

Federal Court



Cour fédérale

Date: 20230824

Docket: IMM-691-22

Citation: 2023 FC 1145

Ottawa, Ontario, August 24, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MILES NOLAN, NOW MILES JONES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND MINISTER OF
PUBLIC
SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the “RPD”), dated January 10, 2022 (the “Decision”), which dismissed the Applicant’s application for reinstatement of his claim for

refugee protection. The RPD found that there was no failure to observe a principle of natural justice, nor was it otherwise in the interests of justice to allow the application.

II. Background

[2] The Applicant is a 22-year-old citizen of the United Kingdom (“UK”). On April 27, 2019, the Applicant – then going by the name “Miles Nolan” – entered Canada from Dublin, Ireland along with his father and two brothers. They sought entry as visitors.

[3] Following an examination by Canadian officials, the Applicant and his family members made claims for refugee protection. The claim was based on persecution they faced as Irish Travellers and a feud with a rival family. The Applicant’s father alleged that the family had been threatened.

[4] When questioned by the Canada Border Services Agency (“CBSA”) in May 2019, the Applicant claimed that he was afraid to return to the UK because his father had been in a dispute with another family. He indicated that he would be at risk as a result.

[5] In June 2019, the Applicant filed a Notice of Withdrawal of a Claim for Refugee Protection. He returned to the UK on June 14, 2019.

[6] The Applicant claims he is illiterate and did not understand what he was signing.

[7] While he was in the UK, the Applicant changed his name to “Miles Jones”. He applied for a Canadian visitor’s visa under his new name on February 29, 2020 and entered Canada on March 14, 2020.

[8] On September 20, 2020, the Applicant submitted an application to extend his stay in Canada and indicated that his purpose for remaining in Canada was tourism. The Applicant also declared that this was his first trip to Canada.

[9] The Applicant claims he was not asked what the purpose of his remaining in Canada was by his immigration representative.

[10] On April 14, 2021, Toronto Police referred the Applicant to the CBSA, who then uncovered his original identity. On April 16, 2021, the Applicant’s visa extension application was refused. On April 19, 2021, the Applicant indicated that he would be filing an application to reinstate his refugee claim.

[11] On May 1, 2021, the Applicant was charged with offenses under the *Criminal Code*, RSC, 1985, c C-46, namely assault with a weapon and assault causing bodily harm.

[12] On June 7, 2021, the Applicant formally filed for reinstatement of his refugee claim.

[13] On January 10, 2022, the RPD rejected the Applicant’s request to reinstate his claim for refugee protection.

III. Decision under Review

[14] The RPD considered the test for reinstating a withdrawn refugee claim under Rule 60(3) of the *Refugee Protection Division Rules*, SOR/2012-256, which states:

60 (3) The Division must not allow the application unless it is established that there was a failure to observe a principle of natural justice or it is otherwise in the interests of justice to allow the application.

60 (3) La Section ne peut accueillir la demande que si un manquement à un principe de justice naturelle est établi ou qu'il est par ailleurs dans l'intérêt de la justice de le faire.

[15] The RPD found that the Applicant had not established (1) that there had been a failure to observe a principle of natural justice or (2) that it was in the interests of justice for the claim to be reinstated.

[16] With respect to its finding that the Applicant had not established that there had been a failure to observe a principle of natural justice the RPD made the following determinations:

- A. The Applicant gave inconsistent reasons for the withdrawal of his refugee claim. The Applicant claimed before the RPD that he withdrew his claim because he wanted to visit his sick grandmother and was missing his girlfriend; however, in his Notice of Withdrawal, the Applicant mentioned only that a friend had been in an accident.

- B. The Applicant's own evidence was that his decision to withdraw his claim was voluntary and not coerced. The Applicant stated he wished to return to see his sick grandmother and girlfriend. He willingly retrieved his travel documents from Canadian officials in order to return to the UK.
- C. The Applicant's claim that he was illiterate and therefore did not understand what he was doing when withdrawing his refugee claim is without merit. The Applicant was able to tell his story in English and was able to function at high level when performing administrative and day-to-day tasks that required English comprehension.
- D. The Applicant's claim that he was unsure of the basis for his refugee claim was not supported by the evidence:
- i. The Applicant was able to relay his story when he was personally interviewed. At no point did the Applicant indicate that he was illiterate or incapable of understanding the claim process.
 - ii. In the Applicant's basis of claim ("BOC") form, an interpreter signed a declaration attesting that the form and documents had been accurately conveyed to the Applicant.
 - iii. The Applicant's family was close-knit. They would likely be able to share the nature of the refugee claims at issue with each other.

iv. The Applicant's story in his affidavit is largely the same as in the original BOC form.

