

Federal Court



Cour fédérale

Date: 20090722

Docket: IMM-169-09

Citation: 2009 FC 747

Montréal, Quebec, July 22, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**MOKHTAR BARAT
FADILA AIT GRIME BARAT
SARA BARAT
MOHAMED LAMINE BARAT**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated December 17, 2008, that the applicants are not Convention refugees or persons in need of protection.

Issue

[2] Did the panel err in concluding that the applicants failed to rebut the presumption of state protection?

[3] For the following reasons, the application for judicial review will be dismissed.

[4] The principal applicant, Mokhtar Barat (applicant), his wife Fadila Ait Grine Barat, their minor daughter Sara Barat and their adult son Mohamed Lamine Barat, all citizens of Algeria, claim refugee protection on the ground that they fear persecution by reason of their membership in a particular social group and the political opinions ascribed to them.

[5] Beginning in 2004, the applicant and his family were threatened by terrorists who wanted to kill them because the applicant had been a member of the Ministry of Defence.

Impugned Decision

[6] The panel asked the applicant to specify whether he had informed the Algerian authorities of the threats against him and his family. He replied that he went to the police station at Bordj-El-Bahri in January 2005 to make an oral complaint and the police officers told him to be careful but did not provide any other protection. The applicant explained that in March 2005, after receiving threatening anonymous telephone calls, he went to the police station again, but that this time the

police officers refused to take his complaint. Accompanied by his wife, he also went to the police station on another occasion in March 2005, but they were given the same response.

[7] Taking into account the relevant case law, the documentary evidence as a whole and the personal situation of the applicant, who worked for the Ministry of Defence for several years, the panel considered that the applicant had not overturned the presumption that his country could protect him and his family.

Analysis

Standard of Review

[8] The standard of review applicable here is that of reasonableness (*Chagoya v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 721, [2008] F.C.J. No. 908 (QL), at paragraph 3; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraphs 55, 57, 62 and 64).

[9] According to the Supreme Court of Canada, the elements to be considered are the justification for the decision, its transparency and its intelligibility. The decision must also be defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[10] For the application for judicial review to be allowed, the applicants must show that it was unreasonable for the panel to conclude that Algeria could protect them.

[11] The facts of this case show that the police authorities visited the applicant following the events he allegedly experienced in November 2005, when individuals were waiting for the applicant and his son in a car parked near their home. When they noticed the presence of the police, those individuals left. In its decision, the panel notes that the applicants did not inform the police of persistent threats in June 2006.

[12] The Court finds that it was not unreasonable in these circumstances for the panel to conclude that the applicants failed to provide clear and convincing evidence that Algeria was unable to protect them (*Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 377 N.R. 69).

[13] The decision is justified and intelligible and is defensible in respect of the facts and law.

[14] No question was proposed for certification and none arises from this case.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-169-09

STYLE OF CAUSE: MOKHTAR BARAT ET AL. v. M.C.I.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 22, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: July 22, 2009

APPEARANCES:

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