

Federal Court



Cour fédérale

**Date: 20160215**

**Docket: IMM-160-15**

**Citation: 2016 FC 202**

Montréal, Quebec, February 15, 2016

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**AHMAD OMID  
(a.k.a OMID AHMAD)  
(a.k.a. FARHAD AHMAD SULTANI)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Ahmad Omid a.k.a. Omid Ahmad a.k.a. Farhad Ahmad Sultani (the “Applicant”) seeks judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”). In that decision, dated December 17, 2014, the Board determined that the Applicant is neither a Convention Refugee nor a person in need of protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Applicant is a citizen of Afghanistan. He sought protection in Canada on the basis of membership in a particular social group, risk to life or of cruel and usual treatment or punishment and danger of torture. The Board rejected his claims because it did not find the basis of his claim to be credible, and it found that the Applicant had an Internal Flight Alternative (“IFA”). The Board also found that the Applicant had failed to rebut the presumption of state protection.

[3] These three findings are reviewable on the standard of reasonableness; see *Tsyhanko v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 819 at paragraphs 12-14. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, that standard requires that a decision be transparent, justifiable and intelligible. Application of the standard of reasonableness means that a range of possible, acceptable decisions is available to the decision maker, as long as the result meets the criteria of transparency, justification and intelligibility.

[4] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 43.

[5] I have reviewed the transcript of the hearing held before the Board on October 22, 2014. I have also considered the submissions of the parties, and agree with the argument of the Minister of Citizenship and Immigration (the “Respondent”) that essentially, the Applicant is challenging the weight given to the evidence by the Board.

[6] I am not persuaded that the Board's credibility findings are unreasonable, when measured against the standard of reasonableness referred to above.

[7] Likewise, I see no reviewable error in the manner in which the Board made its findings about an IFA and state protection. In each case, the Board considered the relevant principles and the relevant jurisprudence. The Board weighed the evidence before it, as it is authorized to do.

[8] Considering the evidence that the Applicant put forward, including country condition documents, I am satisfied that the Board's ultimate conclusions were reasonable and there is no basis for judicial intervention.

[9] The Applicant submits that the Board breached his rights to procedural fairness by failing to consider the further post-hearing submissions and documents that were submitted on December 9, 2014. Although the Board had accepted the first post-hearing submissions filed by the Applicant, it did not consider the second set of post-hearing materials, on the ground that it was *functus*.

[10] The Applicant in making his post-hearing submissions, including the presentation of further documents, did not comply with Rule 43 of the *Refugee Protection Division Rules*, SOR/2012-256.

[11] The Board was not obliged to consider the second set of non-compliant submissions and evidence. It did not breach the procedural fairness rights owing to the Applicant. There is no reviewable error in this regard.

[12] In the result, this application for judicial review was dismissed, no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review was dismissed, no question for certification arising.

“E. Heneghan”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-160-15

**STYLE OF CAUSE:** AHMAD OMID (A.K.A OMID AHMAD) (A.K.A. FARHAD AHMAD SULTANI) v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 26, 2015

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** FEBRUARY 15, 2016

**APPEARANCES:**

Djawid Taheri FOR THE APPLICANT

Brad Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Djawid Taheri FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario