

Federal Court



Cour fédérale

Date: 20190306

Docket: IMM-4042-18

Citation: 2019 FC 269

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 6, 2019

PRESENT: The Honourable Mr. Justice Bell

Docket: IMM-4042-18

BETWEEN:

MARIAMA HADJA DABO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench in Montréal, Quebec, on February 20, 2019.

These reasons have been edited for grammar, syntax and the appropriate reference to case law.)

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, of the decision rendered on July 23, 2018, by a member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada

[IRB]. The application for reinstatement filed by the applicant, Mariama Hadja Dabo, pursuant to section 60 of the *Refugee Protection Division Rules*, SOR/2012-256, was denied.

[2] The applicant is 56 years old and is a citizen of Guinea. She completed a Basis of Claim [BOC] form for her refugee protection claim on January 10, 2018, in Canada. In her BOC, she indicated that on February 17, 1995, she fled her country of origin, Guinea, to seek asylum in the United States as a political refugee.

[3] The applicant claimed that once she was in the United States, she was subject to a removal order, with a hearing date set for October 7, 2017. Given the removal order against her, the applicant left the United States on December 7, 2017, for Canada, with the intention of making a refugee protection claim.

[4] On or about December 18, 2017, the applicant was informed by her American counsel and her husband that her refugee file in the United States had been reopened and that the hearing was set for May 10, 2018. On January 30, 2018, the applicant came to the IRB Registry and withdrew her refugee protection claim by written notice. She had hired a lawyer, who had her sign a retainer and the notice of withdrawal. On February 1, 2018, the IRB informed the Minister of the applicant's withdrawal of her refugee protection claim.

[5] In her affidavit, the applicant argues that the American authorities, without providing reasons, will not allow her to return to the United States, despite the positive decision issued at

the hearing of May 10, 2018, by the American court and despite the efforts of her American counsel.

[6] Therefore, on July 12, 2018, the applicant filed an application for reinstatement.

[7] In support of her application for reinstatement, the applicant argues that her counsel at the time, different from her counsel present at the hearing before this Court, did not explain to her the consequences of withdrawing her refugee protection claim and that she had withdrawn her claim impulsively and under pressure from her husband.

[8] I note that in the applicant's application for withdrawal, the notice of withdrawal, which bears her signature, includes the following information: "I am freely withdrawing my claim for refugee protection, and I am fully aware of the consequences of this withdrawal. I am aware that as a result of the withdrawal of my claim, Canada Border Services Agency may require me to leave Canada".

[9] I also note that the applicant did not file a complaint with the Barreau du Québec regarding the advice provided by her then counsel.

[10] As for the applicant's claims that there were violations of the principles of natural justice, I cannot accept them. She was represented by counsel, and she is of the age of majority. She appeared to have a plan justifying her reasons for taking certain steps. In my view, there is no evidence that the principles of natural justice were violated.

[11] The applicant filed in evidence a psychologist's report dated June 12, 2018. I note that the psychologist referred to a high degree of anxiety, depression and other problems relating to the applicant's mental health. However, there were no treatment recommendations or prescriptions for medications.

[12] Moreover, with respect to the psychologist's report, it is clear that the report was dated about four months after the application to withdraw the refugee protection claim. The psychologist cannot speak to the applicant's mental state at that time.

[13] The RPD held that, according to the evidence, the applicant "understood the consequences of the decision to withdraw her refugee protection claim" and that "her action was not an impulsive one made under pressure, but was rather a calculated action aimed, first, at avoiding the removal order issued by American authorities and, second, once the order set aside, at allowing her to return to the United States, a country where she had been living for 22 years". The panel was of the view that the applicant was capable of understanding the consequences of her actions at the time she withdrew her refugee protection claim.

[14] The applicant is asking this Court to reweigh the facts and, more specifically, the evidence from the psychologist, and find that the RPD's analysis was inadequate. As is well known, that is not the role of this Court on judicial review. In cases of judicial review, it is not the role of the Court to reweigh the evidence (*Dunsmuir v. New Brunswick*, 2008 SCC 9) [*Dunsmuir*]. When a decision is rendered on a standard of reasonableness, the analysis must focus on the existence of justification, transparency and intelligibility within the decision-making

process and on whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, para. 47). See also: *Orsa v. Canada (Citizenship and Immigration)*, 2014 FC 1163, and *Posada Arcila v. Canada (Citizenship and Immigration)*, 2013 FC 210.

[15] In the circumstances, I find that the decision, including the RPD's conclusion, is intelligible and reasonable and falls within the range of reasonable decisions.

[16] The application for judicial review is therefore dismissed. No questions for certification were raised by the parties.

JUDGMENT in IMM-4042-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
no question for certification arising.

"B. Richard Bell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4042-18

STYLE OF CAUSE: MARIAMA HADJA DABO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 20, 2019

**JUDGMENT AND REASONS,
JUDGMENT DELIVERED
FROM THE BENCH:** BELL J.

DATED: MARCH 6, 2019

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