

Federal Court



Cour fédérale

Date: 20110722

Docket: IMM-6957-10

Citation: 2011 FC 924

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 22, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ISRAEL MENDOZA GARCIA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Mendoza Garcia, who has claimed refugee protection in Canada, is a Mexican citizen. It should be noted that the merit of the claim was not before me in the present matter. Since he failed to appear at his hearing, the panel determined his refugee protection claim to have been abandoned on February 6, 2009. Mr. Mendoza Garcia subsequently asked that his refugee protection claim be reopened, on the grounds that he had not received the notice to

appear at the hearing. On September 30, 2010, the member responsible for the case dismissed the application to reopen the claim, hence this judicial review.

[2] For the reasons set out below, this application for judicial review will be dismissed.

[3] Mr. Mendoza Garcia arrived in Canada on June 27, 2007, and made a claim for refugee protection upon arrival. Shortly afterwards, he submitted a change-of-address form, on which he indicated that he was now living on Sherbrooke Street West in Montréal. In March 2008, he moved from Sherbrooke Street West to Marquette Street, which is also in Montréal. He alleges that he reported his change of address to the Immigration and Refugee Board of Canada (IRB) in late March 2008 when he visited the Montréal office, and claims that the employee at the Registry had difficulty finding his file at the time.

[4] On July 30, 2008, the IRB sent a letter to Mr. Mendoza Garcia telling him that it

[TRANSLATION]

. . . had to assign a new file number to your claim for refugee protection. This change affects neither your refugee protection claim nor the contents of your file. Please refer to your new RPD file number in any written communications with the IRB.

The letter was sent to him at Sherbrooke Street West, with a copy for his counsel at the time, Claude Brodeur. It is not known how Mr. Mendoza Garcia managed to obtain the letter, but, in any event, there is nothing in the file to suggest that he returned to the IRB to remind it that he had submitted a change-of-address form four months earlier. The applicant admits however that he read the letter even though he now lives on Marquette Street.

[5] On December 12, 2008, the IRB sent Mr. Mendoza Garcia a notice to appear, informing him that his claim would be heard on January 21, 2009. This notice was sent to him at the Sherbrooke Street West address, with a copy to Mr. Brodeur.

[6] On January 15, 2009, Mr. Brodeur informed the IRB by fax that, despite several attempts, he was unable to contact his client, writing as follows:

[TRANSLATION]

I was appointed to represent the aforementioned person before the RPD. The hearing of his claim is scheduled for January 21, 2009. My numerous attempts to contact him have been in vain. I sent a letter asking him to contact me, but the letter was returned to me.

I will be unable to represent him properly at the hearing on January 21. I ask the Board to allow me to be removed from the case.

[7] As a result, Mr. Brodeur was relieved of his duties.

[8] On January 22, 2009, the IRB sent a new notice to appear to Mr. Mendoza Garcia, notifying him that his hearing was scheduled for February 6, 2009. Again, the IRB sent the notice to Sherbrooke Street West, with a copy to Mr. Brodeur. The applicant did not attend the hearing.

[9] On February 12, 2009, the member declared the claim for refugee protection to be abandoned.

[10] On September 10, 2009, the applicant contacted Mr. Brodeur to enquire about the status of his file. Assessing the importance of the situation, he decided to retain new counsel, who applied for the applicant's refugee protection claim to be reopened. Rule 55 of the *Refugee Protection Division Rules* is the relevant rule. Subsection 4 reads as follows:

55. (1) A claimant or the Minister may make an application to the Division to reopen a claim for refugee protection that has been decided or abandoned.
Form of application

55. (1) Le demandeur d'asile ou le ministre peut demander à la Section de rouvrir toute demande d'asile qui a fait l'objet d'une décision ou d'un désistement.

(2) The application must be made under rule 44.
Claimant's application

(2) La demande est faite selon la règle 44.

(3) A claimant who makes an application must include the claimant's contact information in the application and provide a copy of the application to the Minister.

(3) Si la demande est faite par le demandeur d'asile, celui-ci y indique ses coordonnées et en transmet une copie au ministre.

(4) The Division must allow the application if it is established that there was a failure to observe a principle of natural justice.

(4) La Section accueille la demande sur preuve du manquement à un principe de justice naturelle.

[11] The decision presently under review dismissed the application to reopen the applicant's refugee protection claim on several grounds, namely that the applicant stated that he had received "the IRB letter dated July 30, 2008 . . . but that he did not receive the notices to appear that followed and were sent to the same place" (Sherbrooke Street West), that "the applicant did not submit a copy of his change-of-address form" and that he allegedly waited 19 months "before telephoning [Mr. Brodeur] to inquire about the status of his file".

[12] The member found that the principles of natural justice had not been breached and that the applicant was solely responsible for the outcome of this affair. She also found that [TRANSLATION] “the applicant neglected to notify the IRB of his change of address”.

[13] At the hearing before this Court, counsel for the applicant submitted that it was possible for the change-of-address form to have ended up in the second file. However, the IRB’s letter clearly states that all that had changed was the file number. The IRB did not create a second file.

[14] While it is true that natural justice requires that every person is given the opportunity to make his or her case, especially when a person fears for his or her life, it is nonetheless important for applicants to pay particular attention to their personal affairs. It was entirely reasonable for the member to determine that the applicant had not informed the IRB of his change of address: this conclusion is further reinforced by the fact that the applicant’s counsel at the time asked to be removed from the applicant’s file because he was unable to reach or contact his client, Mr. Mendoza Garcia. *Matondo v Canada (Minister of Citizenship and Immigration)*, 2005 FC 416, provides a good example of the steps applicants must take to keep abreast of the progress of their applications.

[15] It is important to keep in mind that Mr. Mendoza Garcia is the author of his own misfortune, and that despite the outcome of this application for judicial review, he is still entitled to a pre-removal risk assessment.

ORDER

FOR THE REASONS GIVEN;

THE COURT ORDERS that the application for judicial review be dismissed. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6957-10

STYLE OF CAUSE: ISRAEL MENDOZA GARCIA v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 20, 2011

**REASONS FOR ORDER
AND ORDER BY:** HARRINGTON J.

DATED: July 22, 2011

APPEARANCES:

Aude Exertier FOR THE APPLICANT

Catherine Brisebois FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aguilar et Associés FOR THE APPLICANT
Advocates
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec