

Federal Court



Cour fédérale

Date: 20160504

Docket: IMM-10400-12

Citation: 2016 FC 502

Ottawa, Ontario, May 4, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JAN BANOM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the August 21, 2012 decision of the Immigration and Refugee Board of Canada, Refugee Protection Division Panel member [the Board] to refuse the Applicant's application for refugee protection on the basis that he was neither a Convention refugee or person in need of protection.

I. Background

[2] This file was one of a number of files that had initially been involved in an action which has been resolved. In Court file T-1700-11 on October 21, 2014, Justice Russell ordered that the action be discontinued on a no-cost basis and that any applications for judicial review listed in Annex A (including this one), which are granted leave, shall not rely on the topics listed in Annex B to his order. Specifically, Justice Russell ordered that any judge hearing leave and judicial review of a matter in Annex A to his order shall not consider arguments made based on institutional bias which rely on:

- a) allegations of institutional bias with respect to the 2009 Issue Paper, including jurisdictional issues surrounding the Immigration and Refugee Board of Canada [IRB]'s ability to send "fact-finding" missions and produce investigative reports;
- b) all allegations of bias arising from comments made by the former Minister of Citizenship and Immigration, Jason Kenney; and
- c) allegations of conspiracy between the Minister of Citizenship and Immigration, the Minister of Foreign Affairs, the employees and agents of both Ministers, and the IRB, its Board Members and employees.

[3] Leave for this matter was granted by Justice Annis on May 29, 2015.

[4] The Applicant, Jan Banom, is a citizen of the Czech Republic of Roma descent.

[5] There is some inconsistency within the Applicant's personal information form [PIF] and testimony regarding his marital history, residence of family members and work experience. It is established though that the Applicant married his first wife in 1981, who is the mother of his two children who are both refugee claimants living in Canada.

[6] At some point in the 1990s, the Applicant owned and operated his own restaurant. While there he was attacked by “White Czech” people and rocks were thrown into its windows. The police never found the offender(s). He claims that he was turned away from other restaurants due to his ethnicity.

[7] The Applicant ran his own construction business in the Czech Republic beginning in 1997, but closed it in 2005 until he left for Canada in 2009 due to illness. During that period he was supported by social benefits.

[8] In 2002, the Applicant went to pick up his workers when four men verbally insulted him, pushed him, sprayed him with pepper spray, and busted the wheels out on his car. He was hospitalized for a few days after this incident.

[9] On April 21, 2009, the Applicant was in a parking lot with his wife when unidentified men allegedly attacked them. The Applicant and the Applicant’s wife allegedly went to the police and the doctor. The police informed them they could do nothing.

[10] The Applicant travelled to Canada on May 1, 2009, along with his daughter and family.

[11] The Applicant’s application for refugee protection was refused in a decision dated August 21, 2012.

[12] The Board refused the Applicant's application for refugee protection on the basis of credibility concerns as well as a failure to rebut the presumption of state protection.

[13] The Applicant's former counsel was removed as counsel of record (in response to a motion by counsel) by order dated August 27, 2015.

[14] There had been no communication between the former counsel and the Applicant since November 12, 2012.

[15] Several efforts were made by the Applicant's former counsel to contact him in May and June 2015, at both his last known telephone number and last known address, to no avail.

[16] The last known address in the Respondent's database for the Applicant is: 2248 Keele Street, Apt/Unit #5, Toronto, Ontario, M6M 3Y9.

II. Issues

[17] The issues are:

- A. Should the Applicant's application for judicial review be dismissed without consideration of the substantive issues raised? If not,
- B. Did the Board err in law in applying the wrong legal test in assessing state protection?
- C. Was the Board's decision unreasonable with respect to subjective fear of persecution or credibility?

III. Standard of Review

[18] The question of law in assessing state protection should be decided on a standard of correctness. The remaining questions of fact and mixed fact and law should be decided on the standard of reasonableness.

IV. Analysis

A. *Should the Applicant's application for judicial review be dismissed without consideration of the substantive issues raised?*

[19] The Applicant nor any representative on his behalf appeared at the hearing.

[20] This Court has, in a number of cases where no one has appeared on behalf of the Applicant, dismissed judicial review applications without considering the substantive issues raised (*Edirisnghe v Canada (Minister of Citizenship and Immigration)*, 29 April 2015, Doc. No. IMM-191-14; *Akter v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 431; *Martinez v Canada (Minister of Citizenship and Immigration)*, 2000 Canlii 16015).

[21] However, the Court has also decided judicial review applications on the written record before the Court, notwithstanding the failure of anyone to appear on behalf of the applicant at the hearing (*Bojchuk v Canada (Minister of Citizenship and Immigration)*, 2003 FC 967; *Zinta Valleyjos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 289).

[22] In this case, the application was commenced three years ago and the Applicant has shown no interest in disposition of the application since the last communication with his counsel in November, 2012. Moreover, notwithstanding repeated attempts by the Applicant's counsel to obtain instructions since the granting of leave to the Applicant in this matter, the Applicant's counsel has been unable to either locate or contact the Applicant, and has been unable to obtain any instructions, resulting in counsel's removal as solicitor of record shortly before the hearing scheduled for August 27, 2015.

[23] Based on the Applicant's failure to participate in this proceeding over an extended period of time, without any justification, I have decided that the application for judicial review should be dismissed.

[24] However, I should add that I am also not satisfied on the record before me that the Board made any error on the analysis of the issues of state protection or credibility, or that the decision was unreasonable with respect to the failure to establish subjective fear of persecution or lack of credibility.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question was raised for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10400-12

STYLE OF CAUSE: JAN BANOM v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 27, 2015

JUDGMENT AND REASONS: MANSON J.

DATED: MAY 4, 2016

APPEARANCES:

Sheron Stewart

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jan Banom

ON HIS OWN BEHALF

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT