

1986 CarswellNat 833
Federal Court of Canada — Trial Division

Rafeek v. Canada (Min. of Employment & Immigration)

1986 CarswellNat 833, [1986] B.C.W.L.D. 3103,
[1986] F.C.J. No. 302, 38 A.C.W.S. (2d) 325, 5 F.T.R. 5

Mohamed Haddod Mohamed Rafeek v. Minister of Employment and Immigration

Pinard J.

Judgment: May 12, 1986

Docket: Doc. T-951-86

Counsel: *C. McCool* , for the applicant.

P. Partridge , for the respondent.

Subject: Immigration

Headnote

Aliens, Immigration and Citizenship --- Immigration — Convention refugees

Quorum — Refugee Status Advisory Committee -- Applicant seeking certiorari to quash determination that applicant not Convention refugee, and arguing that s. 45(4) of Immigration Act not complied with because only three members of Refugee Status Advisory Committee considering case — Committee having 15 to 18 members but Act not specifying number of members of Committee nor quorum — S. 21(1) of Interpretation Act providing that where Act required to be done by more than two persons, majority may do it — S. 21(2) setting out quorum provision where enactment establishing body of three or more members — Application dismissed — S. 21(1) and (2) not applying to establish quorum where no specific enactment either providing that "act or thing is required to be done by more than two persons" or establishing "body consisting of three or more members" — Immigration Act, S.C. 1976-77, c. 52, s. 45, 45(4) -- Interpretation Act, R.S.C. 1970, c. I-23, s. 21, 21(1), (2).

Pinard, J.:

1 UPON NOTICE OF MOTION dated the 23rd day of April, 1986, on behalf of the applicant "for an order pursuant to s. 18 of the *Federal Court Act* ,

(a) in the nature of a writ of certiorari to quash the determination made by the respondent on or about March 20, 1986, that the applicant is not a Convention refugee as defined by section 2(1) of the *Immigration Act, 1976* , and,

(b) in the nature of a writ of mandamus requiring the respondent to determine once again the applicant's claim to be a Convention refugee in accordance with s. 45 of the *Immigration Act, 1976*, and the definition contained in section 2(1) thereof,

(c) and for such other and further relief as this honourable court may deem meet."

2 First, counsel for the applicant contended that the respondent made her determination on the basis of facts that did not constitute part of the applicant's testimony and without reference to material facts which did form part of the applicant's testimony.

3 In my view, after reviewing the applicant's testimony, I am satisfied that the reasons for the respondent's decision, as stated in the letter to the applicant dated March 20, 1986, when put in the whole context of the applicant's testimony, did not contain any significant error of fact. Therefore, I would not feel justified to substitute my own opinion for the respondent's with relation to the appreciation of the facts.

4 Furthermore, it seems to me that even though the common law right to certiorari may not be entirely excluded as a result of the re-determination procedure available before the Immigration Appeal Board, it should be only in a rare and very exceptional case of an obvious failure to apply provisions of the law that the Trial Division of this court should interfere by way of certiorari quashing a determination by respondent that an applicant is not a Convention refugee or issue a mandamus requiring respondent to again determine an applicant's claim.

5 Secondly, counsel for the applicant submitted that section 45(4) of the *Immigration Act, 1976* has not been complied with because only three members of the Refugee Status Advisory Committee considered the case. Counsel suggested that section 21 of the *Interpretation Act* (R.S.C. 1970, c. I-23) ought to apply in view of the fact that the Chairman of the Committee would have indicated that the committee was "made up of fifteen to eighteen members" (see affidavit of Charles Groos).

6 Section 21 of the *Interpretation Act* reads:

21.(1) Where an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

(2) Where an enactment establishes a board, court, commission or other body consisting of three or more members (in this section called an 'association'),

(a) at a meeting of the association, a number of members of the association equal to

(i) at least one-half of the number of members provided for by the enactment, if that number is a fixed number, and

(ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range,

constitutes a quorum;

(b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association; and

(c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

7 The provisions in sections 45 and 48 of the *Immigration Act, 1976* do not determine any number of members of the Refugee Status Advisory Committee. Neither do they determine the minimum number of members of the Committee who must participate in carrying on the duties assigned to it. No other provision in the *Act* touching the question of the composition of that Committee has been brought to the attention of the court. Consequently, section 21 of the *Interpretation Act* should not apply in the present case where there is no specific enactment either providing that "an act or thing is required or authorized to be done by more than two persons", or establishing a "body consisting of three or more members."

8 Even if one argued that in the *Act* it is implied that "an act or thing is required or authorized to be done by more than two persons", I think that section 21(1) of the *Interpretation Act*, ought, then, to be interpreted as Jackett, C.J. (as he then was), did *Reference re Tariff Board Act (Canada)*, [1977] 2 F.C. 228, 15 N.R. 361, 73 D.L.R. (3d) 173 (C.A.), when he expressed the following view at pages 231 and 232:

Counsel for the Attorney General of Canada put forward the argument that section 21(1) of the *Interpretation Act* read with section 3(8) of the *Tariff Board Act* was sufficient to require an affirmative answer to the question put to this court by the board. In his submission, as we understood him, section 3(8) authorizes three or more members to decide an appeal and section 21(1), therefore, authorizes a 'majority of them' to do it. In our view, section 21(1) cannot be used to make an alteration in the requirements of a provision fixing the 'quorum' required to deal with a matter. Although we recognize that the words of the subsection are wide enough, read literally, to support counsel's submission, as it seems to us, section 21(1) deals with a case where a statutory quorum is exercising a statutory power; *in effect, it makes the 'majority' decision the decision of the group*.

(emphasis is mine)

9 For all those reasons the applicant cannot succeed.

ORDER

10 The application is dismissed with costs.

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