



IMM-1230-96

BETWEEN:

TOUFIK FETNI,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

PINARD J.:

This is an application for judicial review of the decision of the Immigration and Refugee Board (Refugee Division) dated March 26, 1996, declaring the applicant's claim to have been abandoned under paragraph 69.1(6)(c) of the *Immigration Act*. That provision reads as follows:

69.1(6) Where a person who claims to be a Convention refugee

(a) fails to appear at the time and place set by the Refugee Division for the hearing into the claim,

(b) fails to provide the Refugee Division with the information referred to in subsection 46.03(2), or

(c) in the opinion of the Division, is otherwise in default in the prosecution of the claim,

the Refugee Division may, after giving the person a reasonable opportunity to be heard, declare the claim to have been abandoned and, where it does so, the refugee Division shall send a written notice of its decision to the person and to the Minister.

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It is important to reproduce the following passage from the decision of the

Refugee Division:

[TRANSLATION]

The first hearing date was set for October 31, 1995, at 1:15 p.m. A notice of hearing had been sent to the claimant earlier, on or about April 10, 1995. A preliminary conference was held on October 12, 1995, in accordance with section 20 of the *Convention Refugee Determination Division Rules*. Danielle Arpin, the claimant's counsel, Diane Legresley, the officer in charge of the claim, and the Board members on the case were present at that conference and signed the agreement. The purpose of that conference was to establish the manner in which the hearing would proceed and to provide for disclosure of evidence between the parties.

On October 31, 1995, Ms. Arpin informed the Board that she was unable to proceed that afternoon because she had not been able to meet with her client to prepare his case. Abandonment proceedings were initiated and the case was adjourned to December 18, 1995, at 9:00 a.m. On or about November 20, 1995, a notice of hearing concerning the abandonment of his claim was sent to the claimant. On December 18, 1995, the claimant showed cause why his claim should not be declared to have been abandoned; he stated that he had not attended for the interview scheduled for him by his counsel because he had gone to visit Ottawa with his brother. In spite of everything, the Board gave him the benefit of the doubt and did not declare the claim to have been abandoned, and the hearing on the merits commenced.

Since the evidence had not been completed, the hearing was adjourned to January 19, 1966. On January 19, 1966, an adjournment was granted because Ms. Arpin was absent, she being ill. A date was agreed for the continuation of the hearing, in the presence of the claimant and Mr. Piquet, who had been instructed by Ms. Arpin to set a date for the continuation. The date selected was February 8, 1996, at 9:00 a.m. A notice of hearing was handed to the claimant personally on January 19, 1996, for him to attend at the IRB on February 8, 1996, at 9:00 a.m. On February 8, 1996, at 9:36 a.m., since the claimant was still absent and Ms. Arpin had no explanation, abandonment proceedings were commenced for the second time in this case and the hearing was adjourned to March 5, 1996, at 1:15 p.m.

However, before the adjournment, Ms. Arpin stated that she had met with her client on February 5, 1996, three days before the hearing, and had tried to reach him by telephone that morning, February 8, without success. She also said that Mr. Toufik always attended at the appointments she scheduled for him and was sometimes a half-hour early.

On or about February 8, 1996, a notice of hearing concerning the abandonment of his claim was sent to Mr. Toufik, for him to attend on March 5, 1996, at 1:15 p.m., to show cause why the Board should not declare his claim to have been abandoned pursuant to subsection 69.1(6) of the *Immigration Act*. Today, the claimant gave us the explanation that at his meeting with Ms. Arpin on February 5, 1996, he knew that he had to attend for his hearing on February 8, 1996, but when he woke up that morning he forgot that it was the day of his hearing. He says that he went to visit his brother and that in the afternoon he returned home and found that he had received a message on his voice mail from his lawyer, Ms. Arpin. Mr. Toufik also tells us that he keeps a personal diary for his appointments.

In addition to paragraph 69.1(6)(c) of the Act, which is set out *supra*, section 32 of the *Convention Refugee Determination Division Rules* is also applicable. That provision reads as follows:

32(1) Before declaring a claim to have been abandoned pursuant to subsection 69.1(6) of the Act or an application to have been abandoned pursuant to subsection 69.3(2) of the Act, the Refugee Division shall serve on the parties a notice to appear directing them to attend a hearing on the abandonment.

(2) The notice to appear shall also inform the parties that where, at the end of the hearing concerning an abandonment, the Refugee Division does not declare the claim or application to have been abandoned, the Refugee Division will forthwith commence or resume the hearing into the claim or application.

In the case at bar, it is not disputed that the applicant received the notice of hearing concerning the abandonment of his claim. In addition, the transcript of the hearing of March 5, 1996, shows that the Board members allowed the applicant to show cause with respect to his absence on February 8, 1996, thereby affording him an opportunity to try to satisfy them that there were valid reasons why they should not declare the claim to have been abandoned. Despite the explanation given by the applicant with respect to his memory problems, and the psychological report he filed, the Board nonetheless concluded:

[TRANSLATION]

Even if we assume the truth of the conclusions in the psychological report, which are that Mr. Toufik may have memory lapses, this does not excuse the fact that he should have done whatever he needed to do to ensure that he did not forget his hearing date, particularly since the conclusions in that report state, and I quote:

Based on the material gathered at the interview, we can state that Mr. Toufik has no major pathology.

In accordance with paragraph 69.1(6)(c) of the *Immigration Act*, we find that you are in default in the prosecution of your claim and we therefore declare your claim to have been abandoned.

It thus appears that there has been full compliance with the applicable Act, that there has been no breach of the principles of natural justice and that the Board

committed no error of law. In terms of the facts, it is not for this Court to substitute its assessment thereof for the assessment by the Refugee Division, which is a specialized tribunal, when, as in this case, the applicant has failed to establish that the decision in issue was patently unreasonable because it was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. More specifically, I am not satisfied that it was unreasonable for the Board, after considering all of the evidence, including the psychological report filed by him, to reprove the applicant for failing to do whatever he needed to do "to ensure that he did not forget his hearing date".

Accordingly, the application for judicial review must be dismissed.


Like counsel for the parties, I do not believe that there is any question to be certified in this case.

O T T A W A

March 27, 1997

Judge

Certified true translation



C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-1230-96

STYLE OF CAUSE: TOUFIK FETNI v.
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 18, 1997

REASONS FOR ORDER OF PINARD J.

DATED: MARCH 27, 1997

APPEARANCES:

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JUL 22 1997

THE FEDERAL COURT
OF CANADA

LA COUR FÉDÉRALE
DU CANADA

Court No.: IMM-1230-96

No. de la cause:

Let the attached certified translation of the following document in this cause be utilized to comply with Section 20 of the **Official Languages Act**.

Je requiers que la traduction ci-annexée du document suivant telle que certifiée par le traducteur soit utilisée pour satisfaire aux exigences de l'article 20 de la **Loi sur les langues officielles**.

Reasons for Order

3/7/97

DATE

Form T-4F

Yvon Pinard

J.F.C.C.

J.C.F.C.

Formule T-4F

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