

**Date: 20070530**

**Docket: IMM-6053-06**

**Citation: 2007 FC 576**

**Ottawa, Ontario, May 30, 2007**

**Present: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**SAID RMIKI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board, Refugee Protection Division (the Board), that the applicant was neither a refugee under section 96 of the IRPA nor a person in need of protection under section 97 on the ground that he had failed to establish that the Netherlands, a democratic country with a judicial and law enforcement system capable of protecting its citizens, was unable to protect him.

[2] The applicant, Said Rmiki, holds dual Algerian and Dutch citizenship. The facts underlying his refugee claim arose while he was living in Algeria where he was the target of a fatwa, a

judgment of an Islamic tribunal sentencing him to death. This fatwa was the basis of his refugee claim in the Netherlands where he lived for ten years.

[3] The applicant contends that after he made a telephone call to one of his childhood friends in Algeria in 2005, Islamic Afghans found him and threatened to carry out the fatwa. Following this call, the applicant discovered that two Islamists had asked about him at the mosque he attended in the Netherlands. He then asked for police protection in the village where he lived but claims that the police did not take him seriously because there was no evidence. The applicant was forced to move to another town to escape his pursuers.

[4] On September 1, 2005, the applicant went to the police in the new town where he was living. The police told him that they lacked the resources to provide him with protection. Fearing for his life, the applicant left the Netherlands for Canada where he claimed refugee status.

[5] In the Board's view, the fact that the applicant only went to the police once did not demonstrate that he had done everything objectively reasonable under the circumstances to obtain state protection. It therefore found that the applicant had not provided clear and convincing evidence that the Netherlands was unable to protect him.

[6] The only issue in this case is whether the Board erred in fact and in law in finding that the applicant had not discharged his burden of proof with respect to state protection. As a preliminary matter, I note that since the applicant's credibility was not challenged, the "subjective" element of

the fear of persecution was met. The next step is to determine whether the fear was objectively justifiable. In *Canada v. Ward*, [1993] 2 S.C.R. 689, the Supreme Court of Canada described the burden of proof applicable in such cases as follows:

The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.

[7] Subsequently, in *Kadenko v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1376, the Federal Court of Appeal specified that the burden of proof that rests on the claimant is directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.

[8] In this case, the applicant is essentially arguing that the Board's finding that he had not done everything objectively reasonable under the circumstances to obtain state protection is based on an erroneous finding of fact. I concur.

[9] In fact, it appears from the applicant's PIF and from the transcript that the applicant went to the police twice, not once: first, when he learned that two young Islamists wanted to carry out the fatwa that had been issued against him; second, after he moved to another town to escape his pursuers and realized they were still following him. The Board clearly stated that

[TRANSLATION] “[t]he fact that the claimant only went to the police once providing approximate information and did not go back to the police when young Islamists followed him on two occasions, illustrates that the claimant did not persevere in seeking protection.” The Board also determined that [TRANSLATION] “[o]wing to this inertia, the claimant did not overturn the presumption that the Netherlands is capable of protecting him.” The Board's conclusion with respect to state protection was therefore based essentially on this erroneous finding of fact.

[10] To the extent that this finding was at the heart of the Board's decision regarding state protection, it is not appropriate for this Court to make a finding of fact, a role which lies within the exclusive expertise of the Board. Accordingly, this Court's intervention is warranted. For these reasons, the application for judicial review is allowed. The decision is set aside and the matter is remitted for reconsideration by a differently constituted panel.

**JUDGMENT**

The application for judicial review is allowed. The decision is set aside and the matter is remitted for reconsideration by a differently constituted panel.

“Danièle Tremblay-Lamer”

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Judge

Certified true translation  
Mary Jo Egan, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6053-06

**STYLE OF CAUSE:**

**SAID RMIKI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
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**Respondent**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 24, 2007

**REASONS FOR JUDGMENT BY:** MADAM JUSTICE TREMBLAY-LAMER

**DATED:** May 30, 2007

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