himself to blame for his failure to act and that he lacked credibility with regard to his ignorance of the process. The respondent notes that the applicant changed addresses on November 1, 2010, and that between this date and the end of the summer of 2011, he never contacted his counsel or sent a notice of change of address or change of telephone number to the IRB, when he knew that he was awaiting a hearing date. Thus, the applicant's failure to follow up with his counsel resulted in the latter being unable to reach him in order to advise him of the opportunity offered by the panel to challenge the abandonment of his claim. In short, the applicant has not demonstrated that the IRB failed to observe a principle of natural justice. I share this view.

[18] I note that at paragraph 10 of his affidavit submitted in support of his application to reopen, the applicant states that he filled out his PIF with the help of his counsel and that the questions and information contained in the form had been translated into Spanish for him, with the exception of the notice on page 12 of the PIF. However, the panel did not believe "that the claimant's interpreter would faithfully translate every section of the thirteen page PIF except the sentence that states that he must file a change of address". This finding is reasonable in light of the facts in this case.

[19] The applicant further claims that the panel breached principles of procedural fairness by relying on extrinsic evidence, namely, the "Résumé de l'appel du rôle", to conclude that normal

procedure had been followed by the IRB officer. He submits that he was never provided with a copy of the document, and was therefore unable to respond to it or provide evidence to the contrary.

[20] The respondent argues that this document is a checklist which was completed by the registry officer during roll call when the applicant was present and was assisted by an interpreter. The document merely confirms in writing what had been discussed with the applicant during this roll call, and it is part of the IRB file on him and which he and his counsel had access to. The respondent relies on *Quijano v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1232, [2009] FCJ No 1573 (QL), in which the Court held that an immigration officer is under no obligation to confront applicants with information they themselves had provided, and that this information was not extrinsic to the record. I share this view.

[21] The “Résumé de l’appel du rôle” is simply a summary of information relevant to the applicant’s file. It indicates, among other things, that the applicant was present at roll call, that he required the services of an interpreter, that he understood the interpreter, and that he received explanations about the documents contained in the kit. As in *Quijano*, above, the information contained in the “Résumé de l’appel du rôle” is not extrinsic evidence for which the panel would have had an obligation to confront the applicant with. In this regard, there was no breach of the principles of natural justice.

[22] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

Judge

Certified true translation,
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8318-11

STYLE OF CAUSE: Oscar Armando Padilla Hernandez
v.
The Minister of Citizenship and Immigration

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 21, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** Tremblay-Lamer J.

DATED: June 27, 2012

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