

Date: 20090320

Docket: IMM-3953-08

Citation: 2009 FC 297

Ottawa, Ontario, March 20, 2009

PRESENT: THE CHIEF JUSTICE

BETWEEN:

INZEELEENA HAQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In 2004, a member of the Refugee Protection Division dismissed the refugee claim of the applicant's husband because he found his testimony was not credible.

[2] In 2008, the same member presided over the applicant's refugee hearing. He concluded that the applicant's allegations lacked credibility on the basis of his negative finding in her husband's refugee claim.

[3] The allegations of both spouses concerning the events prior to 2004 were substantially similar. Neither spouse testified at the other's hearing.

[4] There is nothing in the tribunal record to explain why this applicant's refugee hearing was scheduled before the same member who heard her husband's claim in 2004. The two claims could have been scheduled before different members. It would be unlikely, to say the least, that a member would make a negative credibility finding against the applicant in 2008 because a different member had not believed her husband in his earlier hearing in 2004.

[5] In my respectful view, it was an error in law for the same board member to base his credibility finding concerning the applicant on the basis of his determination with respect to her husband in an earlier hearing, even if the allegations were substantially similar. The applicant has the right to a refugee hearing with a member with an open mind concerning her claim.

[6] In this case, the applicant also asserted new facts on the basis of events alleged to have occurred between March 2005 and her seeking refuge in Canada in 2007. The reasons disclose no analysis "in clear and unmistakable terms" for not believing the applicant's story concerning the events which occurred in her country of citizenship after her husband had sought refuge in Canada. This constitutes a second reviewable error.

[7] For these reasons, the decision under judicial review will be set aside and the matter will be referred for redetermination by a different member. Neither party suggested the certification of a serious question and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is granted.
2. The decision of the Refugee Protection Division, dated August 20, 2008, is set aside and the matter is referred for redetermination by a different member.

"Allan Lutfy"
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3953-08

STYLE OF CAUSE: INZEELEENA HAQ v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 16, 2009

REASONS FOR JUDGMENT: LUTFY C.J.

DATED: March 20, 2009

APPEARANCES:

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Mrs. Claudine Patry FOR THE RESPONDENT

SOLICITORS OF RECORD:

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