Federal Court  Cour fédérale

Date: 20100611

Docket: IMM-2205-10

Citation: 2010 FC 639

Ottawa, Ontario, June 11, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ABDEL-KARIM MUS EID

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The applicant adduces no established practice and no clear and explicit conduct or assertion. There is no basis for his argument, so it is not a serious one.

[2] Moreover, section 113 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) clearly provides that a pre-removal risk assessment (PRRA) application is to be considered

on the basis of sections 96 to 98 of the IRPA. Consequently, in a PRRA, the officer must assess risk allegations, not humanitarian and compassionate considerations.

[3] This interpretation is consistent with the principles laid down by the Federal Court of Appeal, which specified as follows in *Varga v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394, [2007] 4 F.C. 3:

> [9] Section 96 refers to a well-founded fear of persecution, and section 97 refers to a risk of torture, and exposure to risks to life and of inhuman or of cruel and unusual treatment or punishment. Only risks to applicants are relevant. A broad-ranging consideration of children's interests is not contemplated by these provisions.
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> [10] This latter exercise is properly conducted in the more open-ended inquiry to be undertaken in the course of an application under subsection 25(1) to remain in Canada on humanitarian and compassionate grounds (H&C).
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> [12] Although the same officer may sometimes make a PRRA and determine an H&C application, the two decision-making processes should be neither confused, nor duplicated: *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.) at paras. 16-17; *Rasiah v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 583 at para. 16. [Emphasis added.]

[4] In the absence of any evidence on the subject, the officer could not disregard the negative credibility finding of the Immigration and Refugee Board:

> [19] It is well settled that the purpose of an assessment of the risks of returning is not to give applicants a right to appeal the RPD's decision or to have the evidence reassessed by the PRRA officer or by this Court. The RPD's findings of fact therefore became *res judicata* once the Court dismissed the applicants' leave application challenging the RPD's decision (*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, at paragraph 24; *Angle v. Canada (Minister of National Revenue - M.N.R.)*, [1975] 2 S.C.R. 248, at page 254). [Emphasis added.]

(*Roberto v. Canada (Minister of Citizenship and Immigration*, 2009 FC 180, [2009] F.C.J. No. 212 (QL)).

II. Judicial procedure

[5] On April 21, 2010, the applicant filed an application for leave and judicial review (ALJR) in respect of the pre-removal risk assessment officer's decision dated February 24, 2010.

[6] In that decision, the officer dismissed the applicant's PRRA application.

[7] Along with this ALJR, the applicant filed a motion for the stay of his removal to Jordan on May 21, 2010.

III. Preliminary remarks

[8] Given the coming into force of the *Department of Public Safety and Emergency Preparedness Act*, S.C. 2005, c. 10, the Minister of Public Safety and Emergency Preparedness, who is responsible for carrying out removals in accordance with Order in Council P.C. 2005-0482 of April 4, 2005, should be named as a respondent.

[9] The style of cause is amended in order to add as respondent the Minister of Public Safety and Emergency Preparedness, **in addition** to the Minister of Citizenship and Immigration.

[10] The applicant's motion record does not include a copy of the decision in respect of which he is attempting to raise a serious issue.

[11] Under paragraph 364(2)(f) of the *Federal Courts Rules*, SOR/98-106, a moving party's motion record must include "any other filed material that is necessary for the hearing of the motion." In a stay motion, this necessarily includes a copy of the decision in respect of which the applicant is **required** to raise a serious issue.

[12] This Court has frequently stated that a moving party's failure to include a copy of the impugned decision in his or her motion record is, in itself, a sufficient basis for refusing to find that a serious issue has been raised (*Bayavuge v. Canada (M.C.I.)*, IMM-1492-07, April 17, 2007, *per* Justice Pierre Blais).

[13] In the case before me, the applicant's application for leave states that he received the reasons for the PRRA decision on April 12, 2010. He has therefore had ample time to prepare his motion record, and nothing justifies his failure to include the impugned decision.

[14] The applicant has not given the Court the documents necessary for the hearing of his motion. This is in violation of the Court's rules of practice, is prejudicial to the respondents, and runs counter to professional courtesy and etiquette, without which justice cannot properly be administered.

