

Federal Court



Cour fédérale

Date: 20170720

Docket: IMM-3466-16

Citation: 2017 FC 406

Ottawa, Ontario, July 20, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

LOTERIO BROWN

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

PUBLIC AMENDED JUDGMENT AND REASONS

I. Introduction

[1] Loterio Brown is a failed refugee claimant in Canada because he did not complete a Basis of Claim [BOC] form within fifteen days of arrival as required. His refugee claim was considered abandoned after he failed to appear at a scheduled hearing. Mr. Brown applied to have his claim re-opened but was rejected. He applied a second time to have his claim re-opened and was again rejected. This [REDACTED] rejection forms the decision under judicial review.

II. Background

[2] Mr. Brown is a citizen of the Bahamas. On May 21, 2016, he arrived in Canada as a tourist. He informed Canada Border Services Agency [CBSA] that he wished to go shopping, ride a train and visit the zoo.

[3] The officer interviewing Mr. Brown was concerned that his stated purpose for visiting Canada was not genuine and that he would not leave on his stated departure date. The officer told Mr. Brown that he would draft a report for review by a senior immigration official. Before the report could be completed Mr. Brown approached the officer and claimed refugee status. As a result, Mr. Brown was given a number of documents including a BOC package and a Notice to Appear before being allowed to leave the airport. Mr. Brown signed an acknowledgment of conditions which detailed deadlines for undergoing a medical exam and submitting his BOC form.

[4] Mr. Brown dutifully attended his medical exam but failed to submit his BOC form or attend a hearing to explain why he had not submitted his BOC form. Mr. Brown's claim was considered abandoned and he was notified of the decision.

[5] Upon receiving notice of this decision, Mr. Brown filed to have his case re-opened. He claimed to have never been told about the BOC form or of the mandatory hearing despite having signed an acknowledgment that he was told.

[6] On August 12, 2016, the Refugee Protection Division [RPD] determined that Mr. Brown's evidence was not reliable and that the CBSA officer clearly wrote in his notes that Mr. Brown had been provided with both the BOC package and Notice to Appear detailing his hearing date and time. The application was dismissed for failing to disclose a breach of natural justice.

[7] Mr. Brown then made a second application to re-open his claim. In a decision dated November 7, 2016, the RPD found that there were no exceptional circumstances to warrant re-opening Mr. Brown's file. [REDACTED]

[REDACTED]

[8] [REDACTED]

[9] [REDACTED]

III. Issue

[9] The issue in this case is whether the RPD's decision to not re-open Mr. Brown's refugee claim was reasonable?

IV. Standard of Review

[10] The standard of review applicable to this decision is reasonableness.

V. Analysis

[11] Subsection 62(2) of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules] states: The division must not allow the application unless it is established that there was a failure to observe a principle of natural justice.

[12] Subsection 62(8) of the ~~*Refugee Protection Division Rules*, SOR/2012-256~~ [RPD Rules], reads as follows :

Subsequent application

(8) If the party made a previous application to reopen that was denied, the Division must consider the reasons for the denial and must not allow the subsequent application unless there are exceptional circumstances supported by new evidence.

Demande subséquente

(8) Si la partie a déjà présenté une demande de réouverture qui a été refusée, la Section prend en considération les motifs du refus et ne peut accueillir la demande subséquente, sauf en cas de circonstances exceptionnelles fondées sur l'existence de nouveaux éléments de

preuve.

[13] Mr. Brown's judicial review is for his [REDACTED] application to re-open a claim. The legal test is different for the first application to re-open. A first application to re-open a claim focuses on a breach of natural justice (s.62(6) of the RPD Rules) as opposed to a second application which requires exceptional circumstances (s.62(8) of the RPD Rules) for a file to be re-opened. The initial decision found no breach of natural justice and is ~~not~~ under review.

[14] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[15] [REDACTED]
[REDACTED]

[16] The decision maker considered Mr. Brown's allegation that he was not aware he had to submit a BOC. This argument was rejected as it is standard operating practice by CBSA intake to provide instructions for submitting a BOC. Mr. Brown's argument that he thought the BOC was only needed for the hearing was also reasonably rejected. Mr. Brown attended his medical appointment which is part of the CBSA instructions so he knew of and followed some directions, just not all of them.

[17] The RPD in Mr. Brown's first application to re-open had the allegation that he has difficulty reading and understanding English. In that decision, it was confirmed that Mr. Brown was educated in an English speaking country and held a supervisory position before coming to Canada. The RPD reasonably concluded that Mr. Brown could read and understand English.

[18] I find that it was reasonable that the RPD found there was no failure to observe a principle of natural justice.

[19] [REDACTED]

[20] [REDACTED]

[21] This decision exhibits justification, transparency and intelligibility within the decision making process and the decision is within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12). For those reasons I will dismiss the application for judicial review.

[22] No question was presented for certification.

PUBLIC AMENDED JUDGMENT in IMM-3466-16

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3466-16

STYLE OF CAUSE: LOTERIO BROWN v MINISTER OF IMMIGRATION
AND REFUGEE CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 1, 2017

PUBLIC AMENDED MCVEIGH J.
JUDGMENT AND REASONS:

DATED: JULY 20, 2017

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