

Federal Court



Cour fédérale

Date: 20131011

Docket: IMM-345-12

Citation: 2013 FC 1037

Ottawa, Ontario, October 11, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**CHAHNAZ AL-MAARI
AKA
CHAHNZ AL-HUSSEINI**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ms. Chahnz Al-Husseini, seeks judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision made by the Immigration and Refugee Board [the Board], on November 8, 2012, granting an application by the Minister to nullify her refugee status due to her misrepresentation of a material fact.

I. Issues

[2] The issue raised in the present application is as follows:

A. Did the Board member unreasonably conclude that the Applicant made a material misrepresentation in her claim for refugee protection?

II. Background

[3] The Applicant is a stateless Palestinian by birth who habitually resided in Lebanon until refugee status was conferred on her by Canada on August 25, 1993. On February 16, 2012, the Minister made an application pursuant to s. 109(1) of the Act to vacate the Applicant's refugee status, on the ground that she had obtained refugee status by fraudulent means, misrepresentation, suppression, or concealment of material facts.

[4] In its application, the Minister argued that the Applicant acquired citizenship in Belize on August 1, 1991, and failed to disclose this fact to the Board when she applied for refugee protection in Canada. Holding Belizean citizenship would also have the consequence that she failed to claim refugee protection in all her countries of nationality. The Minister provided two exhibits to demonstrate that the Applicant had acquired Belizean citizenship in 1991: (1) an e-mail from grdn_wade@yahoo.com from Mr. Gordon Wade and (2) a website printout of a list of attendees at a 2007 conference in Belize City, Belize, listing Mr. Wade as an officer attendee of Immigration and National Services for Belize.

[5] The Board member noted the Applicant's arguments that the e-mail communication was not from a government address, did not indicate a government position, and that the Applicant was

unable to contact anyone at grdn_wade@yahoo.com. He noted her testimony that she had never applied for Belizean citizenship, been sworn in as a citizen, or even travelled to Belize.

[6] In his analysis, the Board member acknowledged that the burden of proof in a section 109(1) application to vacate refugee status rests upon the Minister, on a balance of probabilities. He commented that while he could understand the Applicant's concern as to whether Mr. Wade was an appropriate representative of Belize to confirm citizenship, he had no reason to disbelieve the Minister's evidence, as there was no indication that it was not genuine or that the Minister was trying to mislead the Board.

[7] The Board member concluded that on a balance of probabilities, the Applicant had obtained refugee status in Canada by fraudulent concealment of the material fact that she was, as of August 1991, a citizen of Belize, and that there "remains no untainted evidence from the original hearing to justify granting refugee status." The Minister's application was allowed.

III. Standard of review

[8] The standard of review for the issue in this case, being a question of fact, is reasonableness (*Waraich v Canada (Minister of Citizenship and Immigration)*, 2010 FC 861 at para 3).

IV. Analysis

[9] I find that the Board member's decision is unreasonable for the reasons below.

A. *Did the Board member unreasonably conclude that the Applicant made a material misrepresentation in her claim for refugee protection?*

[10] It is not disputed that for an order to vacate a positive refugee determination, the Minister has the burden of proving, on a balance of probabilities, that an applicant misrepresented or withheld material facts at the time a refugee claim was made (*Shahzad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 905).

[11] The Board may reject the vacation application if, pursuant to subsection 109(2), it is satisfied that other evidence before the panel which decided the refugee claim is sufficient to justify maintaining refugee protection regardless. In other words, notwithstanding the misrepresentation or withholding of facts, the application to vacate may be rejected if there is other evidence, untainted by the misrepresentation or withholding of material facts, that is sufficient to justify maintaining refugee protection.

[12] The Board decided here there was a misrepresentation and that no such untainted evidence from the original hearing remained to justify granting refugee status.

[13] It is also true that under section 109(1), it is not relevant whether the Applicant knew that in 1991 she was a citizen of Belize (*Canada (Minister of Citizenship and Immigration) v Wahab*, 2006 FC 1554 at para 29 (FCA)).

[14] In my view, it was unreasonable for the Board member to infer that the yahoo e-mail from Gordon Wade was legitimate, or that the internet printout showing a Gordon Wade attended a Migration Control Seminar in 2007, in any reasonable manner, confirms that the yahoo e-mail is

legitimate or corroborates the fact that the Applicant was in fact a citizen of Belize at the time of her refugee application in Canada. The Board member had, at best, a paucity of questionable evidence to try to make a finding that the Applicant was a citizen of Belize at the relevant date.

[15] As important, and I appreciate the candour of the Minister's counsel on these points, the Board member refers to the Applicant's previous criminal convictions, apparently in questioning the Applicant's credibility as to her evidence concerning a lack of knowledge of any connection to Belize and the fact she had never been to Belize. Yet there is no adverse finding or indeed any finding concerning the Applicant's credibility. The only way the Board member could have decided the way he did was to not believe or accept the Applicant's testimony due to a lack of credibility. Such a finding was never made.

[16] Further, in considering the question of how the Applicant could have obtained Belize citizenship when she had never been there, the Board member took notice of the specialized knowledge the Board has concerning citizenship requirements in foreign countries. While there is nothing wrong with doing so, the Applicant should have been given the opportunity to respond to the Board member's findings concerning economic viability and sponsorship as a means to obtain Belizean citizenship without being physically in Belize. The Applicant was not given that opportunity.

[17] The Applicant also requested that one or more of the following questions be certified:

- A. Are the previous Federal Court decisions ruling that *mens rea* or intention to misrepresent are not a consideration under s.109(1) "absolute" and to be applied in every

- case, or can the lack of intention or *mens rea* be relevant in some cases, depending on the particular facts of that case?;
- B. Is the lack of intention in the present case, where the Applicant may have been a citizen of another country without knowing that she was, a relevant factor that should have been considered by the Board?; and
- C. When the issue is whether an Applicant misrepresented that he or she was a citizen of another country when he or she made a refugee claim, does the burden of proof imposed on the Minister under s.109(1) include the “burden” to confirm citizenship with government officials and provide unquestionable documentary evidence of that citizenship directly?

[18] I do not believe these questions need to be addressed. This Court and the Federal Court of Appeal have effectively decided the first two issues, and the third issue need not be considered, as I do not deem it necessary to dispose of this application for judicial review.

[19] Finally, the parties are agreed that the style of cause should be corrected to add the Minister of Public Safety as a Respondent. I agree.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Applicant's application to set aside the Board member's decision is granted, and the matter is remitted to a different Board member for reconsideration. The newly constituted Board shall determine, in advance of any hearing, and based on probative evidence, whether the Applicant was a citizen of Belize at the time of her application for refugee status in Canada.
2. The style of cause is amended to add the Minister of Public Safety as a Respondent.
3. No question is to be certified.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-345-12

STYLE OF CAUSE: Al-Maari v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 9, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MANSON J.

DATED: October 11, 2013

APPEARANCES:

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