[15] The Court could therefore make a determination that there is no serious issue on the basis of the motion record. Accordingly, his stay motion can be dismissed on this ground alone.

[16] It is not the respondents' role to correct the deficiencies in an applicant's motion record.

[17] However, as officers of justice, and to facilitate the Court's task, the respondents have added a copy of the PRRA decision to the respondents' record.

V. Background

[18] The applicant, Abdel-Karim Mus Eid, is a Jordanian citizen. His wife, his daughter and one of his sons are in Jordan. His other four sons live in the United States, Germany, Saudi Arabia and Egypt, respectively.

[19] Starting in 1975, the applicant was in Saudi Arabia, where he worked on various construction jobs for the U.S. Army. As early as 1990, he was allegedly notified by fundamentalists that his work was an offence against Muslims, and was allegedly the victim of a few incidents of sabotage.

[20] In 2000 and 2001, the applicant travelled to Switzerland, Sweden and Germany.

[21] In July 2002, the applicant returned to Jordan, where he carried out transportation and business activities. Among other things, he allegedly worked for U.S. Army procurement in 2003.

Following these activities, the Al-Takfir group allegedly accused him of collaborating with the Americans, and one of his drivers was allegedly beaten to death.

[22] Visa in hand, Abdel-Karim Mus Eid arrived in Canada on October 16, 2005, to explore business opportunities.

[23] It was not until September 21, 2006, roughly a year after his arrival, that the applicant filed a refugee protection claim.

[24] In his claim, Abdel-Karim Mus Eid alleged that he was wanted by the Al-Takfir group, which allegedly falsely accused him of collaborating with the U.S. Army. He also alleged that a fatwa had been issued against him on September 19, 2006.

[25] The refugee claim was heard by the Refugee Protection Division (RPD) on April 24, 2008. Abdel-Karim Mus Eid was represented by counsel at the hearing.

[26] On May 30, 2008, the claim was dismissed. The RPD determined that Abdel-Karim Mus Eid's narrative was not credible. This finding was based on several elements, including his vague and imprecise testimony, particularly with respect to the person who allegedly notified his wife that there was a fatwa against him, and the inability to obtain that document.

[27] The RPD also found that Abdel-Karim Mus Eid's conduct did not show a genuine fear of persecution because he did not claim protection on any of his trips to Europe, waited a year before claiming protection in Canada, and testified that he chose Montréal in order to pursue business projects in greater depth.

[28] The RPD therefore found that the narrative was not credible and that Abdel-Karim Mus Eid had not meet his burden of proof. It therefore rejected his claim.

[29] On June 23, 2008, Abdel-Karim Mus Eid filed an ALJR against the RPD decision (Docket No. IMM-2801-08). Justice Yves de Montigny dismissed that ALJR on September 23, 2008.

[30] On December 23, 2008, Abdel-Karim Mus Eid's PRRA application was received, followed by his submissions on January 8, 2009, and by his supporting documents on January 14, 2009.

[31] On February 24, 2010, Abdel-Karim Mus Eid's PRRA application was dismissed by the officer. On April 12, 2010, he was notified of the officer's decision to that effect, and was informed at that time that his departure from Canada was scheduled for May 24, 2010.

[32] At a meeting on departure preparations, held on May 3, 2010, Abdel-Karim Mus Eid told the officer that he had obtained his own plane ticket, thereby postponing his departure for Jordan to June 18, 2010.

VI. Issue

[33] Has the applicant met the three tests necessary for the Court to grant a stay of the removal order?

VII. Analysis

[34] In order to obtain a judicial stay of the enforcement of a removal order, an applicant must meet the following three cumulative tests, which were laid down in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and have constantly been applied since:

A. the existence of a serious issue;

B. the existence of irreparable harm; and

C. the weighing of the balance of convenience.

A. Serious issue

[35] The applicant must show that his application is neither frivolous nor vexatious. To this end, the merits of the case must be examined preliminarily to determine whether an issue worthy of consideration is raised:

> [18] The applicant must demonstrate the presence of one or more serious issues that have reasonable chances of succeeding in the underlying proceeding. The standard for what constitutes a serious issue is generally that of an issue that is not frivolous or vexatious (see *Sowkey v. The Minister of Citizenship and Immigration*, 2004 FC 67; *Fabian v. Le ministre de la Sécurité publique et de la protection civile*, 2009 CF 425, at paragraphs 38 to 41). However, the word "serious" requires a little bit more; the merits must be examined to ensure that the

> issue has a chance of succeeding (see *Wang v. Canada (M.C.I.)*, [2001] 3 F.C. 682, at paragraph 11).

