

Federal Court



Cour fédérale

Date: 20140120

Docket: IMM-4505-13

Citation: 2014 FC 62

Ottawa, Ontario, January 20, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

HARJEET SINGH SARRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Harjeet Singh Sarran seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board which found his refugee claim to have been abandoned. He asserts that the Board erred in law in making this finding by failing to take relevant considerations into account, in particular, the fact that he was ready to proceed with his refugee claim on the date set for his abandonment hearing.

[2] It is, however, apparent from paragraph 18 of the Board's reasons that the Board was well aware that the applicant was ready to proceed with his refugee hearing on the date set for his abandonment hearing, and that it took this into account. The Board was also clearly aware that the applicant was there with counsel, that an interpreter was present and that the applicant had provided pre-hearing disclosure.

[3] The fact that the Board referred to the applicant being "ready to testify", and did not specifically mention that he also had other witnesses present at the hearing does not impugn the reasonableness of the Board's decision, as it is presumed to have considered all of the evidence before it unless the contrary is shown: *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (CA).

[4] The Board properly asked itself whether the applicant's conduct in this matter evidenced a lack of intention to pursue his refugee claim with diligence: *Ali v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 908, [2005] FCJ No. 1150, at para. 10.

[5] I agree with the respondent that the applicant is essentially asking this Court to reweigh the fact that he was ready to proceed with his refugee claim on the date set for his abandonment hearing against the numerous other factors favouring a declaration of abandonment. These included the applicant's failure to keep in contact with his counsel prior to the date originally set for his refugee hearing, the fact that he was unprepared to proceed on that date, causing the hearing to be adjourned to a future date, and his failure to appear for the re-scheduled hearing.

[6] The applicant was verbally advised of the date for the rescheduled hearing by the Board. He was also told that this new date was peremptory to him and it was explained to him what this meant. This information was, moreover, provided to the applicant by the Board through a Punjabi interpreter, undermining his claim that linguistic problems contributed to his confusion.

[7] Written notice of the new hearing date was subsequently sent to the applicant by mail, and this notice was admittedly received by him several weeks before the new date set for his hearing. Despite all of this, the applicant still failed to appear for his refugee hearing on the second hearing date.

[8] The Board's finding that the above factors evidenced a lack of intention on the applicant's part to pursue his refugee claim with diligence is well within the range of possible, acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47. As a consequence, there is no basis for this Court to interfere with the Board's decision.

[9] Finally, the applicant argues that it was an error for the Board to rely on this Court's decision in *Sainvry v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 468, [2013] F.C.J. No. 497 [*Sainvry*] to find that the applicant's behaviour was less than diligent. The applicant submits that *Sainvry* is distinguishable as it relates to an application to reopen a refugee proceeding rather than an abandonment proceeding, and because the applicant in *Sainvry* failed to attend either his original hearing or his abandonment hearing.

[10] There is no merit to this submission. The Board relied on *Sainvry* as authority for the proposition that “[a]t a certain point, the applicant must take some responsibility to ensure that he understood the written correspondence he received regarding his refugee claim”: *Sainvry* at para. 16. The applicant does not take issue with this common sense proposition, and the factual differences between the two cases are not material to this point.

[11] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4505-13

STYLE OF CAUSE: HARJEET SINGH SARRAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 16, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:**

MACTAVISH J.

DATED: JANUARY 20, 2014

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