

Federal Court



Cour fédérale

**Date: 20170210**

**Docket: IMM-2141-16**

**Citation: 2017 FC 166**

**Ottawa, Ontario, February 10, 2017**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**ABOAJILA ABDULMAULA  
AMINA ABOHARBA  
YAKHIN ABDULMAULA  
MOHAMED ABDULMAWLA  
IBRAHIM ABDULMOULA  
ALA ABDELMOLA  
MAHAMOUD ABDULMOULA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**UPON** the motion of the Applicants brought in writing pursuant to Rules 397(1)(b) and 369 of the *Federal Courts Rules*, SOR/98-106 for reconsideration of my judgment in *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 [*Abdulmaula*];

**AND UPON** reading the motion records filed on behalf of the Applicants and the Respondent;

**AND CONSIDERING** the following:

In *Abdulmaula*, I found that the Refugee Appeal Division [RAD] of the Immigration and Refugee Board reasonably refused the Applicants' request to adduce a 2015 report of the United Nations High Commissioner for Refugees [UNHCR] as new evidence. I held that the Applicants' argument that the 2015 UNHCR report should be "deemed" a part of the record was not raised before the RAD, and could not therefore be advanced for the first time in the application for judicial review. Finally, I affirmed the RAD's conclusion that the Applicants had a viable Internal Flight Alternative [IFA] in Tobruk, Libya. The application was therefore dismissed.

The Applicants complain that I considered only two of the three issues they raised in argument: whether the RAD's assessment of the 2015 UNHCR report as new evidence was reasonable, and whether the determination of the IFA was reasonable. The Applicants accept my conclusions on both of these issues, but say that I overlooked a third argument: whether the RAD was obliged to refer to the 2015 UNHCR report, even if it did not meet the test for "new evidence" under s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. They also ask that I certify the following question for appeal: "When an updated document is released after the latest RPD sitting but prior to the RPD decision, who has the duty to consider this new evidence: the RPD or the RAD?"

I am not persuaded that the relief sought by the Applicants falls within the scope of Rule 397(1)(b). The RAD could have considered the 2015 UNHCR report in only two circumstances: as new evidence admitted pursuant to s 110(4) of the IRPA, or as part of the record. Both of these issues are addressed in *Abdulmaula*, including whether the 2015 UNCHR report could be “deemed” a part of the record before the RAD. The Applicants’ motion amounts to a disguised appeal, which is not the purpose of Rule 397 (*Lee v Canada (Citizenship and Immigration)*, 2003 FC 867 at para 6 [*Lee*]; *Khalil et al v Canada (Citizenship and Immigration)*, Court File No. IMM-2073-15).

In any event, Rule 397(1)(b) does not permit a party to request reconsideration of legal arguments or issues that were raised in submissions but not addressed in the judgment (*Balasingam v Canada (Employment and Immigration)*, [1994] FCJ No 448 (TD) at para 5; *Lee* at paras 4 and 5; *Haque v Canada (Citizenship & Immigration)*, [2000] FCJ No 1141 at paras 5 and 6). A “matter” for the purposes of Rule 397 is an element of the relief sought, as opposed to an argument raised before the Court.

Finally, a motion for reconsideration under Rule 397(1)(b) cannot be used to certify a question for appeal (*Tran v Canada (Citizenship and Immigration)*, 2007 FC 1249 at para 8; *Raina v Canada (Citizenship and Immigration)*, 2011 FC 318 at para 9).

The motion is therefore dismissed.

**ORDER**

**THIS COURT ORDERS** that the Applicants' motion for reconsideration of the Court's judgment in *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 is dismissed.

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-2141-16

**STYLE OF CAUSE:** ABOAJILA ABDULMAULA, AMINA ABOHARBA,  
YAKHIN ABDULMAULA, MOHAMED  
ABDULMAWLA, IBRAHIM ABDULMOULA, ALA  
ABDELMOLA, MAHAMOUD ABDULMOULA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**ORDER AND REASONS:** FOTHERGILL J.

**DATED:** FEBRUARY 10, 2017

**BY WRITTEN SUBMISSIONS:**

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