Date: 20091118

Docket: IMM-2088-09

Citation: 2009 FC 1177

Ottawa, Ontario, November 18, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

RAFE SHAKIBAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Rafe Shakiban (the "Applicant") seeks judicial review of the decision made by the Pre-Removal Risk Assessment Officer (the "PRRA Officer") on March 16, 2009. In that decision, the Applicant was found not to be a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and his Pre-Removal Risk Assessment ("PRRA") application was dismissed.

[2] The Applicant, a citizen of Egypt, entered Canada in 1998, as a student. He claimed refugee protection in 2004 on the grounds that as a Muslim apostate, he was at risk of persecution in his

country of nationality. The Immigration and Refugee Board (the "Board") found that the Applicant had failed to establish that there was a serious possibility that he would experience the serious harm of persecution if returned to Egypt. The Board made no negative credibility findings.

[3] The Applicant submitted a PRRA application on or about November 8, 2006. A written submission dated November 16, 2006 was submitted by one Michael P. Caden, an immigration consultant with Immigration Partners International.

[4] In the decision dated March 16, 2009, the PRRA Officer noted that the Applicant had identified the same risks in his PRRA application that had been considered by the Board upon the hearing of his refugee claim and further, that insufficient evidence had been submitted to "persuade me to come to a conclusion different than that of the RPD". The Officer noted that country conditions in Egypt had not deteriorated significantly since the RPD decision and referred to U.S. Department of State, Country Reports on Human Rights Practices for 2004 and 2007.

[5] The Applicant now challenges the Officer's decision on the grounds that his Counsel upon the PRRA application failed to adequately and professionally make submissions on his behalf and that the professional incompetence in that regard gave rise to a breach of natural justice that merits judicial intervention.

[6] The appropriate standard of review when an alleged breach of natural justice is in issue is that of correctness; see *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, 74 Imm. L.R. (3d) 85 (F.C.).

[7] In *Shirwa v. Canada (Minister of Employment and Immigration)*, [1994] 2 F.C. 51, Justice Denault reviewed the jurisprudence relative to incompetent counsel in the immigration context. Following his review of the jurisprudence, Justice Denault set out a summary of relevant principles at paras. 11 and 12 as follows:

> 11 While each of the foregoing cases involve a different type of misconduct on the part of counsel, it seems clear that the incompetence of counsel in the context of a refugee hearing provides grounds for review of the tribunal's decision on the basis of a breach of natural justice. The criteria for reviewing such a decision are not as clear, but it is possible to derive a number of principles from these cases. In a situation where through no fault of the applicant the effect of counsel's misconduct is to completely deny the applicant the opportunity of a hearing, a reviewable breach of fundamental justice has occurred (Mathon).
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> a. In other circumstances where a hearing does occur, the decision can only be reviewed in "extraordinary circumstances", where there is sufficient evidence to establish the "exact dimensions of the problem" and where the review is based on a "precise factual foundation." These latter limitations are necessary, in my opinion, to heed the concerns expressed by Justices MacGuigan and Rothstein that general dissatisfaction with the quality of representation freely chosen by the applicant should not provide grounds for judicial review of a negative decision. However, where the incompetence or negligence of the applicant's representative is sufficiently specific and clearly supported by the evidence such negligence or incompetence is inherently prejudicial to the applicant and will warrant overturning the decision, notwithstanding the lack of bad faith or absence of a failure to do anything on the part of the tribunal.

[8] It is clear that in order for an applicant to establish that representation by incompetent counsel gave rise to a breach of natural justice, he must first adduce sufficient evidence to identify the problem and the scope of that problem.

[9] In the present case, the Applicant produced a complaint form that he had sent to the Canadian Society of Immigration Consultants ("CSIC"), dated April 15, 2009. He also produced a letter dated April 29, 2009 from the CSIC, acknowledging receipt of the complaint.

[10] In his complaint, the Applicant simply said that the immigration consultant "didn't do his job and he messed up my case".

[11] In the letter dated April 29, 2006, the Intake Officer for Complaints and Discipline with CSIC said the following:

> Thank you for your correspondence which was received by the Complaints & Discipline Department on April 15, 2009.
>
> In order to pursue the matter of your complaint we require documentary evidence and a detailed written statement to support your allegations that the member 'messed up', that he was 'not competent' and that his services were 'below professional standards'.
>
> In the absence of a retainer agreement we require a detailed description of the service the member was to render and the associated fees. Also, we require:
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> 1) copies of cheques or other proof of payments made to the member.
> 2) a detailed description of the main event of your complaint – the circumstances of your H&C application and the Member's alleged cancellation of your H&C application.
> 3) copies of any correspondences sent or received from CIC.

> 4) an explanation as to why you are filing this complaint over three years after the time Mr. Caden ceased to represent you.
> 5) a timeline of events indicating when you last had contact with the member
>
> A complaint file will not be opened until additional documentation is received.

[12] There is no evidence that the Applicant followed through with the provision of further documentation to the CSIC to substantiate his complaint. In the absence of such documentation, no complaint file would be opened by the CSIC. Effectively then, there is no "complaint" outstanding.

[13] The Applicant has produced the PRRA submissions, dated November 16, 2006, that were filed by the immigration consultant on his behalf. He now invites the Court to draw the conclusion that the submissions were inadequate and demonstrate professional incompetence to a level of a breach of natural justice.

[14] I am satisfied that the Applicant has failed to establish the evidentiary basis to ground a successful argument concerning breach of natural justice arising from incompetent counsel. In this regard, I refer to the decision in *Nunez v. Canada (Minister of Citizenship and Immigration)* (2000), 189 F.T.R. 147 at para. 19 where Justice Pelletier said the following:

> 19 I am not prepared to accept an allegation of serious professional misconduct against a member of the bar and an officer of this court without having the member's explanation for the conduct in question or evidence that the matter has been referred to the governing body for investigation. In this case, there was ample opportunity to do one or the other but neither was done. The failure to do so is inconsistent with the gravity of the allegations made. This is not a question of being solicitous of lawyers' interests at the expense of their clients. It is a question of recognizing that

> allegations of professional negligence are easily made and, if accepted, generally result in the relief sought being granted. The proof offered in support of such an allegation should be commensurate with the serious nature of the consequences for all concerned.

[15] The principle stated here is equally applicable to an applicant who is casting doubt on his representation by an immigration consultant who is subject to regulation by the CSIC.

[16] In the result, this application for judicial review is dismissed. There is no question for certification arising.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Bahman Motamedi	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel LLP Barristers and Solicitors Toronto, ON	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, ON	FOR THE RESPONDENT