

CANADA / JUDGMENT

TB7-22210

COURT

Refugee Protection Division

DECIDED

1 May 2018

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RPD File No. / N° de dossier de la SPR : TB7-22210 TB7-22247 TB7-22251 TB7-22252 TB7-22253
TB7-22254 Private Proceeding / Huis clos Application to Reopen Reasons and Decision ? Motifs et
Décision Claimant(s) XXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX
XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX
Demandeur(e)(s) d'asile Date(s) of Hearing N/A Date(s) de l'audience Place of Hearing Toronto,
Ontario Lieu de l'audience Date of Decision May 1, 2018 Date de la décision and reasons et des
motifs Panel T. Andrews Tribunal Counsel for the Claimant(s) Allison Pyper Conseil(s) du (de la/
des) demandeur(e)(s) d'asile Designated Representative(s) N/A Représentant(e)(s) désigné(e)(s)
Counsel for the Minister N/A Conseil du (de la) ministre REASONS FOR DECISION

- [1] I have received the claimants' application to reopen their refugee claim which the Refugee Protection Division (RPD) found to have been abandoned on December 7, 2017 because they failed to submit Basis of Claim (BOC) forms within 15 days of the referral of their claims and they failed to appear at a special hearing on December 7, 2017.
- [2] Counsel for the applicants (formerly the claimants) requests that the RPD reopen the claim for reasons set out in an application received on December 7, 2017. In that application, Counsel asserts that "there was a breach of natural justice; the right to be heard and to prepare a BOC because of the principal applicant [XXXX XXXX XXXX XXXX] inability to speak, write or understand English, her lack of resources and of familial ties in Canada." In addition, Counsel submits that the applicant's XXXX XXXX concerns and XXXX XXXX XXXX XXXX XXXX (XXXX) constrained her ability to fully participate in the beginning process of her claim. Counsel states that the applicant is "exceptionally vulnerable partly due to her reliance on interpretation services, her mediocre level of education, lack of any professional career and due to her XXXX."
- [3] In the initial application, an affidavit from XXXX XXXX, a legal assistant at XXXX XXXX XXXX is attached. Both that affidavit and counsel's application make mention of a forthcoming report from Psychotherapist XXXX XXXX and in fact quote the Psychotherapist. However, no assessment was attached or provided. Hence, the panel requested that counsel provide a copy of the psychological assessment to be taken into consideration prior to coming to a decision on the application to reopen. The psychological report was subsequently provided on March 10, 2018.

- [4] In making my decision, I have considered the applicant's submissions, the relevant legislation and RPD Rules governing reopening, specifically Rules 50 and 62.
- [5] According to Rule 62 (6) of the Refugee Protection Division Rules (Rules), the Division must not allow the application unless it is established that there was a failure to observe a principle of natural justice.
- [6] According to the affidavit of XXXX XXXX, the applicant made her refugee claim at the airport upon arrival. She had use of a Somali, Arabic speaking interpreter over the phone on the first night and a Lebanese, Arabic speaking interpreter on the second day. The applicant recalls that the translation specific to that second day was "quite poor". However, this is not borne out by information on file.
- [7] The applicant was asked at the beginning of interviews on November 13, November 14, as well as at the Minister's Delegate review whether she understood the Arabic interpreters and she indicated that she did as found in the interview notes. While the notes from November 15, 2017, do not have a similar acknowledgement, there is no evidence in those notes to reflect that the applicant was having any difficulties. In fact, the applicant was readily able to give very specific details regarding what and who she fears as well as specific dates related to time spent in jail and dates of birth in all interviews as well as on the forms completed, for example the IMM0008.
- [8] In addition, the applicant signed an acknowledgement of conditions at the conclusion of her interview on November 15, 2017, which specified that she would provide the completed original and one (1) copy of the Basis of Claim (BOC) form to the Refugee Protection Division within fifteen (15) days from that day. Furthermore, at the conclusion of the Minister Delegate Notes/Review, Officer T. Tardiff indicates that his report was read to the applicants and he "stressed the importance of 10 days to provide address, 15 days to provide the Basis of Claim form."
- [9] Given that information as well as the fact that when interviewed at the border, she was assisted by accredited Arabic interpreters, I find that reasonably the forms related to their refugee claim were explained to them. Beyond that, the information was transmitted to them in writing in accordance with Subrule 3(4) of the Rules on their Notice to Appear. Hence, I find that there has been no failure to observe a principle of natural justice on the part of the Board as the applicants were duly informed of the requirements surrounding the BOC.
- [10] With respect to the issue of the applicant's mental health and whether her XXXX has resulted in a denial of a fair hearing, I find this is not a persuasive argument. The note from the Psychotherapist indicates that the applicant is exhibiting symptoms consistent with XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX XXXX and the applicant reports having problems with XXXX and XXXX as well as difficulty with XXXX XXXX XXXX XXXX, but I note that the applicant was able to fully participate in the interview with the Psychotherapist although she found it stressful and she responded to all questions asked.

Hence, I do not find that the applicant's mental incapacity was such that she could not appreciate the nature of the proceedings during the initiation of her claim and I find that there was no procedural deficiency which affected the fairness of the hearing.

[11] For the foregoing reasons, the application is dismissed. (signed) "T. Andrews" T. Andrews
May 1, 2018 Date RPD.29.1 (August 31, 2012) RPD File No. / N° de dossier de la SPR :
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Prepared on 26 October 2026 · Esheria