



Reasons and Decision – Motifs et décision

Person Concerned	HAGOS BEIENE	Intéressé
Date(s) of Hearing	N/A	Date(s) de l'audience
Place of Hearing	Toronto, Ontario (In Chambers)	Lieu de l'audience
Date of Decision	May 15, 2010	Date de la décision
Panel	Lois D. Figg Chairperson's Delegate	Tribunal

Introduction

[1] This decision concerns the practice of Hagos Beiene (hereinafter referred to as “Mr. Beiene”) before the Immigration and Refugee Board (IRB or the “Board”). It considers whether Mr. Beiene has breached the *Immigration and Refugee Protection Regulations* regarding counsel who are authorized to represent persons who are the subject of proceedings before the Board, and if so, what, if any, sanctions are appropriate to impose upon him.

Background

[2] Since April 2004, Hagos Beiene has represented more than 400 persons who are the subject of proceedings at the IRB, primarily in the Refugee Protection Division (RPD) of the Board’s Central Region, on a “without a fee” basis. Under the *Policy for Handling IRB Complaints Regarding Unauthorized, Paid Representatives* (hereinafter “the Policy”), both the person who is the subject of the proceeding and his or her counsel must provide the Board with a signed declaration that the counsel is an unpaid representative (section 5.3), and this practice has been adhered to at the Board.

[3] Mr. Beiene is not a member in good standing of a bar of a province, the *Chambres des notaires du Québec* or the Canadian Society of Immigration Consultants (CSIC).

[4] There is an Internet record for Hagos Paralegal Service at www.profilecanada.com showing Hagos Beiene as the contact, and a listing for Hagos Immigration & Paralegal Services at www.411.ca/business and at www.All.Pages.com/Toronto/professional/legal, among other Internet listings.

[5] Clients of Mr. Beiene come to the Board’s reception area on a fairly frequent basis looking for Mr. Beiene. They have been asked to leave the area if they do not have a hearing or other business with the Board that day. Mr. Beiene has been notified by the Board of these occurrences on several occasions.

[6] The Policy provides in section 5.5 that frequent appearances at the Board as an unpaid representative may be an indication that a representative who claims to be unpaid may actually be charging a fee.

[7] Based on the foregoing, and in particular because of the very large number of cases on which Mr. Beiene has appeared at the RPD, the Assistant Deputy Chairperson of the RPD, Central Region, determined, in accordance with section 5.6 of the Policy, that there was sufficient information to proceed with a review of Mr. Beiene's practice before the Board.

[8] At the direction of the Assistant Deputy Chairperson, the Registrar advised Mr. Beiene by letter, dated August 28, 2009, that the Board would be conducting a review of the facts to determine whether he should be prohibited from representing and appearing on behalf of any person in their proceedings before the Board.

[9] Mr. Beiene was asked to provide written representations concerning these allegations within a period of three weeks from the date of the letter, and to draw to the Board's attention any additional facts he considered relevant. Mr. Beiene was also requested to furnish proof, such as business, income tax or other records, to show that he was not receiving payment for his services in representing persons at the Board. He was further advised that the Board may impose sanctions up to and including permanently prohibiting him from representing and appearing on behalf of any person before the Board, and was asked to make submissions as to how the Board should deal with that matter. Finally, Mr. Beiene was advised that if he failed to reply, the Board would make its determination nonetheless, without the benefit of his reply.

[10] Since the Board did not receive a reply from Mr. Beiene within the time specified, the Registrar forwarded another letter to Mr. Beiene, dated October 19, 2009, advising him of the ongoing review of his practice and informing him that he had an opportunity to respond to the allegations, in person or in writing, in accordance with the Board's Policy. Mr. Beiene was also informed to advise the Board by November 9, 2009, if he was requesting a hearing in order to make representations on his behalf. He was again reminded that if he failed to reply within the specified time, and provided no response to the allegations, the Board would, nonetheless, proceed to make its determination in his case, without the benefit of his reply.

[11] The Board did not receive a reply from Mr. Beiene within the additional time specified, or at all. Therefore, the Assistant Deputy Chairperson has proceeded with the review of Mr. Beiene's practice and is making a determination, without the benefit of any response from him.

Jurisdiction and Delegation

[12] Section 3.5 of the *Policy for Handling IRB Complaints Regarding Unauthorized, Paid Representatives* states that the Chairperson's delegate is the Assistant Deputy Chairperson or Director of the Division in the region in which the facts leading to the complaint arise. Since the facts leading to the complaint arose in the RPD, Central Region, as the Assistant Deputy Chairperson of that Division in the Central Region, I am the Chairperson of the Board's delegate under the Policy in this case.

[13] The issue of whether an Assistant Deputy Chairperson, who has been delegated the power by the Chairperson of the Board, has the jurisdiction to suspend an agent or representative of an individual from appearing before a Division of the Board because of concerns regarding the agent's or representative's conduct, was dealt with in *Rezaei*.¹ The Federal Court Trial Division found that section 58(4) of the former *Immigration Act*² granted to the Chairperson the power to delegate authority to an Assistant Deputy Chairperson. Moreover, the Court found that the Board has the inherent jurisdiction to monitor its own procedures in order to ensure integrity, and that in the absence of specific procedures laid down by statute or regulation, the Board has the ability (through the Assistant Deputy Chairperson with the delegated power of the Chairperson) to suspend an agent or representative from appearing before the Board on behalf of another person.

[14] Since the decision in *Rezaei*, the *Immigration and Refugee Protection Act (IRPA)* has come into force on June 28, 2002, and the former *Immigration Act* was repealed.

¹ *Rezaei v. Canada (Minister of Citizenship and Immigration)*, [2003] 3 F.C. 421 (T.D.).

