

Federal Court



Cour fédérale

**Date: 20200825**

**Docket: IMM-1194-20**

**Citation: 2020 FC 855**

**Ottawa, Ontario, August 25, 2020**

**PRESENT: The Honourable Madam Justice Fuhrer**

**BETWEEN:**

**WAHEED OLAIDE MAITO  
TITILAYO RIANAT MAITO  
KEHINDE HOSSENAT MAITO  
TAIWO HASSANAT MAITO  
IDOWU ABDULRASHEED MAITO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**UPON** Applicants' motion records filed on July 2 and 31, 2020 containing motions for, respectively, (i) an order for an extension of time *nunc pro tunc* for the filing of the Applicants' Record initially due on March 19, 2020 [Motion 1], and (ii) an order directing the Respondent, as the Minister responsible for the Immigration and Refugee Board of Canada, to provide the

Applicants with an English translation of the January 24, 2020 decision and reasons of the Refugee Appeal Division [RAD] [Motion 2];

**AND UPON** noting Motion 1 was made in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106, while Motion 2 was made returnable for oral hearing on August 11, 2020;

**AND UPON** reading Applicants' Motion 1 Record and Motion 2 Record, and Respondent's Motion 1 Record, and noting Motion 2 requested an order for relief that, while not requested specifically in Motion 1 nonetheless was raised as a relevant issue;

**AND UPON** considering the Respondent's August 6, 2020 letter, questioning the necessity of Motion 2 and the oral hearing, and Applicants' August 8, 2020 letter in response;

**AND UPON** directing that Motion 1 and Motion 2 would be determined together in writing, and that Motion 2 therefore would be removed from Toronto-General Sittings on August 11, 2020;

**AND UPON** considering Respondent's August 12, 2020 letter informing the Court that the Respondent wishes to rely on the Respondent's Motion 1 Record for both motions;

**AND UPON** the Court determining to grant Motion 1, but varied as indicated, and dismiss Motion 2, for the reasons that follow:

I. Background

[1] Regarding Motion 2, the Applicants allege that their former counsel did not inform them that the Notice of Appeal to the RAD would be filed in French (under “Langue choisie pour l’appel”, “Français” was “checked” for the Principal Applicant) nor that the appeal proceeding would be conducted and hence, the decision would be rendered in French. The underlying Refugee Protection Division [RPD] proceeding and decision were in English, the Applicants’ language. The Applicants further allege that they did not sign the Notice of Appeal.

[2] The Applicants’ current counsel wrote to the RAD on February 14, 2020, and to the former counsel on March 6, 2020, to request an English version of the RAD decision. The RAD responded the same day that because the language of procedure selected in the Notice of Appeal was French, and because it did not receive any request for change of language during the appeal process, the decision and reasons were in French. The RAD further informed counsel that for these reasons, the RAD would not be providing an English version. The Applicants’ supporting affidavit is silent regarding any response from their former counsel.

[3] The Applicants argue that because they chose English at the outset in their Basis of Claim form as the language for their immigration proceedings and because they did not sign the Notice of Appeal and hence, they did not change the language of proceedings from the RPD to the RAD, the RAD should provide them with an English translation of its decision and reasons. They are entitled to it. They further argue that an English translation would enable them to review the decision and reasons with their new counsel and thus prepare their Application

Record in respect of their Application for Leave and Judicial Review filed on February 18, 2020 in English.

[4] Regarding Motion 1, the Applicants request an extension of time of fourteen (14) days after the RAD supplies the English version of its written decision. The Respondent does not object to an extension of time *per se*. The Respondent opposes, however, the Applicants' request to have this Court direct the RAD to prepare and provide the Applicants with an English translation of its decision.

## II. Analysis

[5] I am not persuaded that the Applicants have suffered any injustice or hardship in this case nor, for clarity, that there is any prejudice to the public interest. While the RAD has a duty to provide its decisions in both official languages, neither of the circumstances that require the RAD to make its decisions available simultaneously in both official languages is applicable in this case: *Official Languages Act*, RSC 1985, c 31 (4<sup>th</sup> Supp) [OLA], s 20(1). Otherwise, a decision shall be issued first in one official language and then, at the earliest possible time, in the other official language, unless the delay would be prejudicial to the public interest or result in injustice or hardship to any party to the proceeding: *OLA* s 20(2).

