

Federal Court



Cour fédérale

Date: 20210125

Docket: IMM-5966-19

Citation: 2021 FC 78

Ottawa, Ontario, January 25, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FARUCH KARIMI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The subject hyphen matter in this judicial review is not one of substance in respect of a refugee claim but simply considers whether the Applicant should have been heard prior and subsequent to the circumstances that ensued.

[2] It was not denied by the Refugee Protection Division (RPD) that the Applicant's counsel was double-booked on the same day at the Immigration Refugee Board.

[3] The Applicant seeks judicial review of a decision from the RPD dated August 27, 2019, which refused to reopen the Applicant's refugee claim.

[4] The Applicant and her three minor children are citizens of Germany. They sought refugee protection in Canada in September 2018 for domestic violence.

[5] Their refugee claim was declared abandoned for failure to submit Basis of Claim (BOC) Forms and to appear at an abandonment hearing. The RPD dismissed the request to reopen the claim for negligence, absence of reasonable explanation for failure to meet obligations and to appear at the hearing, and proper notice was given. The minor children's claim was however reopened for breach of a principle of natural justice relating to adequate representation.

[6] This judicial review relates to the reasonableness of the RPD's decision in regard to the refusal to reopen the Applicant's refugee claim. A reasonable decision is internally coherent, rational and justified in light of the factual and legal constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[7] The RPD cannot reopen a claim unless there was a failure to observe a principle of natural justice, considering any relevant factors (*Refugee Protection Division Rules*, SOR/2012-256, subsection 62(7)).

[8] The Applicant advances that the reasons justifying the delay or conduct, notably the Applicant's vulnerability and the series of administrative errors, was not given adequate attention or analysis or was tersely dismissed as implausible.

[9] In the present case, the RPD acknowledged the respective parties' positions, including the claim that the Applicant was vulnerable, and reviewed the legal framework, the issue, and the obligations of the various involved parties in communicating relevant information.

[10] Though it did not address vulnerability directly, through review of the decision, it appears that the RPD considered that the Applicant was nevertheless communicated relevant information, including in Farsi, with sufficient time to make accommodations to meet her obligations. She had notably submitted partial BOC Forms pursuant to practice notice in effect. The RPD then did not accept the reasons for failure to meet the requirements that followed.

[11] The RPD retained, essentially, that sufficient and proper notice was given to the Applicant to submit completed forms – including an extension of time.

[12] On this, the RPD noted that there is no indication that a request to change a date or for cancellation was submitted – as alleged – due to a conflict of schedule and that said request was granted. Further, contrary to belief, the hearing was in fact on the role for the specified date.

[13] It is, however, evident – from the RPD's record – that the Applicant's counsel intended to request the abandonment hearing be postponed as he had two other RPD hearings on the same

day, as confirmed by a communication with the social worker on file. The Applicant's sworn affidavit before this Court also confirms counsel's intent to reschedule the hearing and thus her belief that the hearing was in fact moved to another date.

[14] The apparent conflict of schedule and need for a change of date was not addressed by the RPD and there is nothing that indicates that credibility was in question. It is through unique error, inadvertent or otherwise, that the abandonment hearing was not rescheduled. However, for clerical or inadvertent error, the hearing would have been rescheduled or alternatively the Applicant may have appeared on the specified date. As it stands, the Applicant is being denied an opportunity to re-establish her refugee claim (see *Taher v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 991).

[15] Moreover, the record attests to the Applicant's continued intention to pursue her refugee claim as evidenced by the partial BOC (*Attalla v Canada (Citizenship and Immigration)*, 2019 FC 771 at para 19 (differs on the facts as the claimant in that case was arguing that she was unaware, forgot or otherwise did not retain the relevant information due to her vulnerability)).

[16] The Applicant was therefore denied procedural fairness and the RPD's decision was unreasonable. The judicial review is granted.

JUDGMENT in IMM-5966-19

THIS COURT'S JUDGMENT is that:

- 1) The application for judicial review be granted;
- 2) The file be returned to the RPD and that a differently constituted panel consider the file *de novo*; and
- 3) There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5966-19

STYLE OF CAUSE: FARUCH KARIMI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE IN MONTRÉAL,
QUEBEC

DATE OF HEARING: JANUARY 11, 2021

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

DATED: JANUARY 25, 2021

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