

Federal Court



Cour fédérale

Date: 20171130

Docket: IMM-2831-17

Citation: 2017 FC 1086

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 30, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SYEDA NOOR FATIMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is contesting a decision rendered on May 11, 2017, by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board refusing to allow her appeal of an exclusion order.

[2] The lawfulness of the exclusion order—which was issued for failure to comply with the residency obligation under subsection 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]—is not at issue today. In this case, the IAD found that the humanitarian and compassionate grounds cited by the applicant do not warrant special relief within the meaning of paragraph 67(1)(c) of the IRPA.

[3] At the start of the hearing on November 29, 2017, the applicant’s counsel of record, Meryam Haddad, filed a motion for leave to withdraw, as the relationship of trust with the applicant had been broken. The motion to withdraw made in Ms. Haddad’s letter dated November 27, 2017, and her motion record were served on November 27, 2017, to the applicant and to counsel for the respondent, Isabelle Brochu. The applicant did not attend the hearing on November 29, 2017. No objection to the motion to withdraw and no request to postpone the hearing were made by the applicant or on her behalf. Given the serious nature of the motion to withdraw and the respondent’s lack of objection, the Court allowed Ms. Haddad to withdraw. Subsequently, the Court heard the oral submissions of counsel for the respondent, who requested the summary dismissal of this application for judicial review.

[4] This application for judicial review cannot succeed.

[5] First, no affidavit verifying the facts relied on by the applicant in support of the application for judicial review was served to the Court in accordance with subsection 10(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The affidavit dated July 27, 2017, submitted by counsel who works at the law firm that formerly

represented the applicant, is insufficient. Since the Court granted the application for leave on September 14, 2017, no motion has been filed by the applicant or her former counsel to replace the insufficient affidavit with an affidavit from the applicant. This is a fatal flaw (see, for example, *Metodieva v Canada (Minister of Employment and Immigration)* (1991), 132 NR 38, 28 ACWS (3d) 326 (FCA); *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at paragraphs 4 to 10; and the case law cited in those decisions). Therefore, the Court has no alternative than to summarily dismiss this application for judicial review.

[6] Second, although it is unnecessary to examine the merits of the application for judicial review, it should be stated here that the applicant essentially disagrees with how the IAD analyzed the evidence on record and weighed the various relevant factors. I agree with the respondent that the applicant's written submissions dated July 27, 2017, simply repeat arguments that were already raised before the IAD and essentially encourage the Court to substitute its opinion for that of the administrative decision-maker. However, it is not for this Court to re-examine the evidence on record. Furthermore, I am satisfied that the IAD was guided by the relevant factors in exercising its discretion. The IAD had full discretion to determine the weight of those factors in light of the specific circumstances of the case. As part of an in-depth analysis, the IAD considered the favourable and unfavourable factors. It also provided detailed and intelligible reasons. Dismissing the appeal was therefore one of the possible and acceptable outcomes.

[7] For these reasons, the application for judicial review is dismissed. No questions of law of general importance are raised in this case.

JUDGMENT in IMM-2831-17

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

No question is certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2831-17

STYLE OF CAUSE: SYEDA NOOR FATIMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 29, 2017

JUDGMENT AND REASONS: MARTINEAU J.

DATED: NOVEMBER 30, 2017

APPEARANCES:

Meryam Haddad

FOR THE APPLICANT

Isabelle Brochu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Handfield & Associés, Avocats
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada

FOR THE RESPONDENT

Certified true translation
This 29th day of July, 2019

Lionbridge