

Federal Court



Cour fédérale

Date: 20130524

Docket: IMM-7895-12

Citation: 2013 FC 541

Ottawa, Ontario, May 24, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MUHAMMAD DAQA
DUA DAQA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2006, Mr Muhammad Daqa and his spouse, Ms Duaa Daqa, fled Israel and claimed refugee protection in Canada. In 2008, a panel of the Immigration and Refugee Board granted their claims for protection based on their alleged fear of political persecution and a discriminatory state policy that prevented them from cohabiting. They became permanent residents of Canada in 2010.

[2] In 2011, the Minister of Public Safety and Emergency Preparedness sought to vacate the applicants' refugee status on the basis of misrepresentation. The Minister alleged that Mr Daqa had failed to disclose that he had spent a considerable amount of time in the United States and had been deported from the US to Israel. In particular, the Minister alleged that in the US Mr Daqa had used the surname "Dacca," had attended school from 1997 to 2004, had been charged with possession of counterfeit cheques, and had been convicted of marriage fraud. In his application for refugee status, Mr Daqa had stated that he lived and worked in Israel from 1996 to 2006, and had no criminal record in another country.

[3] Mr Daqa was arrested and extradited to the US. He was in custody at the time of the hearing to vacate the applicants' refugee status, scheduled for January 2012. However, that hearing was postponed because Mr Daqa had been given insufficient notice to allow him to participate. The hearing was rescheduled for May 18, 2012 but, again, Mr Daqa was not able to participate. Nevertheless, the Board proceeded to hear the Minister's allegations and granted his application.

[4] The Board found that insufficient efforts had been made by the applicants' counsel to secure Mr Daqa's participation in the hearing. It also concluded that the applicants had obtained refugee status fraudulently. While the misrepresentations had been made by Mr Daqa, the Board found it implausible that Ms Daqa was unaware of them. Further, since her claim was based entirely on his, and there was no other evidence that would merit independent recognition of her refugee status, the Board vacated both Mr Daqa's and Ms Daqa's status.

[5] The applicants argue that the Board treated Mr Daqa unfairly by proceeding in his absence. They also contend that the Board unreasonably vacated Ms Daqa's refugee status based solely on Mr Daqa's misrepresentations. They ask me to overturn the Board's decision and order another panel to reconsider the Minister's application.

[6] I am not satisfied that Mr Daqa was treated unfairly. He was given a reasonable opportunity to participate in the hearing. However, I am also not satisfied that the Board reasonably vacated Ms Daqa's refugee status. Therefore, I will grant this application for judicial review and order another panel of the Board to reconsider the Minister's application to vacate her status.

[7] The issues are:

1. Did the Board treat Mr Daqa unfairly?
2. Did the Board unreasonably conclude that Ms Daqa's refugee status should be vacated?

II. The Board's Decision

[8] The Board found that Mr Daqa had been given a reasonable opportunity to participate in the hearing. The fact that he did not participate was attributable to the applicants' failure to make reasonable efforts to ensure Mr Daqa's involvement.

[9] As mentioned, the Board had already granted an adjournment to facilitate Mr Daqa's participation. In granting that adjournment, the Board specifically charged counsel for Mr Daqa with the task of making the necessary arrangements. The Board noted that counsel had not provided information about the communication protocol for the correctional facility where Mr Daqa was housed in Georgia, nor any evidence of any communication with that institution. Counsel stated that he tried to contact the facility but someone hung up the phone on him.

[10] The Board was not satisfied that this evidence showed that the applicants had made reasonable efforts to arrange Mr Daqa's participation in the hearing.

[11] Regarding Ms Daqa, the Board found that she was a party to the misrepresentations of Mr Daqa and that those misrepresentations "tainted the entire refugee determination process". They precluded the panel from exploring various lines of inquiry, including evidence of the applicants' identities, their credibility, the well-foundedness of their claims, and the possibility that they were excluded from refugee status under Article 1F of the Refugee Convention. Further, the Board found it implausible that Ms Daqa did not know about her husband's misrepresentations, and there was no remaining untainted evidence that could support her refugee claim.