E. There are other credibility concerns arising from the Applicant's inconsistent evidence:

i. The Applicant claimed to be a member of the Irish Traveller community and therefore not have a fixed address, yet he claims to have lived at a fixed address for 10 years.

ii. The Applicant, his father and brothers entered Canada as visitors, but later the Applicant claimed that they left because they feared being attacked.

iii. The Applicant only sought to reinstate his refugee claim once his dual identity was revealed.

[17] With respect to its finding that the Applicant had not established that it was otherwise in the interests of justice for the claim to be reinstated the RPD made the following determinations:

A. The personal circumstances of the Applicant did not warrant reinstating the claim:

i. The Applicant was 18 at the time he made his claim. He was no longer a minor. The Applicant functioned at a high level and is not otherwise a "vulnerable person" in that he is unable to present his case.

- ii. The Applicant was charged for a criminal offense while in Canada. If he “truly cared” about his immigration status, he would have avoided being accused of criminality.
 - iii. The Applicant had sufficient time to make a refugee claim and there were not compelling reasons to allow for adjudication of the Applicant’s claim simply because the claims of his father and brothers were going forward.
- B. The application for reinstatement was not made in a timely manner and there was no justification for the delay.
- C. Given the credibility issues in the Applicant’s story, there is little merit to the underlying refugee claim.

IV. Issue

[18] Did the RPD err in refusing to reinstate the Applicant’s refugee claim?

V. Standard of Review

[19] The standard of review is reasonableness with respect to RPD decisions refusing applications for reinstatement of withdrawn refugee claims. Unless there was a failure to observe a principle of natural justice or is otherwise in the interests of justice to allow the application, it should not be allowed (*Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 12).

VI. Analysis

[20] The RPD reviewed the evidence and determined that the Applicant had not established there had been a failure to observe the principle of natural justice:

- (i) based on the Applicant's own evidence, his decision to withdraw his claim and return to the UK was voluntary and was not coerced;
- (ii) the Applicant provided varying and inconsistent evidence with regard to why he returned to the UK – his Notice of Withdrawal indicates a friend had been in an accident, yet the Applicant's application to reinstate does not mention the friend and lists visiting his girlfriend and grandmother as the reasons for returning;
- (iii) there was no pressing or consistent reason for the Applicant to return to the UK;
- (iv) the Applicant claimed to be illiterate, but there was some evidence of at least partial literacy – furthermore, the Applicant did not mention his alleged illiteracy at the time of his initial refugee claim and attested that he understood all of the relevant documents at that time;
- (v) the 15-day requirement to file a BOC applies to all refugee claimants and was not a violation of natural justice;

- (vi) the Applicant was aware of the nature of the original refugee claim as he explicitly relied on the narrative of his father and therefore returned to the UK fully cognizant of his father's allegations of risk from the family he feared;
- (vii) the Applicant's adoption of a new identity, re-entering Canada under that identity, falsely stating he had never been to Canada before and failing to seek reinstatement of his refugee claim for over a year all weighed against a finding that there had been a breach of natural justice.

[21] Moreover, the RPD also properly considered the second part of the test under Rule 60(3) – whether the interests of justice weighed in favour of reinstating the refugee claim. The RPD weighed the relevant evidence and factors, including an assessment of the Applicant's personal circumstances:

- (i) the RPD acknowledged that the Applicant was young (18) when he first made his refugee claim;
- (ii) the Applicant has been charged with assault under the Criminal Code;
- (iii) the RPD found that although the Applicant asserted that his circumstances had changed and that after returning to the UK he faced a risk that he had not previously faced, the evidence indicated that in 2019 when he made his refugee claim, the Applicant stated that he was at risk from the rival family by virtue of his

membership in his own family – his return to the UK did not result in a change of circumstances warranting reinstatement;

- (iv) the Applicant provided inconsistent reasons for returning to the UK and did not attempt to reinstate his claim until he was arrested;
- (v) in not seeking reinstatement as soon as possible, the Applicant made a strategic decision which did not work to his advantage – this does not provide a reason to reinstate;
- (vi) the Applicant did not provide sufficient evidence to establish that he is a vulnerable person;
- (vii) the application to reinstate was not made in a timely manner (over one year after returning to Canada);
- (viii) there was no reasonable explanation for the delay;
- (ix) in all of the circumstances, it was not in the interests of justice that the Applicant's refugee claim be reinstated.

[22] For the reasons provided above by the Respondent, I find that it was reasonable for the RPD to determine that a reinstatement of the Applicant's refugee claim was not justified.

JUDGMENT in IMM-691-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-691-22

STYLE OF CAUSE: MILES NOLAN, NOW MILES JONES v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
AND MINISTER OF PUBLIC, SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 15, 2023

JUDGMENT AND REASONS: MANSON J.

DATED: AUGUST 24, 2023

APPEARANCES:

Arlene Rimer FOR THE APPLICANT

Andrea Mauti FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Arlene Rimer FOR THE APPLICANT

Barrister and Solicitor

Toronto, Ontario

Attorney General of Canada

Toronto, Ontario

FOR THE RESPONDENTS