[6] To paraphrase an earlier decision of this Court, I find that “[t]here is no evidence on file that [the Applicants] made a specific request to the [decision maker] prior or during the [...] hearing for the decision to be rendered or translated in English”: *Sztern v Canada (Attorney General)*, 2010 FC 181 at para 72. *The Refugee Appeal Division Rules*, SOR/2012-257 [RAD

*Rules*], require an appellant to indicate their language of choice, English or French, in the notice of appeal: *RAD Rules* s 22(1). An appellant wishing to change the language of the appeal must do so in accordance with subsection 22(3) of the *RAD Rules*, namely, by notifying the Division and the Minister in writing without delay and, if a date for a proceeding has been fixed, the notice must be received by their recipients no later than 20 days before that date.

[7] Notwithstanding the Applicants' allegation that they did not sign the Notice of Appeal, nor see it until just before the Principal Applicant swore the supporting affidavit dated July 30, 2020 regarding Motion 2, "[t]he law is clear that an individual must bear the consequences of hiring poor counsel" [citations omitted]: *Rohini v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1488, para 21. I note that the Applicants have not alleged that their former counsel was poor, but rather that they did not see nor sign the Notice of Appeal until after the RAD issued its decision and reasons. In addition, there is no evidence that the RAD was aware of any limitation on the Applicants' former counsel to act on their behalf in the manner that she did: *Bemar Construction Ltd v Canada*, 1999 CanLII 8955 at paras 11-12.

[8] Further, there is no evidence that the Applicants' former counsel did not provide the requested translation of the RAD decision and reasons when asked by their current counsel. Though the Applicants repeated their complaint regarding the language of the RAD decision in their Application for Leave and Judicial Review filed on February 18, 2020, nonetheless they raised grounds consistent with having some understanding of the RAD decision. For example, the Applicants' grounds include that the Tribunal erred in law when it determined that the Applicants are not Convention Refugees and are not Persons in need of Protection and that it

erred in law by: making selective, inadequate and unreasonable findings; misapplying the law and jurisprudential guidelines; ignoring evidence, taking into account irrelevant evidence, misinterpreting evidence properly before it, making erroneous findings of fact without regard to the evidence before it, and failing to properly understand the evidence.

[9] Thus, as Justice Zinn of this Court found in his March 20, 2013 Order in *Hussein v Canada (MCI)*, IMM-10932-12, I similarly find that if the Applicants' current counsel requires the RAD decision or any other material in the Application Record to be in English, then the burden to obtain a translation is on the Applicants and their counsel; it is not on the RAD or this Court given that the Applicants were represented by counsel who chose to have the appeal of the RPD decision conducted in French.

### III. Conclusion

[10] I therefore dismiss Motion 2. Regarding Motion 1, I am prepared in the circumstances to grant the Applicants an extension of time of fourteen [14] days from the date of this Order to serve and file the Applicants' Record.

**ORDER in IMM-1194-20**

**THIS COURT ORDERS that:**

1. Regarding the Applicants' motion for an order for an extension of time *nunc pro tunc* for the filing of the Applicants' Record initially due on March 19, 2020, the Applicants are granted an extension of time of fourteen [14] days from the date of this Order to serve and file their Record in this proceeding;
2. Regarding the Applicants' motion for an order directing the Respondent, as the Minister responsible for the Immigration and Refugee Board of Canada, to provide the Applicants with an English translation of the January 24, 2020 decision and reasons of the Refugee Appeal Division, the motion is dismissed;
3. There are no costs.

"Janet M. Fuhrer"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1194-20

**STYLE OF CAUSE:** WAHEED OLAIDE MAITO, TITILAYO RIANAT MAITO, KEHINDE HOSSENAT MAITO, TAIWO HASSANAT MAITO, IDOWU ABDULRASHEED MAITO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** FUHRER J.

**DATED:** AUGUST 25, 2020

**WRITTEN REPRESENTATIONS BY:**

Abdul-Rahman Kadiri FOR THE APPLICANTS

Norah Dorcine FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kadiri Law FOR THE APPLICANTS  
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