

Date: 20090429

Docket: IMM-4423-08

Citation: 2009 FC 433

Toronto, Ontario, April 29, 2009

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ERKAN DOLAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The determination of this Application rests upon a single issue, that of procedural fairness. The evidence of the Applicant's Counsel at the hearing before the Board, provided by way of her affidavit filed with this Court, states that the hearing took place by way of a teleconference and, on at least one occasion, the Board Member who ultimately decided the case and the Refugee Protection Officer were seen to be having a conversation while Counsel was muted out. Further Applicant's Counsel attests that there must have been subsequent conversations between the

Minister and the Officer having regard to certain correspondences, that Counsel received from the Board.

[2] It is improper for the Board Member and Refugee Protection Officer to have conversations between themselves that deal in any way with the case under consideration without Counsel for the claimant being present or at least afforded a reasonable opportunity to be present.

[3] Counsel for the Respondent pointed to a letter from the Case Management Officer of the Board to the claimant's Counsel stating that administrative matters only were discussed in such conversations and not the facts or merit of the case. That Case Management Officer was not a party to the conversations. That letter is not proper evidence before this Court.

[4] Whatever the rules of evidence may be before the Board, if a matter of procedural fairness is raised in this Court by way of an affidavit filed with the Court then the responding party should file its own evidence with this Court responding to those allegations or cross-examine on the affidavit filed by the other party. Simply to point to a third party's letter is insufficient evidence.

[5] Here, on the evidence before this Court as to the one or more private conversations between the Board Member and Refugee Protection Officer give rise to a reasonable belief that there has been a disregard of procedural fairness.

[6] The application will be allowed and returned to for redetermination by a different member.

There is no question for certification and no Order as to costs.

JUDGMENT

FOR THE REASONS provided:

THIS COURT ADJUDGES that:

1. The application is allowed;
2. The matter is returned for redetermination by a different member;
3. There is no question for certification;
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4423-08

STYLE OF CAUSE: ERKAN DOLAS v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 29, 2009

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

DATED: April 29, 2009

APPEARANCES:

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