IMM-3149-95

OTTAWA, ONTARIO, the 16th day of January 1997.

BEFORE: THE HONOURABLE MR. JUSTICE PINARD

BETWEEN:

SAMIR BESSEKRI,

Applicant,

- and -

EMPLOYMENT AND IMMIGRATION
COMMISSION OF CANADA,

Respondent.

O R D E R

The application for judicial review of a decision by the Convention Refugee Determination Division on October 18, 1995 that the applicant is not a Convention refugee as defined by s. 2(1) of the *Immigration Act* is dismissed.

YVON PINARD
JUDGE

Certified true translation

C. Delon, LL.L.

IMM-3149-95

BETWEEN:

SAMIR BESSEKRI,

Applicant,

- and -

EMPLOYMENT AND IMMIGRATION
COMMISSION OF CANADA,

Respondent.

REASONS FOR ORDER

PINARD J.

The application for judicial review is from a decision by the Convention Refugee Determination Division on October 18, 1995 that the applicant is not a Convention refugee as defined by s. 2(1) of the *Immigration Act*.

The tribunal's decision was first and foremost based on the applicant's lack of credibility. Alternatively, the tribunal said the following:

> [TRANSLATION]
> Even if we had regarded the claimant as completely credible, we would still not have granted refugee status because it seems clear to us that a domestic flight alternative (DFA) existed in Algeria in his case.

The tribunal's conclusion that the applicant lacked credibility appears to the Court to be based not only on his actions, including the fact that he did not claim refugee status in France or the US, but also on inconsistencies between the applicant's personal information form and his testimony as well as discrepancies in his account. Accordingly, the Court has not been persuaded that this assessment by the tribunal lacked an adequate basis.[1] The tribunal certainly could reasonably conclude as it did, since

[1] *Rajaratnam v. M.E.I.*, December 5, 1991, A-842-90, F.C.A.

its view that the applicant was not credible in fact amounts to a conclusion that no credible evidence existed to justify the claim for refugee status at issue. On this point we need only recall what was said by MacGuigan J.A. in *Sheikh v. Canada*, [1990] 3 F.C. 238, at 244:

> The concept of "credible evidence" is not, of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a tribunal linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to "country reports" from which nothing about the applicant's claim can be directly deduced), a tribunal's perception that he is not a credible witness effectively amounts to a finding that there is no credible evidence on which the second-level tribunal could allow his claim.

As intervention by this Court is thus not justified on the tribunal's primary conclusion, the application at bar is dismissed without any need to consider the alternative conclusion.

There is no basis here for certification pursuant to s. 18(1) of the Federal Court Immigration Rules, 1993.

YVON PINARD
JUDGE

OTTAWA, Ontario,
January 16, 1997.

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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