

Cour fédérale



Federal Court

Date: 20220217

Docket: IMM-4135-21

Citation: 2022 FC 216

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 17, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

SIDI MOHAMED SIDI ABOUBECK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Ottawa, Ontario, on February 17, 2021.)

[1] Mr. Aboubeck is seeking judicial review of a decision of the Refugee Appeal Division [RAD] rejecting his refugee protection claim. This application is brought in a particular procedural context that can be summarized as follows.

[2] Mr. Aboubeck's refugee protection claim was initially heard by the Refugee Protection Division [RPD], which rejected it on the basis of the applicant's lack of credibility. Pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], the RPD also noted that there was no credible basis for Mr. Aboubeck's claim.

[3] Mr. Aboubeck sought judicial review of that decision. In a decision indexed as 2019 FC 370, Justice René LeBlanc, then a member of this Court, allowed the application in part. He found the RPD's conclusion that Mr. Aboubeck was not credible to be reasonable. He ruled, however, that the finding that there was no credible basis for the claim was unreasonable. He remitted the matter to the RPD for redetermination.

[4] After receiving submissions from the parties on how to proceed, the RPD issued its decision without holding a hearing. The RPD concluded that the only task assigned to it by Justice LeBlanc's decision was to make a new determination regarding the lack of credible basis. It decided this issue in favour of Mr. Aboubeck, essentially for the reasons given by Justice LeBlanc. The RPD also endorsed the credibility findings in the original decision.

[5] Mr. Aboubeck appealed to the RAD, which dismissed his appeal. First, it found that the RPD had not breached procedural fairness by not holding a hearing. It then considered the merits of the case and agreed with the RPD's initial findings that Mr. Aboubeck's testimony was not credible.

[6] Mr. Aboubeck is now seeking judicial review of the RAD's latter decision. However, after the parties' records were filed, his counsel obtained permission from the Court to be removed as solicitor of record.

[7] A number of efforts were made to inform Mr. Aboubeck of the hearing. A bailiff was sent to his last address in the court record. His former roommate stated that he had moved. Emails were sent to his last known address. Both his former counsel and his former roommate provided the same telephone number as the one in IRCC's records. The respondent's counsel made several attempts to call that number but was automatically redirected to an uninitialized voicemail. Nevertheless, she did leave a message.

[8] In the circumstances, as in *Abdelgadir v Canada (Citizenship and Immigration)*, 2021 FC 58, I find that it is fair to decide the case on the basis of Mr. Aboubeck's written submissions.

[9] Those submissions are exceedingly brief and relate to only one issue: that the RPD should have held a *de novo* hearing. No case law is offered in support and no reference is made to the relevant statutory provisions.

[10] In my view, Mr. Aboubeck failed to discharge his burden of showing that a breach of procedural fairness had occurred. Justice LeBlanc's judgment set aside only part of the original RPD decision. It must be inferred that the portions of that decision dealing with Mr. Aboubeck's credibility remained valid and that the RPD could not reconsider that issue.

[11] In fact, Justice LeBlanc's judgment was intended to give Mr. Aboubeck the opportunity to appeal to the RAD and have the original RPD decision reviewed on a standard of correctness. Mr. Aboubeck availed himself of that opportunity. He cannot complain that he was not able to present his evidence again before the RPD.

[12] Mr. Aboubeck did not make any submissions with respect to section 170 of the Act. Suffice it to say that while this provision does not explicitly contemplate a situation such as Mr. Aboubeck's, the process that was followed was consistent with its spirit.

[13] For these reasons, the application for judicial review will be dismissed, and no question will be certified.

JUDGMENT in IMM-4135-21

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4135-21

STYLE OF CAUSE: SIDI MOHAMED SIDI ABOUBECK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARING HELD VIA VIDECONFERENCE

DATE OF HEARING: FEBRUARY 17, 2022

JUDGMENT AND REASONS: GRAMMOND J.

DATED: FEBRUARY 17, 2022

APPEARANCES:

No one appeared for the applicant.

Yaël Levy

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT