

Date: 20091006

Docket: IMM-359-09

Citation: 2009 FC 1012

Toronto, Ontario, October 6, 2009

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

JAMSHID SHIR AHMAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of Afghanistan who claims refugee protection from the Taliban.

[2] The Applicant was not represented by counsel in making his claim before the Refugee Protection Division (RPD), however, he was assisted in doing so by a relative. The RPD member who conducted the hearing of the claim became unavailable to render a decision. When this fact became known, the Applicant was given a choice: request a *de novo* hearing, or have another RPD

member render a decision on the record of the hearing conducted. The Applicant chose the latter option.

[3] Subsequent to making the choice, the Applicant was granted legal aid and his Counsel immediately made three separate requests of the RPD to address the Applicant's claim by convoking a *de novo* hearing. The RPD failed to heed these requests and, on the record, an RPD member rendered the decision under review.

[4] In my opinion, Counsel's request for a *de novo* hearing must be regarded as a withdrawal of the Applicant's consent to have a decision rendered on the record; for the RPD to have proceeded in the face of this request is a denial of natural justice.

ORDER

Accordingly, I set aside the RPD's decision and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-359-09

STYLE OF CAUSE: JAMSHID SHIR AHMAD v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 5, 2009

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: OCTOBER 6, 2009

APPEARANCES:

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David Cranton FOR THE RESPONDENT

SOLICITORS OF RECORD:

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