

Federal Court



Cour fédérale

Date: 20171027

Docket: IMM-5366-16

Citation: 2017 FC 962

Ottawa, Ontario, October 27, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NASIR MEHMOOD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] One claiming protection in Canada as a Convention refugee may also claim protection for a “dependent child” who is less than 19 years of age. Subsection 25.1(9) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 [the Regulations] provides that the lock-in date for the age of a child of a refugee claimant “is the date on which the claim for refugee protection was made.”

[2] On December 10, 2014, Mr. Mehmood attended the Citizenship and Immigration Canada office at Etobicoke to make a refugee claim. In his claim he listed (among others) his son Khuram Nasir as a dependent child. On December 10, 2014, he was given a notice to appear for interview on January 5, 2015. He attended and was subsequently granted permanent residence status as a Protected Person. However, an officer found that Khuram Nasir did not meet the definition of dependent child because he turned 19 years of age on December 30, 2014. The officer took the view that Mr. Mehmood's claim for refugee status was "made" on January 5, 2015, and not on December 10, 2014. This is the finding that is the subject of the judicial review.

[3] I agree with the Minister that the decision under review attracts a review on the reasonableness standard, and this is so even though the officer was required to interpret the Regulations. However, I find that there is only one reasonable interpretation of the Regulations, and it is not that given by this officer.

[4] Subsection 99(3.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 requires persons seeking protection to provide the officer with documents and information required, including the Basis of Claim form, within the time limits provided for in the Regulations:

A person who makes a claim for refugee protection inside Canada other than at a port of entry must provide the officer, within the time limits provided for in the regulations, with the documents and information — including in respect of the basis for the claim — required by the rules of the Board, in accordance with those rules.
[emphasis added]

[5] The Minister submits that “pursuant to s. 99(3.1) of the IRPA where a person makes an inland claim for protection to a visa officer, that person must give the visa officer a completed Basis of Claim form” and submits that until the Basis of Claim form has been submitted and the claimant found to be eligible, no application has been made. That interpretation is not consistent with the Regulations.

[6] Subsection 99 (3.1) makes it clear that the claimant has to provide certain documents to the officer, including the Basis of Claim form, but it also makes it clear that the claimant must do so within the time prescribed by the Regulations. Subsection 159.8(1) provides that those documents are to be provided no later than the date on which the officer determines the eligibility of the claim. It does not provide that there is no application made prior to the date of eligibility:

For the purpose of subsection 99(3.1) of the Act, a person who makes a claim for refugee protection inside Canada other than at a port of entry must provide an officer with the documents and information referred to in that subsection not later than the day on which the officer determines the eligibility of their claim under subsection 100(1) of the Act.

In fact, the letter provided to Mr. Mehmood on the date he first visited the Etobicoke office and submitted his application acknowledged that he had made an application: “You have been requested to return for an interview with respect to your application [emphasis added].”

[7] Moreover, the Guide the Minister has prepared for claimants affirms that “If you made your claim at an inland office, you must give your original completed [Basis of Claim] Form and one copy to CIC or the CBSA officer on the day of your eligibility interview [emphasis added].”

[8] In my view, it would be absurd to say, as this officer did, that there is no claim for protection made by a claimant, until an officer determines, based on application forms submitted by the claimant, that he or she is eligible to make the claim and thus schedules a hearing before the Refugee Protection Division. Taking that view would mean that the Minister's "Generic Application Form for Canada" submitted by Mr. Mehmood is not an application at all; but what is it? – an application to apply!

[9] The officer's interpretation is unreasonable as it is absurd.

[10] This application is allowed.

[11] The applicant proposed for certification the question: "When is a refugee claim "made" for the purposes of s. 25.1(9) of IRPA?"

[12] In my view, the question is framed too broadly, as the present application deals only with an inland refugee claim. I am satisfied that there is a proper question of general importance that would be dispositive of an appeal and transcends the interests of the immediate parties to the litigation due to its broad significance: See *Canada (Minister of Citizenship and Immigration) v Liyanagamage*, [1994] FCJ No 1637, 176 NR 4 (CA) (QL) at paragraph 4; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168, [2013] FCJ No 764 (QL) at paragraph 9). The certified question is: "When is an inland refugee claim "made" for the purposes of subsection 25.1(9) of the *Immigration and Refugee Protection Act*, SC 2001, c 27?"

ORDER IN IMM-5366-16

THIS COURT ORDERS that:

1. This application is granted, the officer's decision is set aside because the applicant's son, Khuram Nasir, was an eligible dependent on the date on which the applicant's claim for refugee protection was made, and his application is remitted back to a different officer to decide in accordance with these reasons; and

2. The following question is certified pursuant to subsection 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27: "When is an inland refugee claim "made" for the purposes of subsection 25.1(9) of the *Immigration and Refugee Protection Act*, SC 2001, c 27?"

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5366-16

STYLE OF CAUSE: NASIR MEHMOOD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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