

Federal Court



Cour fédérale

**Date: 20161102**

**Docket: IMM-631-16**

**Citation: 2016 FC 1216**

**Toronto, Ontario, November 2, 2016**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**AREE QASIM AHMED BRINDAR  
(A.K.A. AREE QASIM AHMED BRI, AREE)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Aree Qasim Ahmed Brindar (the “Applicant”) seeks judicial review of a decision made by the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dismissing his claim for recognition as a Convention refugee or a person in need of protection, pursuant to subsections 96 (a) and 97 (1)(b), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The Board found, pursuant to section 107.1 of the Act, that the Applicant’s claim was “manifestly unfounded”.

[2] The Applicant is a citizen of Iraq. He is of Kurdish ethnicity. He left Iraq on June 26, 2015 and travelled to the United States of America on the same day, holding a visa for entry into that country.

[3] On September 14, 2015 the Applicant entered Canada with the aid of a smuggler. He claimed protection in Canada on the basis of a fear of persecution in his home country arising from his conversion to Christianity and political opinion.

[4] The Board found that the Applicant was not credible and that his claims about conversion to Christianity and political opinion, as the basis of his risk of persecution, were “both invented”. The Board concluded that the Applicant’s claim was manifestly unfounded.

[5] The Applicant advances several arguments, including unreasonable findings of credibility, a failure of the Board to properly consider the *sur place* aspect of his conversion to Christianity, and a breach of procedural fairness arising from the Board’s failure to apply the correct principles in dismissing an application to introduce post-hearing evidence.

[6] The Minister of Citizenship and Immigration (the “Respondent”) argues that the Board committed no reviewable error that would justify the intervention of this Court.

[7] It is not necessary for me to review the submissions of the parties in detail. In my opinion, the dispositive issue in this application is the Board’s conclusion that the claim is manifestly unfounded.

[8] That finding, involving assessment of the evidence and the application of section 107.1 of the Act, is a question of mixed fact and law. Accordingly, subject to review on the standard of reasonableness; see the decision in *New Brunswick (Board of Management) v. Dunsmuir*, [2008] 1 S.C.R. 190 (S.C.C.) at paragraph 51.

[9] The reasonableness standard requires that the decision be justifiable, transparent, intelligible and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir, supra* at paragraph 47.

[10] In my opinion, the Board's decision does not meet this standard. I am not persuaded that the Board's credibility findings justify the application of section 107.1.

[11] A negative credibility finding is not synonymous with submission of a fraudulent claim. The decision does not show if this distinction was appreciated by the Board. The Board's reliance upon s. 107.1 was not reasonable.

[12] In the result, this application for judicial review is allowed, the decision of the Board is set aside and the matter remitted to a different decision-maker for re-determination. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that this application for judicial review is allowed, the decision of the Board is set aside and the matter remitted to a different decision-maker for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-631-16

**STYLE OF CAUSE:** AREE QASIM AHMED BRINDAR (A.K.A. AREE QASIM AHMED BRI, AREE) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 31, 2016

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** NOVEMBER 2, 2016

**APPEARANCES:**

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Laoura Christodoulides FOR THE RESPONDENT

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