Federal Court Cour fédérale

Date: 20160122

Docket: IMM-3576-15

Citation: 2016 FC 78

Vancouver, British Columbia, January 22, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALIREZA KALANTARI GHOMI NEJA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In *Lally v Telus Communications Inc.*, 2014 FCA 214 at para 27, Justice A.F. Scott stated that it is the responsibility of an administrative tribunal "to ensure that self-represented litigants understand the procedure and rules to be followed from the very commencement of a hearing".

II. Introduction

[2] The self-represented Applicant in this case understood the matter before the tribunal to be one in regard to his citizenship application, and, not one in regard to an application to cease the Applicant's determination that he is a Convention refugee.

[3] The Applicant clearly stated in regard to his comprehension of English that he does "not understand English very well", but that he understands. That is not enough in respect of the legal language used in such a hearing to be considered enough for the understanding of the legal procedure which the Applicant underwent.

III. Background

[4] The Applicant is of the Baha'i faith, a faith banned in the Islamic Republic of Iran.

[5] The UNHCR Office in Turkey (Ankara) accepted the Applicant as a protected person as a result of his Baha'i faith due to the treatment of Baha'is in Iran.

[6] The Applicant was landed in Canada; and was accepted as a permanent resident upon arrival.

[7] In July 2014, the Applicant wrote an examination, a step in obtaining citizenship in Canada. In March of 2014, the Applicant attended an interview with Canada Border Services Agency [CBSA], which he thought was to further his citizenship application.

[8] Subsequent to that interview, due to return trips to Iran by the Applicant, the Respondent applied to the Refugee Protection Division (RPD) of the Immigration and Refugee Board [IRB] to cease the Applicant's refugee status (under subsection 108(2) of the *Immigration and Refugee Protection Act*). Therefrom, a hearing at the IRB was scheduled wherein the Applicant attended without legal representation and without an interpreter present.

IV. Analysis

[9] The Applicant was not aware of the consequences of the said hearing before the RPD.

[10] The RPD member, as an outcome of the hearing, stripped the Applicant of his former refugee status and of his permanent resident status.

[11] As the standard of review in respect of matters of law and procedural fairness is one of correctness, the decision cannot stand as it is, until the procedural fairness issue is rectified, whatever the outcome in a new hearing may, then, eventually be.

[12] A determination process is, by its very nature, one which must not only give, but be seen to give, fundamental justice in its application of the law.

[13] It was incumbent on the Member of the RPD to ensure that the criteria established in *Mervilus v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1206 at para 21, for an adjournment by which to retain counsel be offered to the Applicant. This should have occurred further to an explanation of the serious consequences to the Applicant in clear non-legalese

language. Also, documents were submitted at the hearing of which the Applicant had not had a chance to take cognizance.

[14] In addition, the application of the Respondent before the RPD did not comply with the *Refugee Protection Division Rules*: 34(3) and 64(2)(*d*) in respect of the time limit and of the reception of documents. The 64(1) Form of Application to vacate or cease refugee protection must be in writing and made in accordance with this rule.

Content of application	**Contenu de la demande**
(2) In the application, the Minister must include	(2) Dans sa demande, le ministre inclut :
(*d*) in the case of a person whose application for protection was allowed abroad, the person's file number, a copy of the decision and the location of the office;	*d*) dans le cas de la personne dont la demande de protection a été acceptée à l'étranger, son numéro du dossier, une copie de la décision et le lieu où se trouve le bureau qui l'a rendue;
[Emphasis added.]	[Je souligne.]

[15] At the very outset of the RPD hearing, the Applicant, a self-represented litigant, when asked if he understands the proceeding, stated that he understands, "but not very well". At the end of the hearing, again, it is significant that the Applicant clearly responded to a question of the presiding member, "How much did you understand?"; and, the Applicant responded: "Some of them I didn't know before." The case at the RPD ends as it began, but the Applicant clearly demonstrating that he did not understand the nature of the proceeding, thinking that the matter dealt with his Citizenship Application rather than the cessation of his refugee status.

[16] It is significant to recall the decision in *Li v Canada (Minister of Citizenship and Immigration)*, 2015 FC 927 at para 37, wherein Justice James Russell states:

> For self-represented litigants, this may include an obligation on the Board to explain the process to an applicant and to clarify the nature of the decision being made. The consequences of the decision and the complexity of the matter can have an impact in determining whether a hearing is fair.

V. Conclusion

[17] In this case, a new is hearing, whatever the final outcome will be subsequent to that new hearing; the matter, as it now stands, is perceived as unfair and is unfair; procedural fairness was absent. It is for that, and that alone, that it is being sent back to be heard anew by a different RPD member.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision of the RPD be set aside. A new hearing is to be held by a differently constituted panel of the RPD. No question of general importance is submitted for certification.

OBITER

Recognizing the grave treatment and tragic history of the Baha'is, under the present regime in Iran, as has been clearly discussed in the jurisprudence of this Court (*Oraminejad v MCI*, 2011 FC 997), if the Applicant is, in fact, a Baha'i, as is stated and affirmed by the UNHCR, great care must be taken by Canada as a signatory to the Refugee Convention, in recognition of the grave situation of many Baha'i in Iran. Therefore, if the language comprehension issue is not be resolved, as the transcript clearly demonstrated, a lack of adequate understanding of the English language and of legal technical terms remains predominant for the self-represented applicant in respect of the proceeding which he underwent in the above specified case. This remains the situation for the self-represented litigant until such time as the matter is heard anew by a different member of the RPD.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3576-15
STYLE OF CAUSE:	ALIREZA KALANTARI GHOMI NEJA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 20, 2016
JUDGMENT AND REASONS:	SHORE J.
DATED:	JANUARY 22, 2016

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