Federal Court  Cour fédérale

Date: 20111103

Docket: IMM-177-11

Citation: 2011 FC 1260

Ottawa, Ontario, November 3, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SHAID UDDIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Uddin, a citizen of Bangladesh, arrived in Canada via the United States in 2000. His claim that he was a refugee, within the meaning of the United Nations Convention, was dismissed, as was his subsequent pre-removal risk assessment. He was "deported" to the United States in July 2003.

[2] There are three types of removal orders: departure orders, exclusion orders and deportation orders. If a foreign national is removed within the time prescribed, he need not obtain authorization

in order to return to Canada. If he leaves late, however, as Mr. Uddin did, the departure order becomes a deportation order, which obliges him to obtain written authorization from an officer in order to return to Canada: see section 52(1) of the *Immigration and Refugee Protection Act* [IRPA] and sections 223 and following of the *Immigration and Refugee Protection Regulations*.

[3] Not only did Mr. Uddin come back to Canada in 2007, he did not bother to present himself at a port of entry in order to ask for permission. He sneaked into Quebec from northern New York State. The reason he wanted to return to Canada was to join his wife, a Canadian permanent resident, whom he married over the telephone; he being in New York and she in Bangladesh. Let him tell the story:

> With the help of my friend I met a Pakistani smuggler in a restaurant in N.Y. He promised to bring me to Canada in exchange for $4,000. On November 9, 2007 at night, he picked me in his car and drove about 1 ½ hours and then transferred me to two Spanish speaking guys. They too me into their vehicle and started their journey towards Canada. … They drove about 5/6 hours and then came to a busy area. One of them got out of the vehicle and asked me to follow him. We walked through a bushy area for about 20 minutes after crossing a small swampland (Muddy and little water). The Spanish guy told me "We are now in Canada". He also talked to another person over his cell phone. Another vehicle came over there and we got into the vehicle. They drove for about one hour or so and reached the Plamondon area of Montreal. As per our agreement I gave the Spanish guy the promised money of $4,000 and the driver dropped me in front of Plamondon metro on November 9, 2007. I came to Vezina Street and met my wife Fatema Begun. Since then we have been living together happily on Vezina Street in Montreal.

[4] A year and a half later, he filed an "In-Canada application for permanent resident status". He disclosed his first sojourn in Canada, his removal, and his return.

[5] The application was dismissed because he returned to Canada without the authorization of an officer as required by section 52(1) of IRPA. This is the judicial review of that decision.

[6] Mr. Uddin submits that the officer committed various reviewable errors by not informing him of her concerns regarding the authorization to enter Canada after being deported. It follows that he had no opportunity to respond to her concerns. Furthermore, she did not consider his humanitarian and compassionate grounds for an exemption of the requirement to be pre-authorized to return to Canada after being deported. She could have granted an exemption.

DISCUSSION

[7] Issues of procedural fairness are beyond the realm of the standard of judicial review. The Court owes no deference to the decision maker: see *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539. Alternatively, one might say the standard of review is correctness: see *Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 3 FCR 392.

[8] One might wonder what duty one owes to a scofflaw who deliberately flaunts our laws and wallows back through the big muddy. Be that as it may, whatever duty of fairness the immigration officer owed was discharged.

[9] There was no humanitarian and compassionate application before her. At best, there is one line in her own notes of interview of Mr. Uddin and his wife in which they stated that they were undergoing fertility treatments as they had gone more than two years without being able to

conceive. The officer was concerned with the solemnity of the marriage which, as mentioned above, took place by procuration via the telephone. Perhaps she should not have been concerned with this point as she was satisfied of the legitimacy of the relationship. In any event, they resolved her concerns by entering into a marriage ceremony at a Mosque in Montreal.

[10] The officer was criticized for not specifically raising her concerns about Mr. Uddin's status in Canada earlier, or at any time. In her notes dated 28 September 2010, the officer expressed satisfaction with respect to the relationship but stated that she was obliged to dismiss the application in virtue of section 52(1) of IRPA. However, the letter to Mr. Uddin dismissing his application is only dated 20 December 2010.

[11] The order granting leave to have the matter judicially reviewed was in the standard form. It provided that each side was entitled to serve and file further affidavits and to cross-examine thereon. The Minister filed an affidavit from the immigration officer in which she said that after her meeting with the Uddins on 21 September 2010, she informed their immigration consultant that she would have to dismiss the application because of section 52(1) of IRPA. The consultant asked her to hold off so that he could consider the situation. They further discussed the matter at least on two other occasions during the months of October and November 2010. It was only after protracted silence that the decision was actually issued.

[12] She was not cross-examined on her affidavit. Nor was leave sought to have affidavits in reply filed by Mr. Uddin, his wife, or the immigration consultant.

[13] Counsel for Mr. Uddin stated it would be inappropriate to cross-examine because the affidavit was self-serving, with no reference to these discussions in her notes. On the other hand, the dates are consistent with her recollection. Section 66 of the *Immigration and Refugee Protection Regulations* provides that a request by a foreign national under section 25 of IRPA on humanitarian and compassionate grounds must be made in writing. The timeline gave Mr. Uddin every opportunity to do so. He did not.

[14] There was no breach of procedural fairness in this case and otherwise the decision was reasonable. The application is dismissed.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. This application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	UDDIN v MCI
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