

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151117

Docket: A-30-15

Citation: 2015 FCA 256

**CORAM: NADON J.A.
SCOTT J.A.
RENNIE J.A.**

BETWEEN:

ABDLWAHID HAQI

Appellant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Vancouver, British Columbia, on November 17, 2015.
Judgment delivered from the Bench at Vancouver, British Columbia, on November 17, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

SCOTT J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 17, 2015).

SCOTT J.A.

[1] The Immigration Division of the Immigration and Refugee Board of Canada (the Immigration Division) found that Mr. Abdlwahid Haqi (the appellant) was inadmissible to Canada for being a member of an organization for which there are reasonable grounds to believe had engaged in the subversion by force of the Iranian government. A judge of the Federal Court

(the Judge), in reasons cited as 2014 FC 1246, dismissed the appellant's application for judicial review to quash the notice given by a Canada Border Services Agency (CBSA) officer pursuant to section 104 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) and decided that it did not confer any discretion to the officer not to terminate his refugee proceeding. The Judge certified the following serious question of general importance:

After a Refugee Protection Division proceeding has been suspended under paragraph 103(1)(a) of the *Immigration and Refugee Protection Act* pending the outcome of an Immigration Division hearing into a refugee claimant's admissibility, if the Immigration Division determines that the claimant is inadmissible for security reasons under section 34(1)(f) of *IRPA*, does a CBSA officer have any discretion under subsection 104(1)(b) of *IRPA* to not determine the claim's eligibility and to not notify the Refugee Protection Division of the officer's decision on eligibility?

[2] This is an appeal from the decision of the Federal Court.

[3] We are all of the opinion that the certified question will be answered in the negative and the appeal should be dismissed essentially for the reasons given by the Judge.

[4] Contrary to the appellant's position, we agree with the Judge that neither the decision of the Supreme Court in *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 S.C.R. 678, nor the enactment of the *Protecting Canada's Immigration System Act*, S.C. 2012, c. 17 (the Act) had any impact on section 104 of *IRPA*. Moreover, we conclude that the interpretation of de Montigny J. in *Tjiueza v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1247 [*Tjiueza*] is not inconsistent with the *Charter of Human Rights*

and Freedoms, R.S.Q. c. C-12, or with Canada's international obligations under the *Refugee Convention*.

[5] The appellant applied for Ministerial relief for inadmissibility under subsection 42(1) of the *IRPA* after the decision was rendered by the Judge. We reject his argument that his application for Ministerial relief has any bearing on the operation of section 104. The fact that it is a human actor, the officer, who takes notice of facts and communicates the legal consequence imposed by the *Act* to the affected party and to the Refugee Protection Division does not make that person a decision-maker with discretion.

[6] Consequently, the certified question will be answered in the negative and the appeal will be dismissed.

"A.F. Scott"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-30-15

STYLE OF CAUSE: ABDLWAHID HAQI v. THE
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: NOVEMBER 17, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
SCOTT J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: SCOTT J.A.

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