(*Mejia v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 658, [2009] F.C.J. No. 824 (QL)).

[36] The Court agrees with the respondents' position.

[37] The issues raised by Abdel-Karim Mus Eid in his submissions regarding the PRRA decision do not constitute a serious issue.

[38] The officer entertaining a PRRA application must analyze the evidence and the applicant's situation to determine whether removal would subject him to a danger of torture or persecution or to a risk to his life or to a risk of cruel and unusual treatment or punishment (*El Morr v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 3, [2010] F.C.J. No. 16 (QL) at para. 22; *Cen v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 337, 167 A.C.W.S. (3d) 138 at para. 4).

[39] It is well settled that the burden is on the applicant to submit evidence in support of his allegations:

> [12] Generally, the Federal Court of Appeal and this Court have stated on many occasions that the onus is on the applicant to submit evidence on all the elements of his or her application. Specifically, on a PRRA application, it is settled law that the applicant bears the burden of providing the PRRA officer with all the evidence necessary for the officer to make a decision (*Cirahan v. Canada (Solicitor General)*, 2004 FC 1603, [2004] F.C.J. No. 1943 (QL) at paragraph 13). [Emphasis added.]

(*Lupsa v. Canada (Minister of Citizenship and Immigration)*), 2007 FC 311, 159 A.C.W.S. (3d) 419).

[40] The analysis of the evidence is within the PRRA officer's special expertise. It is therefore the officer's role to analyze the documents submitted and determine what weight they should be given:

> [17] It is well settled that as the decision-maker it is the PRRA officer's function to determine the weight that should be given to testimony and documentary evidence filed in support of an application (*Singh v. Canada (Minister of Citizenship and Immigration*), [1996] F.C.J. No. 1329 (QL), para. 3).

(*Diallo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1063, 317 F.T.R. 172).

[41] In his PRRA application, Abdel-Karim Mus Eid primarily cited the degree of his establishment in Canada, the humanitarian and compassionate considerations in his record, and the unusual and undeserved or disproportionate hardship that he would face if he were required to apply for permanent residence from outside Canada.

[42] The applicant repeated the narrative given in support of his refugee protection claim, namely, that he was purportedly threatened by fundamentalists due to his cooperation with the U.S. Army, and that a fatwa had allegedly been issued against him.

[43] The applicant added that he feared the authorities and "Jordan's Muslim Brotherhood", and specified that a judgment was rendered against him for a [TRANSLATION] "religious crime" on June 23, 2008.

[44] In support of his application, Abdel-Karim Mus Eid submitted several documents, all of which the officer considered in great detail.

[45] A reading of the reasons for his decision shows that the officer closely examined all the evidence submitted to him.

[46] The officer noted that, in his PRRA application, Abdel-Karim Mus Eid was repeating the account that he had given to the RPD, which determined that it was not credible (decision affirmed by the Federal Court). The only new elements in the PRRA were the allegations that he was wanted by the authorities and by "Jordan's Muslim Brotherhood" by reason of the judgment dated June 23, 2008.

[47] With respect to the allegations regarding Abdel-Karim Mus Eid's degree of establishment in Canada, and the humanitarian and compassionate considerations applicable to him, the officer noted two things: the applicant did not submit any application for permanent residence in Canada based on humanitarian and compassionate considerations; and those considerations were in no way relevant in a PRRA application.

[48] Consequently, the officer stated that those allegations would not be considered.

[49] With regard to the documents adduced in support of the application, the officer considered each of them, and provided clear and reasonable grounds for the weight accorded to each item of evidence.

[50] Two documents adduced in evidence, namely, the CNN article and a death certificate dated December 6, 2004, pre-date the RPD decision. The officer found that Abdel-Karim Mus Eid did not provide any explanation for his failure to submit these documents in support of his refugee claim. In addition, nothing in the death certificate ties that certificate to Abdel-Karim Mus Eid.

