

Federal Court



Cour fédérale

**Date: 20130131**

**Docket: IMM-4408-12**

**Citation: 2013 FC 108**

**Ottawa, Ontario, January 31, 2013**

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

**BETWEEN:**

**GALINA TEPORDEI  
VITALIE TEPORDEI  
DORINA TEPORDEI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This judicial review stems from a decision of the Immigration and Refugee Board [Board] refusing to reopen the Applicants' refugee claim. The principal argument advanced is that there had been either actual bias or a reasonable apprehension of bias exhibited by a Board Member at the refugee hearing.

[2] Justice Zinn had issued a stay of deportation based in part on the bias claim being a serious issue which the Board had not addressed in its reopening decision. This Court has now had the benefit of a complete record and a more fulsome record than was before Justice Zinn.

## II. FACTS

[3] The Applicants, citizens of Moldova, made a refugee claim. The claim was heard on June 1, 2010 by the Member but adjourned pending written submissions from the Applicants. There were some sharp exchanges between counsel and the Member on such issues as counsel's failure to file documents prior to the hearing and a possible extension of time for filing post-hearing submissions.

[4] On the day the submissions were due, June 17, 2010, the Applicants filed a request for a *de novo* hearing (or alternatively an interpretation audit) on the grounds of interpretation errors. On June 23, 2010, the Applicants were informed that the request for a *de novo* hearing was denied.

[5] On June 25, 2010, the Applicants' counsel requested the Board's Co-ordinating Member's intervention. Counsel also indicated his intention to file a formal complaint against the Member who heard the case and requested that the Member not be permitted to decide the case or be assigned to any other case involving the Applicants' counsel. That same day the Member denied the refugee claim on the basis of the adverse credibility of the adult Applicants.

[6] Two weeks later the Co-ordinating Member informed counsel that the Member was *functus*, that he had properly denied the application for a *de novo* hearing. Counsel was informed that he

could make an application for judicial review and apply to reopen the decision in accordance with Rule 55 of the Board's Rules [the Rules].

[7] The Applicants filed an Application for Leave and Judicial Review of the refugee decision in August 2010. The issue of bias/reasonable apprehension of bias was not raised. Leave was denied by this Court on December 21, 2010.

[8] No application to reopen the refugee decision was filed until two (2) years later when the Applicants were served with a Direction to Report for Removal. The issue of bias was then raised along with the issue of interpreter's error and rejection of certain documents submitted at the hearing.

[9] The Rules under which a matter may be reopened require that an application to reopen must be filed without delay and can be granted where there is a failure to observe a principle of natural justice.

**44.** (1) Unless these Rules provide otherwise, an application must be made in writing and without delay. The Division may allow a party to make an application orally at a proceeding if the party with reasonable effort could not have made a written application before the proceeding.  
[...]

**44.** (1) Sauf indication contraire des présentes règles, toute demande est faite sans délai par écrit. La Section peut permettre que la demande soit faite oralement pendant une procédure si la partie n'aurait pu, malgré des efforts raisonnables, le faire par écrit avant la procédure.  
[...]

**55.** (1) A claimant or the Minister may make an application to the Division to reopen a claim for refugee

**55.** (1) Le demandeur d'asile ou le ministre peut demander à la Section de rouvrir toute demande d'asile qui a fait

protection that has been decided or abandoned.	l'objet d'une décision ou d'un désistement.
(2) The application must be made under rule 44.	(2) La demande est faite selon la règle 44.
(3) A claimant who makes an application must include the claimant's contact information in the application and provide a copy of the application to the Minister.	(3) Si la demande est faite par le demandeur d'asile, celui-ci y indique ses coordonnées et en transmet une copie au ministre.
(4) The Division must allow the application if it is established that there was a failure to observe a principle of natural justice.	(4) La Section accueille la demande sur preuve du manquement à un principe de justice naturelle.

*Refugee Protection Division Rules, SOR/2002-228*

[10] The Board's reasons for rejecting the Application to Reopen are brief. The Board dismissed this application because all the issues had already been decided by the Board and the conduct of an immigration consultant (a matter raised by the Applicants) in respect of an H & C application was not within the Board's jurisdiction. The Board also noted that an Application for Leave and Judicial Review had been dismissed. It concluded that there was no breach of natural justice.

III. ANALYSIS

[11] Neither party addresses the standard of review. In written submissions the Applicants implicitly suggest that the standard is reasonableness while in oral argument it was accepted that the standard is correctness.

The crucial issue is the Board's decision that there was no breach of natural justice by the Board. The usual standard for the issue of breach of natural justice is correctness. The issue is not one to which the Board can claim deference especially as it is sitting in judgment of itself.

[12] I conclude that the standard of review is correctness. However, the result would be the same if the standard was reasonableness.

[13] The Board was correct on the facts that the issues raised had already been dealt with. It was legally correct in finding that there had been no breach of natural justice.

[14] Having examined the transcript, I can find no basis to conclude that there was bias or a reasonable apprehension thereof. The exchanges were sharp, the Member obviously had a history with counsel but neither of these matters are sufficient to ground the Applicants' claim in this regard.

[15] Bias or reasonable apprehension is a matter which ought to be raised as soon as possible. The Applicants did raise the issue with the Board on June 25, 2010; the day of the refugee decision. The Applicants had full opportunity to raise the bias issue in their first Leave Application to this Court – they did not. This fact alone would be sufficient basis to deny a reopening on bias grounds. Any issues of procedural fairness had to be raised in the Application for Leave and the denial of leave foreclosed raising the issue again.

[16] Further, the Board's Rules require that an application such as one to reopen must be filed without delay. In this case, the Applicants waited two years over which time they engaged the services of an immigration consultant for another immigration matter only to return to counsel when they were to be deported and a reopening was the "last best" chance.

#### IV. CONCLUSION

[17] The Board could have dismissed the reopening application on the basis of delay alone. When delay is factored into the absence of any real basis for a bias allegation, there is absolutely no basis upon which to reopen this case. The Board was correct in its decision.

[18] This judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed.

“Michael L. Phelan”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4408-12

**STYLE OF CAUSE:** GALINA TEPORDEI  
VITALIE TEPORDEI  
DORINA TEPORDEI

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 17, 2013

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

**DATED:** January 31, 2013

**APPEARANCES:**

Robin Morch FOR THE APPLICANTS

Bradley Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MR. ROBIN MORCH FOR THE APPLICANTS  
Barrister, Solicitor & Notary Public  
Ballantrae, Ontario

MR. WILLIAM F. PENTNEY FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario