

Federal Court



Cour fédérale

**Date: 20121015**

**Docket: IMM-2049-12**

**Citation: 2012 FC 1199**

**Ottawa, Ontario, October 15, 2012**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**SYED ZULFIQAR HUSSAIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of an Immigration Officer dated 26 January 2012, wherein it was determined that the Applicant was not admissible as a permanent resident in Canada, on security grounds, under section 34(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA).

[2] There is only one ground that I need to consider in this application. It is that of procedural fairness. As such, no consideration of reasonableness or correctness needs to be undertaken. The issue is whether procedural fairness was afforded or not.

[3] The Applicant is an adult male citizen of Pakistan. He entered Canada in 1994 and made a claim for refugee protection. That claim was successful. Subsequently, the Applicant filed an application for permanent residence in Canada. In February 2008, the Applicant attended an interview at the request of Citizenship and Immigration Canada (CIC) for the purpose of assessing whether he was inadmissible under the provision of section 34(1)(f) of IRPA by reason of his membership in a particular group in Pakistan.

[4] For some two and a half years (I note the delay as important in setting the pace of these proceedings) nothing happened. By letter dated October 13, 2010, the Applicant was advised that he had ninety (90) days to provide a written response to a number of matters as set out in that letter. The Applicant's response consisted simply of the submission of a fee and a Personal Information Form (PIF).

[5] About one year later, on October 3, 2011, CIC sent another letter to the Applicant acknowledging receipt of the materials referred to above and granting a further ninety (90) day extension to make any further submissions in response to the letter of October 13, 2011. The ninety-day period would have expired on about January 2, 2012.

[6] On December 27, 2011, Counsel for the Applicant sent an email to CIC clearly referencing the appropriate file, stating that Counsel continued to represent the Applicant, and requesting an extension until January 31, 2012 to file a response. CIC did not reply.

[7] The record shows that a letter dated January 10, 2012 was drafted by Applicant's Counsel setting out detailed submissions respecting the Applicant's case. For unknown reasons, this letter was not sent to CIC until January 30, 2012, and was received by CIC until February 1, 2012.

[8] In the meantime, CIC drafted a letter dated 26 January 2012 stating that it determined that the Applicant was inadmissible having regard to subsection 34(1) of IRPA. This letter was received by the Applicant's Counsel January 31, 2012. In other words, this letter and Counsel's submissions dated January 10, 2012 crossed in the mail, and the decision had been made by CIC *before* the expiry of the thirty-day extension requested by Applicant's Counsel.

[9] While it is agreed that CIC did not actually communicate with Applicant's Counsel granting the requested thirty-day extension, neither did it deny that extension. It did nothing.

[10] In the circumstances, and given the delay of some two and a half years already incurred by CIC, it was not unreasonable for Applicant's Counsel to expect that a request for a thirty-day extension be granted. It was, in the circumstances, unreasonable and a denial of procedural fairness and of natural justice, for CIC to make a decision and to send it out before the expiry of that delay.

[11] Under these unusual circumstances, the matter is sent back to CIC for a determination by a different Officer having regard to Applicant's Counsel's submissions dated January 10, 2012.

[12] No question is certified.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THIS COURT'S JUDGMENT is that:**

1. The application is allowed;
2. The matter is returned for redetermination by a different Officer having regard to Applicant's Counsel's submissions dated January 10, 2012;
3. No question is certified; and
4. No Order as to costs.

"Roger T. Hughes"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2049-12

**STYLE OF CAUSE:** SYED ZULFIQAR HUSSAIN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** October 11, 2012

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

**DATED:** October 15, 2012

**APPEARANCES:**

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Camille N. Audain FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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