

Federal Court



Cour fédérale

Date: 20130219

Docket: IMM-1763-12

Citation: 2013 FC 172

Toronto, Ontario, February 19, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DEQUAN AMATUS CARLTON EVANS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Court takes extraordinary care to protect the rights of minors; however, it requires evidence to do so and none has been provided upon which to positively respond to counsel's plea to set aside the decision that the applicant minor's refugee claim has been abandoned.

[2] Dequan Amatus Carlton Evans is a citizen of St. Lucia. In September 2010, at the age of 14, Dequan fled St. Lucia and his abusive father and made an inland claim for refugee protection in Canada. Dequan was assisted in his travel to Canada and in making his refugee claim by his mother. When he arrived, he lived with her and his stepfather in the Greater Toronto Area.

[3] Dequan's mother was appointed as his designated representative and she retained current counsel to represent him in the refugee claim, and presumably this application.

[4] The Refugee Protection Division of the Immigration and Refugee Board scheduled Dequan's refugee hearing for May 9, 2011. Only his counsel attended. Counsel advised the Board that Dequan was ill and could not attend, but did not provide the Board with any doctor's note or other substantiation of the illness.

[5] On July 7, 2011, Dequan and his counsel were notified by mail that a 'show cause' hearing would be convoked on September 9, 2011, to permit him a chance to explain why he did not appear at his refugee hearing and address whether his claim should be declared abandoned.

[6] Neither Dequan nor his counsel appeared at the September 9, 2011 show cause hearing. Counsel, however, faxed the Board on that date a short letter advising that Dequan could not attend that day's hearing due to unspecified "medical reason(s)" – corroborated by a doctor's note of similarly-limited explanatory value – and proposed that the Board reschedule the show cause hearing to a new date.

[7] The Board obliged. By letter dated October 17, 2011, the Board notified Dequan and his counsel that the show cause hearing would take place on November 18, 2011.

[8] Once again, Dequan did not attend. Counsel, however, attended, and advised:

Unfortunately, the minor claimant is not here. We have not received any medical note yet but I...like I said before we went on the record, I did get a valuable information that claimant is still not very well.

[9] The Board then asked when the last time counsel had heard from the applicant. His answer: September 9, 2011. After reviewing Dequan's attendance record before the Board and noting that he lived with his mother and stepfather in Canada, the Board concluded that Dequan was not taking the refugee process seriously and declared his refugee claim abandoned.

[10] The applicant's most superficially-appealing argument in this application is that Dequan's "mother had been going through traumatic personal problem which might be preventing her from taking decision in the interest of the minor, such that the minor applicant might not even have been aware of the date of the proceeding of November 18, 2011 [*sic*] [*emphasis added*]." However, there is not one shred of evidence before the Court relating to Dequan's knowledge or lack thereof, his mother's situation, or indeed of anything relating to Dequan's situation or that of his family here, or of counsel's interactions with any of them. In short, counsel offers the Court nothing other than mere speculation and suggestion and that cannot be the foundation of any reasonable or proper decision.

[11] This application has no merit. I agree with the respondent that, quite simply, on the record before the Board and in this Court, there is no evidence that the Board failed to observe any principle of natural justice or that its decision that the refugee claim was abandoned was unreasonable. Dequan was represented by counsel and had his mother as a designated representative, they were all notified of the hearings, was indeed given an *additional* opportunity to appear beyond the September 9, 2011 hearing, where Dequan failed to attend for the second time,

and none of these three individuals or any other has provided evidence to this Court that explains why Dequan could not or did not attend the scheduled hearings. In this case, the Board went above and beyond the requirement to hold one show cause hearing.

[12] This application must be dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1763-12

STYLE OF CAUSE: DEQUAN AMATUS CARLTON EVANS v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 19, 2013

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

DATED: February 19, 2013

APPEARANCES:

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