

Federal Court



Cour fédérale

Date: 20131106

Docket: IMM-10760-12

Citation: 2013 FC 1130

Ottawa, Ontario, November 6, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MATHIJUKAN RAMANATHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a most unusual case. The problem is that the transcript of a May 8, 2012 Refugee Protection Division hearing has gone missing. Therefore, the Certified Tribunal Record is incomplete.

[2] I accept the word of the Applicant's counsel, as an officer of this Court, that the hearing of May 8, 2012 dealt with the Applicant's identity – the determinative issue in this case. The Applicant's credibility was also in issue.

[3] Both matters of identity and credibility were canvassed in the missing transcripts. Therefore, the transcripts are highly relevant.

[4] Given the options of determining the judicial review without the transcript and potentially accepting counsel's notes as the "best available evidence" and ordering the matter to be reheard, a rehearing is the preferred option. This is not a criticism of counsel or his note-taking abilities.

[5] Therefore, this judicial review will be granted, the decision quashed and the matter referred back to be determined by a different member.

[6] There are no questions for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the decision of the Refugee Protection Division is quashed and the matter is to be referred back to be determined by a different member.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-10760-12

STYLE OF CAUSE: MATHIJUKAN RAMANATHAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 21, 2013

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

DATED: NOVEMBER 6, 2013

APPEARANCES:

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Michael Butterfield FOR THE RESPONDENT

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