

Date: 20060929

Docket: IMM-425-06

Citation: 2006 FC 1165

OTTAWA, Ontario, September 29, 2006

PRESENT: The Honourable Paul U.C. Rouleau

BETWEEN:

NABIL SAAD IBRAHIM

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Nabil Saad Ibrahim, is a 50-year-old citizen of Egypt. He alleges a fear of persecution by Islamist extremists and the Egyptian authorities by reason of his religious beliefs. He claims he is being targeted because he converted to Christianity in 1971, which he practised in secret until his older brother died in 2002.

[2] According to the applicant, his mother was Christian and his father Muslim. In 1971, after his father died, and under the influence of his mother's brother, the applicant, then aged 16,

allegedly converted to Christianity. Afraid of his paternal uncle, the applicant concealed the fact that he had converted until 1999, when he announced he intended to change his religion.

[3] The applicant claims that his half-brother, Yahya, denounced him to a state security officer. He was purportedly arrested and detained for two days, during which time he was insulted, threatened, humiliated and savagely beaten. The applicant allegedly did not admit he had already converted and was released on the promise that he would not convert.

[4] The applicant alleges he continued to practise his Christian faith in secret until his half-brother Yahya died in 2002.

[5] The applicant was married to a Muslim woman, Linda, whose father was born a Christian. However, the applicant had a child with a Christian woman, Magda, out of wedlock. His wife then allegedly told her family that he had converted to Christianity, and she swore vengeance by denouncing him to a small group of Islamic extremists from Cairo, of which the applicant's brother-in-law was a member.

[6] On November 22, 2002, the applicant left Egypt for the United States. He had a U.S. visitor's visa issued in 2000 and valid for five years and a Canadian visitor's visa issued on September 19, 2002. The applicant stayed in the U.S. for a year without applying for refugee status, because he had been told that, since September 11, 2001, it had become practically impossible to obtain such a status.

[7] The applicant arrived in Canada in December 2002. He decided to get married and have his wife sponsor him rather than make a claim for refugee protection. In September 2004, after his Canadian wife withdrew her sponsorship, the applicant claimed refugee protection in Canada.

[8] The panel rejected the applicant's claim owing to a lack of evidence. The decision states that the applicant, whose mother is Christian, allegedly converted to Christianity in 1971, making it official in 1990. In addition, the members of his ex-wife's family, Muslim extremists, allegedly conspired to have him arrested.

[9] In its decision, the panel indicates that the name of the applicant's ex-wife is Linda, a name that is more Christian than Muslim, and that it is therefore improbable that her family really are Muslim extremists. In addition, Linda's father was Christian and her mother was Muslim. It therefore was not plausible, in the panel's view, that Linda's mother's family were also extremists, as alleged by the applicant, since they had allowed Linda's mother to marry a Christian.

[10] In addition, the panel raised the issue that, at question 4 of his PIF, the applicant stated he had never been in detention. In the PIF narrative, however, he stated that he had been arrested and that he feared being arrested again by officials in his country if he returned there. He explained this discrepancy by saying that he had never been imprisoned; it was not an official arrest.

[11] The applicant submits that the panel was silent on whether the reason for the applicant's alleged fear of persecution, his conversion from Islam to Christianity, was well founded. Although

the panel had reservations about certain aspects of the applicant's account, it could not ignore that his fear of persecution was justified.

[12] The applicant submits that the panel did not mention his baptismal certificate, which, compared with his birth certificate, clearly shows that he was born a Muslim and secretly baptized a Christian when he was 16 years old. The baptism means certain death according to some Islamic documents entered into evidence and to which the panel did not even refer.

[13] In addition, the applicant has doubts as to the panel's impartiality, since, on several occasions during the hearing, the member defended Islam using preconceived notions of a moderate version of Islam that respects freedom of religion.

[14] The applicant submits that his answers were credible, direct and to the point and that he never contradicted himself or tried to justify his explanations.

[15] Contrary to what is reported in the panel's decision, the applicant submits that he never said he had officially converted to Christianity in 1990. This date is not indicated anywhere in his PIF or the hearing transcripts. In fact, it was in 1999 that the applicant allegedly told his family he wanted to convert to Christianity, whereas he had already officially converted in 1971.

[16] In addition, he never stated, either in his account or at the hearing, that he had been arrested because of his ex-wife's family. In fact, in 1999 he was detained after his half-brother denounced him.

[17] The applicant maintains that the panel's argument to the effect that the name of his ex-wife, Linda, undermines the claim that her family are religious extremists is completely ridiculous and circumstantial. He explained that Linda's father had converted to Islam to be able to marry a Muslim, since mixed marriages are illegal in Egypt.

[18] The applicant submits that it is not his ex-wife's family who pose the main risk to his life, but rather there is a risk they will tell the authorities and extremist Islamic groups, of which his brother-in-law is a member, that he converted. He alleges that the panel did not even begin to assess this issue.

[19] The applicant claims that he never contradicted himself by saying that he had told the authorities he had converted to Christianity and then saying he had not done so. At the interview with the officer, the applicant said he had been arrested because he had been accused of converting to Christianity. It was his half-brother who had told state security officers.

