

Federal Court



Cour fédérale

Date: 20141008

Docket: IMM-882-14

Citation: 2014 FC 953

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Toronto, Ontario, October 8, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**ALDO APOLO AQUINO GUARDADO
LIZA MARIA MACHON DE AQUINO
ALDO AQUINO MACHON**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are challenging the legality of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated January 24, 2014, which upheld the decision of the Refugee Protection Division [RPD] determining that the applicants were

neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants are citizens of El Salvador who fear returning to that country due to the problems experienced by applicant Aldo Apolo Aquino Guardado resulting from the theft of his car by a businessman who enjoys a great deal of political influence and the reprisals that followed his attempts to obtain protection from the authorities. The RPD refused their claim for refugee protection because it found the applicant not to be credible and the RAD upheld that decision.

[3] As was the case in several matters recently brought before the Court, the main issue in this case was the RAD's application of a reasonableness standard of judicial review to the findings of fact and of mixed fact and law in the RPD's decision. For the reasons I set out in *Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952 [*Alyafi*], an appeal before the RAD is not a judicial review and the RAD's application of the standard suitable for judicial review is not an acceptable outcome in respect of the law.

[4] I explained in *Alyafi* that there are currently two competing approaches in decisions of this Court as to which standard the RAD should apply to findings of fact and of mixed fact and law made by the RPD. Without issuing any pronouncements on the scope of the review that ought to be carried out by the RAD, suffice it to say that the applicants were denied the appeal they were entitled to under the law, given that the RAD instead applied a standard of judicial

review. The matter will therefore be referred back to the RAD for redetermination in light of the precedents of the Court, including those I analyzed in *Alyafi*.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is allowed. The impugned decision is set aside and the matter is referred back to the Refugee Appeal Division for a reconsideration of the applicant's appeal. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-882-14

STYLE OF CAUSE: ALDO APOLO AQUINO GUARDADO, LIZA MARIA MACHON DE AQUINO, ALDO AQUINO MACHON
v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 24, 2014

JUDGMENT AND REASONS: MARTINEAU J.

DATED: OCTOBER 8, 2014

APPEARANCES:

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