

Federal Court



Cour fédérale

Date: 20170920

Docket: IMM-357-17

Citation: 2017 FC 843

Toronto, Ontario, September 20, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

MAISAM RAHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application challenges a decision of the Refugee Protection Division (RPD) dated January 6, 2017 in which the Applicant's claim for protection was dismissed on a finding that the claim is manifestly unfounded. I find that the decision must be set aside because of failure in fact-finding on key credibility conclusions.

[2] The RPD found that a basis for rejecting the Applicant's claim was significant differences between the allegations set out in the narrative filed with his Basis of Claim form in

Canada and a “statement” drafted for submission with respect to a previously filed asylum claim in the United States (Decision at para 11).

[3] In the United States claim the Applicant named the Taliban in Afghanistan as the risk agent. That claim was abandoned and subsequently the Applicant made the same claim in Canada, but also claimed protection by naming his ex-fiancé’s family as a risk agent due to his ethnicity.

[4] As between the claims in the United States and Canada, in part because the ethnicity claim was not made in the United States, the RPD concluded that the allegation of the Applicant’s ethnicity “is an embellishment added to provide an additional basis of claim which was in actuality an invention” (Decision, para 15). I find that the RPD failed to supply cogent evidence and clear reasons for reaching this speculative conclusion.

[5] With respect to the Applicant’s claim against the Taliban in Canada, the RPD impugned the Applicant’s credibility based on a “note” made by his then Counsel in the “statement” drafted for submission in the United States claim. The “note” is not contained in the Certified Tribunal Record and its existence is not within the knowledge of current Counsel for both the Applicant and the Respondent. As a result, I find that the negative credibility finding made with respect to the “note” cannot be verified and is, therefore, unreasonable.

[6] In the result, the RPD's finding that the Applicant's claim in Canada is manifestly unfounded cannot be supported in fact and law because of the errors in fact-finding as described. Accordingly, I find the decision under review is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-357-17

STYLE OF CAUSE: MAISAM RAHI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 18, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: SEPTEMBER 20, 2017

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