

Federal Court



Cour fédérale

**Date: 20160415**

**Docket: IMM-2664-15**

**Citation: 2016 FC 422**

**BETWEEN:**

**HIBIL HASSAN MAHDI  
(a.k.a.: MAHDI HIBIL HASSAN)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER**

**PHELAN J.**

[1] This is a motion for reconsideration of this Court's Order of February 17, 2016, pursuant to Rule 397 of the *Federal Courts Rules*, SOR/98-106:

**397 (1)** Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the

**397 (1)** Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de

ground that

nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :

(a) the order does not accord with any reasons given for it; or

a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

(b) a matter that should have been dealt with has been overlooked or accidentally omitted.

b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.

(2) Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court.

(2) Les fautes de transcription, les erreurs et les omissions contenues dans les ordonnances peuvent être corrigées à tout moment par la Cour.

[2] The decision of the Refugee Protection Division [RPD] was to dismiss a claim for refugee protection on the basis that the Applicant had failed to establish his identity. This finding is directly contrary to the conclusion of U.S. authorities as to the Applicant's identity.

[3] The RPD muddled its reasons by concluding that the Applicant had failed to produce sufficient evidence of identity and then concluding that there was no credible basis for the claim. That last finding deprived the Applicant of his right of appeal to the Refugee Appeal Division [RAD].

[4] This Court concluded that the "no credible basis" finding was unreasonable. It then suspended the operation of the decision to permit the Applicant to commence a RAD appeal

rather than quashing the RPD decision and requiring the Applicant to go through a new refugee hearing. The effect of the Court's Order was to preserve the Applicant's appeal rights.

[5] The Respondent brought this motion for reconsideration on the grounds that the Court overlooked jurisdictional concerns when it made this type of order. The Respondent argues that the Court does not have jurisdiction to make any other order than to quash (or presumably uphold) an administrative tribunal's decision.

[6] Firstly, the Respondent assumes that the Court missed the jurisdictional issue. It is plain from the structure of the Order that the Court did not miss the jurisdictional issue – it exercised the supervisory jurisdiction which it has. The Respondent takes too narrow a reading of s 18.1. The Respondent ignores the Court's remedial, equitable and inherent powers and obligations.

[7] The Court's Order of suspension was an interim order; the Immigration and Refugee Board was directed to do something it had failed to do and the ultimate disposition, failing compliance with the Order, is the dismissal of the judicial review. All of these steps are within the Court's jurisdiction including s 18.1.

[8] Secondly, this reconsideration application is improper. It is nothing more than a veiled attempt at an appeal but to the deciding judge. It is a misuse of the Rule to attempt to do indirectly what it cannot do directly.

[9] On these two grounds, this motion should be dismissed. However, the Applicant has supported the motion and raised a matter which was not considered by the Court because it had not been raised.

[10] The Applicant has advised that prior to the filing of the Application for Leave, the Applicant, with the assistance of different counsel, commenced an appeal to the RAD which was denied. The situation now presented is complicated by the conundrum of the *Refugee Appeal Division Rules*, SOR/2012-257.

[11] Had the Court been aware of this hither-before unknown RAD appeal, the remedy ordered would have been different.

[12] Therefore, the motion is allowed and a new Order will issue as attached.

"Michael L. Phelan"

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Judge

Ottawa, Ontario  
April 15, 2016

**ANNEX**

**ORDER**

**UPON MOTION** for reconsideration of this Court's Order of February 17, 2016;

**AND UPON READING** the materials of the parties;

**THIS COURT ORDERS that:**

1. The Respondent's extension of time is granted;
2. The Respondent's request for reconsideration is denied;
3. The Applicant's request for reconsideration is granted;
4. The Order of February 17, 2016 is amended as follows:
  - a) The application for judicial review is granted;
  - b) The decision of the Refugee Protection Division is quashed and the matter is sent back to be considered by a different panel.
5. There are no costs.

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

**DOCKET:** IMM-2664-15

**STYLE OF CAUSE:** HIBIL HASSAN MAHDI (a.k.a.: MAHDI HIBIL HASSAN) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**REASONS FOR ORDER:** PHELAN J.

**DATED:** APRIL 15, 2016

**WRITTEN REPRESENTATIONS BY:**

Eve Sehatzadeh

FOR THE APPLICANT

Ildikó Erdei

FOR THE RESPONDENT

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