

Federal Court



Cour fédérale

Date: 20110128

Docket: IMM-2683-10

Citation: 2011 FC 107

Ottawa, Ontario, January 28, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SAMUEL JOSEPH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges, by way of this judicial review application, the decision of the Immigration and Refugee Board's Refugee Protection Division (RPD) of March 24, 2010, declaring his claim for refugee protection to be abandoned. The applicant contends that the decision should be set aside on the basis that he did not receive notice of the hearing and had no intention of abandoning his claim. For the reasons that follow, the application for judicial review is dismissed.

[2] In declaring a claim to be abandoned, the RPD exercised the power given to it by s. 168(1) of the *Immigration and Refugee Protection Act, 2001 c. 27 (IRPA)*, which authorizes the RPD to declare a claim to be abandoned if it is of the opinion that the claimant is in default by failing to appear for a hearing. Rule 58 (2)(3) of the *Refugee Protection Division Rules* provides that, prior to the RPD declaring a claim to be abandoned, the claimant must be given the opportunity to explain why the claim should not be declared to be abandoned and sets forth certain criteria for the Board to consider, such as the nature of the explanation and whether the claimant was prepared to start the proceeding. The applicant, Mr. Joseph, was provided this opportunity.

[3] The applicant was sent a Notice of Hearing to determine his refugee claim. It was sent to both the applicant at his home address and to his counsel (consultant) at his business address specifying that a hearing would take place on February 20, 2008. Neither the applicant nor his consultant appeared at the hearing. A further notice was sent to both the applicant and his consultant advising that a hearing would be held on March 24, 2010 to determine his refugee claim and that a failure to appear on that date would render the hearing a show cause hearing as to why the applicant's claim should not be declared abandoned. Again, neither the applicant nor his consultant appeared, although the Notice was duly served on both the applicant and his consultant by prepaid regular service at the addresses provided to the Board by the claimant and his consultant.

[4] The applicant's argument before this Court, simply put, is that he did not receive the two notices in question and that he never intended to abandon his claim for refugee status. He argues in the alternative, that if the letters were received by the consultant, the consequence of his failure to act in response to them should not be suffered by him. This is not an alternative argument; it is an

inconsistent argument. These arguments are not a sufficient basis on which to set aside the decision of the RPD as being unreasonable.

[5] There is a presumption that letters sent in the ordinary course are received. Other than the bald assertion of the applicant in the supporting affidavit, no explanation or evidence was offered to explain why none of the four letters sent to the correct addresses were not received. No evidence was forthcoming from the consultant. As a mixed question of law and fact the decision of the RPD declaring the applicant's claim to be abandoned is to be assessed against the standard of reasonableness, per *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The RPD's decision is within the possible, acceptable range of outcomes and is defensible in respect of the facts and law. It is, therefore, reasonable.

[6] No question has been proposed for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. There is no question of general importance to be certified.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2683-10

STYLE OF CAUSE: SAMUEL JOSEPH v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 26, 2011

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

DATED: January 28, 2011

APPEARANCES:

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Margherita Braccio FOR THE RESPONDENT

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