[20] In addition, the officers did not know that the applicant had been baptized, otherwise he would not be free or even alive today. The panel does not seem to have understood the difference between conversion and baptism, the latter simply being a confirmation of conversion and which may be done several years after the conversion.

[21] At question 4 of the PIF, the applicant indicated he had never been arrested. In his narrative, however, he stated he had been detained by state security under emergency legislation. These two

statements are not contradictory. The applicant's detention was not official and was not a genuine arrest; it was only an interrogation to check whether he had really converted to Christianity. If the authorities had known he had been baptized, they would have incarcerated, tortured or killed him. After the interrogation, the authorities simply released him without further ado. It was not a genuine arrest.

[22] The applicant's attitude does not in the least demonstrate a lack of a serious fear of persecution. The applicant was legally in Canada until August 2004, when his Canadian wife withdrew her sponsorship. He then immediately applied for refugee status. The case law has established that it is difficult to reproach someone for not having claimed refugee protection during their legal stay in Canada.

[23] The panel completely ignored the documentary evidence to the effect that the applicant could be persecuted, tortured or murdered in Egypt because he converted to Christianity.

[24] The respondent argues that the onus is on the applicant to provide clear and sufficient evidence and that the panel is in a better position to assess it.

[25] The respondent submits that the panel may take into account contradictions between an applicant's initial statements to an immigration officer, his PIF and his testimony. The panel may also take his confusion and behaviour into consideration.

[26] The respondent maintains that the failure to mention the baptismal certificate is not a material element, as the panel did not cast doubt on the applicant's credibility as to his Christian faith, but rather as to his fear of being persecuted by his wife's family and the circumstances of his alleged detention in 1999.

[27] The respondent submits that the panel no doubt stated 1990 instead of 1999 with regard to the official date of the applicant's conversion to Christianity, since it was the date that was initially indicated in the PIF before he made changes.

[28] As for when the applicant officially announced his conversion, the respondent submits that he contradicted himself; he told the immigration officer that he had announced it when he was arrested in 1999 and provided a confused answer in response to question 31 of his PIF, whereas at question 9 of his PIF he stated he had been arrested because he had converted to Christianity.

[29] The panel rejected the applicant's claim on the ground that he did not provide sufficient evidence that he was a person described in sections 96 and 97 of the IRPA.

[30] After reading the applicant's and respondent's written submissions and the transcript of the hearing before the panel, I am persuaded that the applicant's main allegation that a Muslim converted to Christianity, was completely ignored or disregarded.

[31] A careful reading of the documentary evidence raises a number of questions regarding people who convert. The documentary evidence clearly shows that these people feel targeted and are arrested, detained and, in some cases, threatened with death by Islamic extremists in Egypt.

[32] I am in complete agreement with the applicant's submissions to the effect that the panel did not objectively assess his subjective or objective fear. In my view, the evidence in the record does not support dismissal of the application. Simply by referring to the second paragraph of the panel's analysis, one can clearly see that the panel's determination that the applicant's account was not plausible has no merit.

[33] For example, I cite the following passage:

However, she is named Linda, a name that is more Christian than Muslim. If the family were so narrow-minded, especially since they are living in a Muslim country, the claimant's ex-wife would bear a Muslim name. In fact, the panel learned during the hearing that Linda's father was Christian and that only her mother was Muslim. If the mother's family had been so intolerant, it would never have permitted her mother to marry a Christian. It is therefore a mixed marriage. The panel therefore does not believe the claimant's account, which is not plausible.

[34] The determination that since the applicant's first name was not Muslim her family would not be as narrow-minded as alleged by the applicant is not plausible. When he testified, the applicant explained that his wife's ancestors were Christian and that a member of that family was named Linda, which is why his wife had this non-Muslim name.

[35] As the applicant explained, he had not told his wife about his conversion to Christianity. In light of events during the marriage, that is, that he fathered a child out of wedlock and that he announced his conversion only after several years had gone by, the panel's determination cannot be upheld.

[36] The panel also determined that the applicant was not credible because, in his personal information form, he indicated he had never been arrested by security forces in Egypt. The applicant's explanation was definitely logical. The security forces suspected that he might have converted to Christianity. They had him go to their offices and detained him for two days without officially arresting him. They were simply investigating his religious situation, which he had never disclosed.

[37] It is true that the applicant arrived in Canada in December 2002 and that he claimed refugee protection only two years later. This wait was justified. He had married a woman who had agreed to sponsor him and had even initiated the application. They then divorced, and she withdrew her sponsorship. This explains why he waited to submit his refugee claim.

[38] In my view, throughout her decision, the panel member expresses her beliefs of Islam versus Christianity without even remotely trying to justify her expertise or back her allegations with documentary evidence.

[39] I am convinced that the panel's decision has no merit.

JUDGMENT

The application for judicial review is allowed, and the matter is remitted to a differently constituted panel for redetermination.

“Paul U.C. Rouleau”

Deputy Judge

Certified true translation
Jason Oettel

FEDERAL COURT
SOLICITORS OF RECORD

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