

Federal Court



Cour fédérale

Date: 20140416

Docket: IMM-10936-12

Citation: 2014 FC 366

Ottawa, Ontario, this 16th day of April 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**NASREEN IMTIAZ
and
IMITIAZ AHMED**

Applicants

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR ORDER AND ORDER

[1] The respondents in this case applied to the Refugee Protection Division of the Immigration and Refugee Board (the “RPD”) for the purpose of vacating a decision made to allow the applicants

their claim for refugee protection. The RPD, in a decision released on September 22, 2012, concluded that the decision to allow the claim for refugee protection had to be vacated.

[2] It is from that decision of the RPD that judicial review is sought, in accordance with section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”). For the reasons that follow, I believe it would be safer to return the matter to the Refugee Protection Division for a redetermination of the matter.

[3] It is not disputed that the standard of review is that of reasonableness. That, in turn, calls for a measure of deference. However, the role of the reviewing court is not to substitute its view of the matter or to conduct its own examination of the evidence for the purpose of making a determination. In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court of Canada described thus the role of the Court:

[47] ... A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[4] An examination of the decision made by the RPD leaves one wondering what exactly happened. The only thing that is clear is that there is a lack of clarity around the identity of the applicants. However, the record also reveals that was disclosed to the authorities, shortly after their arrival in Canada, that the applicants had travelled on false documentation. If it is right that the determining issue in the case is “whether the decision to allow the claims of the respondents for

refugee protection resulted from, directly or indirectly, misrepresenting the identity of Mrs. Nasreen Imtiaz as well as the real situation of Mr. Imtiaz Ahmed, or from withholding material facts relating to her identity and to his personal situation” one would have expected the RPD to explain why the disclosure of the use of false identification documents did not suffice.

[5] Instead, we are confronted to a convoluted explanation about the possibility that the female applicant would in fact be a British citizen. To put it plainly, the decision under review does not have the features of intelligibility and justification required in the decision-making process. At the end of the day, the test as described in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, requires that reasons “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes ...” (at paragraph 16).

[6] In the case at bar, I have found it impossible to come to that understanding. Obviously, the issue raised before this panel of the RPD is that of the identity of the applicants. The decision of the RPD which was to be vacated found the following: “their identities are supported by several documents, including a passport from Madam, national identity cards, marriage certificate and a family registration certificate. They have also presented documents which confirm both their professional background of Mrs. Imtiaz and, documents as well confirming their legal difficulties in Pakistan.” The panel that concluded that the initial decision had to be vacated never referred to that evidence nor, for that matter, the affidavit of March 21, 2005, about a month after the arrival of the applicants, in which was disclosed that they had travelled on false documents.

[7] Having reviewed the record carefully, heard the parties and reviewed the record again, I am still confused. The decision of the RPD did not assist in clarifying the situation.

[8] In the circumstances, I conclude that the decision under review lacks the features required in order to conclude that it is reasonable. In my view, the matter has to be sent back for a redetermination by a different panel. A more systematic attempt at explaining the identification discrepancies should be made by the respondent and the applicants would be expected to provide a clear explanation of the circumstances surrounding their arrival in Canada on February 18, 2005.

ORDER

The application for judicial review is allowed. The matter is sent back for a redetermination by a different panel of the Refugee Protection Division of the Immigration and Refugee Board. A more systematic attempt at explaining the identification discrepancies should be made by the respondent and the applicants would be expected to provide a clear explanation of the circumstances surrounding their arrival in Canada on February 18, 2005.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-10936-12

STYLE OF CAUSE: NASREEN IMTIAZ and IMITIAZ AHMED v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 24, 2014

**REASONS FOR ORDER
AND ORDER:** ROY J.

DATED: APRIL 16, 2014

APPEARANCES:

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