

Federal Court



Cour fédérale

Date: 20160713

Docket: IMM-5755-15

Citation: 2016 FC 797

Ottawa, Ontario, July 13, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ABD EL RASOL ABREE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

UPON hearing this application for judicial review at Calgary, Alberta on June 9, 2016;

AND UPON reviewing the materials filed with the Court and hearing counsel on behalf of the parties;

AND UPON reserving decision;

AND UPON concluding that this application should be allowed for the following reasons:

[1] This application concerns a decision of the Immigration Appeal Division [Board] cancelling a stay of removal order previously granted to the Applicant, Abd El Rasol Abree. Mr. Abree is a citizen of Sudan who came to Canada with his family at the age of eleven.

[2] Mr. Abree's immigration troubles arise out of his criminal behavior. In 2010, he was deemed inadmissible after being convicted of trafficking in cocaine and sentenced to 5 months in custody. Mr. Abree did not take issue with the inadmissibility finding and, instead, sought relief from the Board on humanitarian and compassionate grounds. That effort proved successful. On July 25, 2011, the Board granted a stay of removal for 3 years on conditions that, *inter alia*, he not commit any criminal offences and, if charged, that he report immediately to the Canada Border Services Agency.

[3] Unfortunately, Mr. Abree did not stay out of trouble. On September 9, 2013, he was found guilty for having possession of a small amount of crack cocaine and sentenced to a conditional discharge. Further, on October 16, 2013, he was charged with impaired driving, and pleaded guilty on September 2, 2014. His sentence for this conviction was a one thousand dollar (\$1,000.00) fine and a driving prohibition of one year. Not surprisingly, these matters led to the reconsideration of the Board's stay of removal order. After receiving evidence, including testimony from Mr. Abree, the Board cancelled its earlier stay of removal order thereby rendering Mr. Abree subject to removal to Sudan.

[4] Counsel for the Minister acknowledges an error in the Board's decision where it referred to two intervening criminal convictions. By receiving a conditional discharge, Mr. Abree was not "convicted" of criminal possession of cocaine albeit he was guilty of the offence. I do agree, however, with the Respondent's point that this error was immaterial to the outcome of the case because the finding of guilt on this charge was proof of the breach of the stay condition that he "not commit any criminal offences".

[5] There is, however, a problem with the Board's treatment of the evidence bearing on the risks Mr. Abree would face on return to Sudan. This was a material factor in the Board's first decision granting a stay of removal and it was not altered by his subsequent criminal behaviour. In the first-instance decision, the Board described the personal hardships he would likely face as "significant". Given the prevailing level of armed conflict in the Sudan this is a fair characterization. On that occasion, the Board also paid considerable attention to a detailed psychological report written by Dr. Meghan Davis. Dr. Davis described the hardships that Mr. Abree would likely face in the Sudan in the following way:

He is not well educated, by any standard, having entered school late in Sudan and having been passed through the educational system in Canada by attending ESL classes. Still, he is qualified to do manual labor in Canada and has recently shown himself able to integrate into the Canadian work-force on this basis. In Sudan, we have no reason to expect that he would have the same advantage as he has not lived there since he was in his early teens. Indeed, it is not reasonable to assume that the life he has started to construct for himself in Canada — working and integrating into society as a liberal, non-adherent Muslim — would be replicated in Sudan.

There is an indication that Mr. Abree has suffered from a mental illness (PTSD). While this would not predict criminal recidivism, it would predispose him to additional functional challenges in Sudan and it would be completely unreasonable to assume that his already chronic status would not deteriorate further due to the following social factors that are known to be environmental risk factors for

the development of depression: social isolation, removal from contact with family of origin, and loss of a newly constructed, meaningful role in Canadian society.

It is not that Mr. Abree knows little about Sudan and could not reasonably be expected to reintegrate; rather, it is the case that he knows nothing about Sudan that would be of use to him in his attempts to relocate in a manner that would yield well-being and emotional health. It is important that his identity is not that of a Sudanese man seeking protection. He sees himself, instead, as a man of Sudanese descent whose family brought him to Canada — for reasons related to violence and family risks which he witnessed and would have inferred as a boy — and who is now seeking to establish himself in Canada. He does not know today whether he would face personal risks in Khartoum, for instance, because he does not know much about Khartoum, because he could not even find this city on a map in my office, and because he is of the mistaken opinion that “things are pretty good there” (presumably an indication that he does not know of current conflict).

Importantly, he does not know how the dynamics of current north-south conflict in and around the location of his birthplace could potentially affect him. Beyond this, he also knows little of the role of religion in this conflict; he states that he had left the practice of Islam when he decided that drinking alcohol was an acceptable social practice for him. He does not know, and appears to have not considered, whether his being a non-practicing Muslim would put him at risk. His re-exposure to general violence, however, — violence which he is today not expecting to see — would by itself most likely trigger serious decompensation.

...

Taking all facts together, it is our opinion that a removal of Mr. Abree to Sudan could unnecessarily impose disproportionate emotional, occupational, and familial hardship on him based on the reality that he would in a return to Sudan be forced to re-enter a society about which he knows essentially nothing and within which he would have (above cited) high risks for mental illness. The challenge to his mental illness would be principally due to his having had extraordinary exposures to violence and killing as a boy, due to social and familial isolation that would result from removal, and due to risks for not prospering educationally or occupationally in Sudan.

[6] The record before the Board dealing with the prevailing conditions in the Sudan also described, in considerable detail, the grave situation facing the population in the region. Brutal conflict, massive displacement of the civilian population, famine, and the widespread killing and torture of civilians are all reported by reliable sources.

[7] The above evidence is not reasonably accounted for in the impugned reasons with the bare statement “there would be some degree of hardship if the appellant was removed to the Sudan”. The prevailing situation facing Mr. Abree was profoundly more serious than the Board allowed and was deserving of far more attention. In the result, the decision is set aside as unreasonable. The matter is to be redetermined on the merits by a different decision-maker.

[8] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5755-15

STYLE OF CAUSE: ABD EL RASOL ABREE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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