

Federal Court



Cour fédérale

Date: 20170816

Docket: IMM-2068-17

Citation: 2017 FC 771

Calgary, Alberta, August 16, 2017

PRESENT: The Honourable Madam Justice McDonald

Docket: IMM-2068-17

BETWEEN:

TUSIF UR REHMAN CHHINA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a May 1, 2017 Detention Review Decision (the Decision) of the Immigration and Refugee Board of Canada, Immigration Division. The Decision ordered the ongoing detention of the applicant on the basis that his identity had not been established and on the basis that he was a flight risk and unlikely to appear for his removal. The issue was securing travel documents to have the applicant returned to Pakistan. At the time

of the May 1, 2017 detention review hearing the applicant had been in detention since November 2015.

[2] Following the filing of this judicial review, another Detention Review Hearing was held on July 21, 2017. At this hearing, the Minister advised that the government of Pakistan had approved the return of the applicant to Pakistan and that a travel document would be issued. At that time it was anticipated that the applicant would be returned to Pakistan at the end of August or the beginning of September, 2017.

[3] On the hearing of this judicial review application I was advised that travel documents for the applicant have been secured so removal will take place in accordance with the August - September timeframe as noted in the July 21, 2017 Detention Review Hearing. Accordingly, the applicant's argument that his detention is unlawful on the grounds that it is "indeterminate" is no longer applicable.

[4] In light of these developments at the hearing of the judicial review application, both legal counsel for the Applicant and legal counsel for the Respondent, submit that the judicial review application has been rendered moot.

[5] In applying the test articulated in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at paras 15-17, and 29-40 [*Borowski*], there is no longer a live controversy between the parties that this Court's decision would have any practical effect on solving. Further, upon

considering the factors in the second branch of the *Borowski* test, I decline to excise my discretion to decide the matter.

[6] The Minister sought costs, but in the circumstances I decline to award any costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed as moot. No costs are awarded.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2068-17
STYLE OF CAUSE: TUSIF UR REHMAN CHHINA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: AUGUST 16, 2017

**REASONS FOR JUDGMENT
AND JUDGMENT:** MCDONALD J.

DATED: AUGUST 16, 2017

APPEARANCES:

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