

Federal Court



Cour fédérale

Date: 20140306

Docket: IMM-12831-12

Citation: 2014 FC 217

Toronto, Ontario, March 6, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

DANIEL GROMER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

(Reasons delivered orally in Toronto on March 4, 2014)

[1] Daniel Gromer (the Applicant) seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 27, 2012, in which it decided that the Applicant's refugee claim had been abandoned and that his refugee claim was dismissed (the Decision).

Background

[2] The Applicant had filed a Personal Information Form (PIF) and had retained counsel but on October 10, 2012 at 1:00 p.m., when his refugee claim was to be heard on the merits ,(the First Hearing) the Applicant failed to appear at the Board's office in downtown Toronto. His car had broken down on the Gardiner Expressway in Etobicoke at 11:15 a.m. His counsel did appear before the Board and explained that the Applicant would be unable to attend. He mentioned a motor vehicle accident but did not indicate that the Applicant had been injured. The Board ordered that a hearing be held on November 27 at 9:30 a.m. (the Second Hearing). At that time the Applicant was to explain his earlier absence and, if the explanation was accepted, the hearing would proceed on the merits.

[3] The Applicant appeared at the Second Hearing with a service station repair invoice showing that his car's alternator had failed and had been repaired on the day of the First Hearing. A breakdown had been the problem not an accident. In my view, the difference between an accident and a breakdown is not material. The important point was that the Applicant could not appear in time for the First Hearing at 1:00 p.m. and the Board was so advised. The Applicant's counsel did not attend the Second Hearing.

The Evidence

[4] At the Second Hearing the Applicant was questioned by the Board. He testified that his car broke down at 11:15 a.m. and that, by the time he had it towed to a garage, it was 2 p.m. He estimated that if he had left the garage at 2 p.m. he could have reached the Board's office by 3 p.m. using public transit. However, he admitted that he did not try to travel downtown.

The Decision

[5] The Board concluded that the Applicant had not been diligent in pursuing his claim because he did not take public transit and arrive two hours late for the First Hearing.

Conclusion

[6] In my view the Decision was unreasonable because there was no evidence that the Applicant or his counsel had any reason to believe that the Board would have proceeded with the First Hearing at 3 p.m. when it was scheduled to start at 1 p.m.

[7] No question was posed for certification.

ORDER

THIS COURT ORDERS that the application is allowed and the Decision is to be reconsidered by a different member of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-12831-12

STYLE OF CAUSE: DANIEL GROMER V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 4, 2014

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

DATED: MARCH 6, 2014

APPEARANCES:

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Jocelyn Espejo Clarke FOR THE RESPONDENT

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