

**Date: 20080207**

**Docket: IMM-1197-07**

**Citation: 2008 FC 164**

**Toronto, Ontario, February 7, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**TARIQ SYED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a Pre-Removal Risk Assessment (PRRA) decision rejecting the Applicant's claim for protection based on a fear of risk to his life from the police and the Muttahida Quami Movement (MQM) in Pakistan.

[2] In July 2000, the Applicant had been the subject of immigration proceedings in Canada with the result that he was deported to Pakistan. He was escorted to the Karachi airport by two Canadian Border Services agents. In August 2001, the Applicant re-entered Canada and again entered the

immigration system. The PRRA decision under review in the present application arises as a result of his pending removal back to Pakistan.

[3] An essential feature of the Applicant's argument in the present judicial review is that a breach of due process was committed by the PRRA Officer (Officer) in rendering the negative PRRA decision. The process of reaching the negative decision involved the Applicant filing his PRRA application in August 2005 and an oral hearing being conducted in November 2005, with the decision being rendered in March 2007. As is recounted in the decision, following the oral hearing the exact circumstances of the Applicant's entry into Pakistan in July 2000 became a live issue, and on her own motion, apparently in order to bring clarity to circumstances, the Officer requested and obtained affidavits from the Border Services agents who accompanied the Applicant. These affidavits were properly sent to Counsel for the Applicant for comment.

[4] By letter dated February 6, 2006, Counsel for the Applicant responded with rebuttal evidence, and, in addition, made the following request:

I would request, however, an opportunity to cross-examine [Border Services agent] Ms. Raposo to clarify all of these facts. I think it's only fair given that the statutory declaration is being filed with a view to trying to undermine the credibility of Mr. Syed's statements.

(Tribunal Record, p. 13)

There is no evidence on the Tribunal Record that the Officer provided a response to this request. The cross-examination did not take place. In the present Application, Counsel for the Applicant argues that failure of the Officer to respond to the February 6, 2006 request constitutes a breach of due process. I agree.

[5] In my opinion, the duty to be fair required the Officer, not only to respond to the Counsel for the Applicant's request, but to grant the opportunity cross-examine. This point is particularly important because in the negative PRRA decision rendered, the Officer gave weight to the Border Services agents' evidence and assigned no weight to the Applicant's rebuttal evidence. In my opinion, in the circumstances, it is remarkably unfair to do so without granting the request.

**ORDER**

Accordingly, I set aside the PRRA decision and refer the matter back for re-determination before a different PRRA officer.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1197-07

**STYLE OF CAUSE:** TARIQ SYED v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 7, 2008

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

**DATED:** FEBRUARY 7, 2008

**APPEARANCES:**

ANDREW BROUWER FOR THE APPLICANT

KRISTINA DRAGAITIS FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JACKMAN & ASSOCIATES  
Barrister and Solicitor  
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Toronto, Ontario FOR THE RESPONDENT