

Federal Court



Cour fédérale

Date: 20190619

Docket: IMM-4079-18

Citation: 2019 FC 833

Toronto, Ontario, June 19, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ATAL TALUKDER

Applicant

and

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

Respondent

JUDGMENT AND REASONS

**(Delivered from the Bench at Toronto, Ontario, on June 19, 2019 and
edited for syntax and grammar and otherwise)**

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division dated July 26, 2018, which was an appeal from a decision of the Refugee Protection Division dated August 21, 2017 holding the Applicant was not entitled to refugee protection under sections 96 and 97 of the *Immigration Refugee Protection Act*, SC 2001, c 27. The appeal was dismissed by the RAD.

[2] The matter was put down for hearing on March 19, 2019, at which time Justice Heneghan presided. The Applicant did not attend the hearing. Justice Heneghan decided that the matter should not proceed in his absence. Justice Heneghan further ruled:

...that the matter will now be heard before the Court at Toronto on Wednesday, June 19, 2019 at 9:30 am on a peremptory basis, meaning that if the Applicant does not appear in person or by Counsel, the application for judicial review may be dismissed forthwith;

THIS COURT ORDERS that:

1. The hearing of the within application for judicial review is set down for hearing on a peremptory basis, on Wednesday, June 19, 2019 at Toronto at 9:30 am, failure of the Applicant to appear in person or by Counsel means that the application for judicial review may be dismissed forthwith;
2. A copy of this Order is to be sent by registered mail requiring a receipt to the Applicant at the address of his immigration consultant, that is Mr. Mahbuba Khanam at 597 Pharmacy Ave., Toronto, Ontario, M1L 3H1;
3. A copy of this Order is to be sent by registered mail requiring a receipt to the immigration consultant Mr. Mahbuba Khanam at 597 Pharmacy Ave., Toronto, Ontario, M1L 3H1.

[3] At the opening of the proceeding this morning, June 19, 2019 the Applicant was not present. Accordingly, the Court attendant was asked to go to the lobby and call his name several times in a loud voice in various areas to see if he was present. The Court attendant subsequently reported that no one responded to her calls.

[4] I directed that the Court wait 15 minutes further to see if the Applicant would appear, failing which the Court would entertain the Respondent's submissions.

[5] The registry officer confirmed that both letters required by paragraphs 2 and 3 of Justice Heneghan's order were sent by registered mail requiring a receipt, the first to the Applicant, and the second to the immigration consultant, at the address indicated. The registry officer further confirmed the Court sent a copy of Justice Heneghan's order by fax to the fax number on the Applicant's application record and in that connection a receipt of confirmation was received on March 18, 2019.

[6] Having waited some 15 minutes, I again asked the Court Attendant to go to the lobby and call his name several times in a loud voice in various areas to see if he was present. The Court attendant did so and subsequently reported that no one responded to her calls.

[7] Given the failure of the Applicant to attend, I entertained submissions from the Respondent. He advised that at the March 19, 2019 sitting of the Court he reported a conversation he had with the immigration consultant during which the immigration consultant told counsel that he had not been able to contact the Applicant for months.

[8] Based on the above I am satisfied the Applicant and his immigration consultant had adequate notice of today's hearing.

[9] Counsel for the Respondent made submissions based on his written material noting that the Refugee Appeal Division found that there was a viable internal flight alternative [IFA] available. The availability of an IFA is of course determinative of a claim for refugee protection. It is also noteworthy as counsel observed that the Applicant made no attempt to nor any

challenge in respect of the finding of the Refugee Appeal Division that an IFA was available to the Applicant.

[10] Counsel for the Respondent indicated that there was no question to certify of general importance and I agree.

[11] I am unable to conclude that the decision of the Refugee Appeal Division is anything but reasonable, that is, falling within the range of possible, acceptable decisions that are defensible on the facts and the law in this case. In the absence of unreasonableness I must uphold the decision of the RAD and therefore I will dismiss this application for judicial review.

JUDGMENT in IMM-4079-18

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed,
no question is certified, and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4079-18

STYLE OF CAUSE: ATAL TALUKDER v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 19, 2019

JUDGMENT AND REASONS: BROWN J.

DATED: JUNE 19, 2019

APPEARANCES:

NA FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

NA FOR THE APPLICANT

Attorney General of Canada FOR THE RESPONDENT