[51] Consequently, in accordance with paragraph 113(a) of the IRPA, these documents, which pre-date the RPD's decision, were not analyzed. That decision is consistent with the principles laid down by this Court.

[52] Two of the documents submitted by Abdel-Karim Mus Eid were not relevant to his allegations, namely, the copy of a real property registration (under his name and that of his wife) and a copy of a document called "The Islamic Group (Expiatory & Expatriation)". The latter document is an incomplete translation which identifies neither the source nor the publication date of the original. Moreover, it is in no way personal or specific to Abdel-Karim Mus Eid.

[53] Accordingly, the officer attached very little weight to these two documents.

[54] The officer then examined the other documents submitted by Abdel-Karim Mus Eid in support of his new risk allegations. First, the officer properly noted that Abdel-Karim Mus Eid had submitted no original documents. Although the documents are marked [TRANSLATION] "True Copy", the version of the document of which they are a copy is not specified. Moreover, the same person who affixed the [TRANSLATION] "True Copy" seal did all the translations.

[55] For all these reasons, the officer stated that it was very difficult to determine the reliability of the source of those documents and that their probative value was undermined as a result.

[56] Second, the officer examined each of the documents closely and then stated, in a clear and detailed fashion, why little probative value was accorded to them:

- **"Arrest Warrant and Arraignment"**: The warrant's date is not specified; the issue date of the document is not specified; no offence is referred to; there is no reference to a case number; and the applicant provided no indication of how he might have obtained the document.
- **Document issued by the Public Security Directorate**: The document refers to two alleged petitions (one of which pre-dates the RPD decision) without specifying their contents; the petitions were not attached, and the date on which the Directorate issued the document is not specified.
- ***"Judgment***": This document states that the applicant was accused of a "crime of religious empathy" under section 326 of the *Penal Code*, but according to the objective documentary evidence, that provision has nothing to do with religious crimes; rather, it is

about murder, and provides that [TRANSLATION] "anyone who deliberately kills a human being will be punished by 15 years of forced labour"; moreover, the judgment was supposedly rendered *in absentia* after notice was sent to the applicant's residence (the documentary evidence also shows that a judgment was rendered *in absentia* after notification procedures); and yet the applicant did not adduce any notification documents, or specify who, at his residence, was notified or when or whether he was advised of the notification; in addition, the document is missing very basic information and contains no particulars of the alleged offence (date, place and acts).

- **"Request by Public Prosecutor"**: This document states that the applicant must be found so that the sentence can be carried out, but there is no evidence establishing the existence of a fatwa, the June 2008 judgment, or the petitions.
- **Document from Shadi Abdel Karim Musa Eid**: Apparently, this individual brought a complaint against bearded religious fanatics who purportedly conducted surveillance of this individual's house; however, the document does not bear the complainant's signature and does not state the place where the complaint was filed, and the applicant did not specify who the complainant is.
- **Incident report document from the applicant's wife**: The applicant's wife apparently filed a complaint following an attack on her home by bearded men who were looking for her husband; however, the document bears no signature and does not specify who are the people named therein, what their relationship to his wife is, and how they were informed of the event.

(Applicant's Record, Exhibits "A" through "E" to the Affidavit).

[57] In addition, after analyzing the situation in Jordan, the officer concluded that no significant change had occurred following the RPD's decision and that the evidence disclosed no personal risk to Abdel-Karim Mus Eid.

[58] Abdel-Karim Mus Eid provided no probative evidence in support of his allegations.

[59] The decision evinces a highly thorough and solid analysis of each item of evidence. The officer clearly exposed the flaws of each document and explained why so little probative weight could be attached to them. All the documents were considered.