[12] Therefore, the Board vacated both applicants' refugee status.

III. Issue One - Did the Board treat Mr Daqa unfairly?

[13] I cannot conclude that the Board erred in finding that Mr Daqa had been provided a reasonable opportunity to participate in the hearing.

[14] There is no direct evidence from the counsel who represented the applicants at the vacation hearing regarding his understanding of what arrangements might have been made or who was responsible for setting them up. However, at the January 2012 hearing, the Board clearly put the onus on counsel for the applicants to make the arrangements for the next one. At various points it appears that counsel communicated with the Board to indicate where Mr Daqa was incarcerated, but the Board continued to tell him that it was his responsibility to provide the information necessary to make contact with Mr Daqa. Counsel provided some information – an address, phone and fax numbers, and an email address for the correctional facility in the US housing Mr Daqa – but not the ISDN (Integrated Services Digital Network) code for videoconferencing. Nor did counsel provide Mr Daqa with the Board's telephone number so that he could dial out of the facility, or try to make alternate arrangements, or request that the Board consider a post-hearing affidavit from Mr Daqa.

[15] In my view, the Board reasonably concluded that Mr Daqa had been given a reasonable opportunity to participate in the hearing, and did not treat Mr Daqa unfairly by proceeding in his absence. Further, I have no evidence before me about the testimony Mr Daqa might have given, or any prejudice that resulted from the Board's decision to proceed in his absence. Accordingly, considering all of the circumstances, I cannot conclude that Mr Daqa was treated unfairly.

IV. Did the Board unreasonably conclude that Ms Daqa's refugee status should be vacated?

[16] In my view, the Board failed to give sufficient attention to Ms Daqa's separate circumstances. Her claim was, indeed, based on Mr Daqa's narrative, but there was little or nothing in that narrative (which constituted the real basis for the couple's refugee claims) that was affected by Mr Daqa's misrepresentations. The applicants had met and married after Mr Daqa had been deported from the US, and at least some of the original claims of persecution that affected Ms Daqa and post-dated Mr Daqa's activities in the US remained intact. For example, the following elements of the evidence before the Board were unaffected by Mr Daqa's misrepresentations:

- Ms Daqa's identity documents and the couple's marriage certificate were valid;
- Mr and Ms Daqa could not live together because her family was from the West Bank;
- Ms Daqa's family was forced to relocate from Israel to the West Bank; and
- If Ms Daqa returned to Israel, she would be stripped of her residency status, returned to the West Bank, and separated from her husband.

[17] In my view, the Board was obliged to consider whether this evidence supported her refugee claim.

[18] Further, while the Board found it implausible that Ms Daqa was unaware of her husband's misrepresentations, the Board does not cite any evidence or give any reasons for that conclusion. All of the events that Mr Daqa had failed to disclose preceded their marriage. His parents claimed not to know about them. It is unclear why the Board concluded that Ms Daqa probably knew about, and was complicit in, his misrepresentations.

[19] In my view, therefore, the Board's conclusion that Ms Daqa's refugee claim should be vacated was unreasonable, and I will grant this application for judicial review on that basis alone.

V. Conclusion and Disposition

[20] The Board gave Mr Daqa a reasonable opportunity to participate in the hearing and, therefore, treated him fairly. However, the Board did not adequately consider the evidence that supported Ms Daqa's refugee application, and did not explain why it found implausible her claim that she was unaware of her husband's misrepresentations. Therefore, I will allow this application for judicial review in relation to Ms Daqa, and order a different panel of the Board to reconsider the Minister's application to vacate her refugee status. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed in relation to Ms Daqa;
2. A new hearing is ordered before a different panel of the Board in order to reconsider the Minister’s application to vacate her refugee status;
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7895-12

STYLE OF CAUSE: MUHAMMAD DAQA, ET AL
v
MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 14, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: MAY 24, 2013

APPEARANCES:

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