² 58. (4) The Chairperson may authorize any Deputy Chairperson or Assistant Deputy Chairperson of the Refugee Division or Appeal Division and any coordinating member of the Refugee Division to exercise any power or perform any duty or function of the Chairperson under this Act, other than (a) the power to make rules under subsection 65(1), (b) the power, duty or function in relation to the Adjudication Division, or (c) the power to delegate under this subsection, and, if so exercised or performed, the power, duty or function shall be deemed to have been exercised or performed by the Chairperson.

Section 58(4) of the *Immigration Act* has been replaced by section 159(2) of the *IRPA*, which reads:

159. (2) The Chairperson may delegate any of his or her powers under this Act to a member of the Board, other than a member of the Immigration Division, except that

(a) powers under subsection 161(1) may not be delegated;

(b) powers referred to in paragraphs (1)(a) and (1)(i) may be delegated to the Executive Director of the Board; and

(c) powers in relation to the Immigration Division may only be delegated to the Director General, Directors or members of that Division.

[15] It is clear that the Chairperson has statutory power to delegate to Board Members, other than Members of the Immigration Division, *any* of his powers, except the power to make rules as set out in section 161(1) of the *IRPA*, the power to supervise and direct the work of IRB staff, and the power to appoint and fix the remuneration of experts or persons with special knowledge to assist the Divisions of the Board (the latter two powers may be delegated to the Executive Director of the Board).

[16] I find that the power of the Chairperson to delegate under the *IRPA* is at least as broad as the power to delegate conferred by the former *Immigration Act*. Consequently, I find that the decision and reasons for judgment in *Rezaei* regarding the issues of jurisdiction of the Board to ensure the integrity of its process and delegation of the Chairperson's power continue to be applicable under the *IRPA*. I further find that the Chairperson has delegated to me his power with respect to this matter in accordance with section 3.5 of the Policy.

Legislation and IRB Policy on “Unauthorized Representatives”

[17] Section 13.1 of the *Immigration and Refugee Protection Regulations*, which came into effect on April 13, 2004, provides in part:

13.1(1) Subject to (2), no person who is not an authorized representative may, for a fee, represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board.

[18] An “authorized representative” means a member in good standing of a bar of a province, the Chambres des notaires du Québec or the CSIC.

[19] On April 10, 2008, the Board or IRB introduced its *Policy for Handling IRB Complaints Regarding Unauthorized, Paid Representatives* (the Policy), which is available online at:

http://www.irb-cisr.gc.ca/Eng/brdcom/references/pol/pol/Pages/paid_remun.aspx

Determination

[20] Under the terms of the *Policy for Handling IRB Complaints Regarding Unauthorized, Paid Representatives*, the Board has undertaken to actively monitor that only authorized or unpaid representatives act as counsel before all its Divisions. The Federal Court has recognized that this Policy imposes an important duty on the Board in order to properly fulfill its mandate. Mr. Justice Lagacé stated in the case of *Domantay*:

[19] ... the Court shares the view that there is a duty incumbent upon the Board to verify that those individuals representing clients with whom it has dealings are authorized representatives pursuant to the Regulations, or that they are not receiving a fee for their services. This duty envisions the protection of applicants and the preservation of the integrity of Canada's immigration system.³

[21] Section 5.5 of the Policy sets out possible indications that a representative who claims to be unpaid may actually be charging a fee, including:

- frequent appearances as an unpaid representative
- relevant information from a source outside the Board

[22] The sheer volume of persons that Mr. Beiene has represented before the Board since April 2004, which number exceeds 400, raises legitimate concerns about the nature of Mr. Beiene’s practice and whether it constitutes a business, rather than providing a *pro bono* service for refugee claimants. Consequently, Mr. Beiene was asked to furnish proof, such as business, income tax or other records, to show that he was not receiving payment for his services in representing persons at the Board.

³ *Domantay, Romeo Mejia v. M.C.I.* (F.C., no. IMM-5109-07), Lagacé, June 18, 2008; 2008 FC 755.

[23] Despite two reminders, and giving him more than three months for a response to the Board's concerns, to date Mr. Beiene has not provided any response to the allegations or any documentation concerning his practice.

[24] Since it is the responsibility of the Board to ensure that the *Regulation* concerning authorized representatives is respected in order to protect refugee claimants and safeguard the integrity of Canada's refugee determination system, I hereby order that Mr. Beiene is prohibited from representing and appearing on behalf of any person in any proceeding before all Divisions of the Board, effective immediately. This prohibition will remain in effect indefinitely, until such time as Mr. Beiene furnishes proof that satisfies the Board that he is not charging a fee for his services. A declaration from Mr. Beiene that he is an unpaid representative is not sufficient proof that he is not charging a fee in any given proceeding.

[25] In imposing this requirement, I was mindful of the fact that Mr. Beiene is not a member in good standing of a bar of a province, the Chambres des notaires du Québec or the CSIC, and therefore is not entitled to charge a fee for any services he provides to persons who have proceedings before the Board. Consequently, this decision should not affect his ability to earn a livelihood or impose an economic hardship on him.

[26] Should Mr. Beiene become a member in good standing of a bar of a province, the Chambres des notaires du Québec or the CSIC, this decision will no longer be effective.

Order

[27] Upon issuance of this decision, I direct the Regional Directors of the Board to notify any persons who are represented by Mr. Beiene that he is prohibited from representing and appearing on behalf of any person in any proceeding before all Divisions of the Board, effective immediately. The prohibition will remain in effect indefinitely, until such time as Mr. Beiene furnishes proof that satisfies the Board that he is not charging a fee for his services. A declaration from Mr. Beiene that he is an unpaid representative is not

sufficient proof that he is not charging a fee in any given proceeding.

“Lois D. Figg”

Lois D. Figg

15 May 2010

Date