[60] The officer was entitled to weigh the evidence using his specialized expertise, and he provided reasons explaining the weight given to each item of the evidence. This approach is in keeping with the principles laid down by the Court:

> [28] Bearing in mind what is stated above regarding paragraph 113(*a*) of the IRPA and the *Raza* judgment (*supra*) of the Court of Appeal, I note that the PRRA officer took the time to analyze the documentation submitted in support of the PRRA application and that he explained in detail his findings in regard to its probative value (the credibility of the evidence, while considering the source and the circumstances surrounding the existence of the information, its trustworthiness, its element of novelty and its high degree of importance). He did so by taking into consideration not only the date of the information but also the aspect of novelty or lack thereof with reference to the evidence before the RPD, the RPD's findings and whether or not the information was available at the time of the RPD hearing as well as whether or not it was reasonable to expect that she present this information to the RPD. An analysis such as this satisfies the standards contained under paragraph 113(*a*) of the IRPA and the Court has no reason to intervene because the PRRA officer's decision was reasonable. Officer Perreault considered the relevant information and he made the appropriate determinations considering the circumstances of the matter.

> [29] I would add, as it had been mentioned in *Colindres, supra*, in circumstances similar to this case, that the fact that the applicant disagrees with the findings of the PRRA officer does not render the PRRA officer's decision unreasonable. In my opinion, the applicant in her submissions is in reality asking the Court to substitute its assessment of the evidence for the assessment made by the officer. This is not the Court's role at this stage of the applicant's file (*Gonzalez v. Canada (Minister of Citizenship and Immigration*), [2006] F.C.J. No. 1592, 2006 FC 1274 at paragraph 17; *Maruthapillai v. Canada (Minister of Citizenship and Immigration*), [2000] F.C.J. No. 761 at paragraph 13). [Emphasis added.]

(*Abdollahzadeh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1310, 325 F.T.R. 226).

[61] There is no error in the officer's decision. Abdel-Karim Mus Eid had to show that he would be subject to a danger of torture or persecution or to a risk to his life or to a risk of cruel and unusual treatment or punishment. He did not. He failed to meet his burden, and adduced no probative evidence in support of his allegations. As the Court has pointed out:

> [34] A PRRA application is still an exceptional measure that should not be allowed unless there is new evidence that was not available at the time of the RPD's decision and then only insofar as this new evidence establishes a risk for the applicant if he were to return to his country of origin.

(*Sani v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 913, [2008] F.C.J. No. 1144 (QL)).

[62] In his memorandum, Abdel-Karim Mus Eid raises no serious issue in relation to the officer's decision.

[63] **Firstly**, he submits that the officer should have analyzed the humanitarian and compassionate grounds in support of his PRRA application, and that he had a legitimate expectation that the grounds he raised would be taken into consideration.

[64] However, he does not specify the conduct or assertion that gave rise to his legitimate expectation. In *Canadian Union of Public Employees*, the Supreme Court of Canada defined the doctrine of legitimate expectation as follows at paragraph 131:

> [131] The doctrine of legitimate expectation is "an extension of the rules of natural justice and procedural fairness": *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, at p. 557. It looks to the conduct of a Minister or other public authority in the exercise of a discretionary power including established practices, conduct or representations that can be characterized as clear, unambiguous and unqualified, that has induced in the complainants (here the unions) a reasonable expectation that they will retain a benefit or be consulted before a contrary decision is taken. To be "legitimate", such expectations must not conflict with a statutory duty. See: *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170; *Baker*, *supra*; *Mount Sinai*, *supra*, at para. 29; Brown and Evans, *supra*, at para. 7:2431. Where the conditions for its application are satisfied, the Court may grant appropriate procedural remedies to respond to the "legitimate" expectation.

(*C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29).

[65] In a recent matter, this Court reiterated that that an officer need not consider humanitarian and compassionate considerations in a PRRA application:

> [32] The case law is clear: humanitarian or compassionate considerations need not to be considered in a pre-removal risk assessment. In *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540 (QL) at para. 70, Justice Mosley noted the following:
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> > By the same logic, I find that PRRA officers need not consider humanitarian and compassionate factors in making their decisions. There is no discretion afforded to a PRRA officer in making a risk

> assessment. Either the officer is satisfied that the risk factors alleged exist and are sufficiently serious to grant protection, or the officer is not satisfied. The PRRA inquiry and decision-making process does not take into account factors other than risk. In any case, there is a better forum for the consideration of humanitarian and compassionate factors: the H&C determination mechanism. I do not find that the officer erred in law by refusing to consider humanitarian and compassionate factors in the context of the PRRA decision.
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> See also *Sherzady v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 516, 273 F.T.R. 11, [2005] F.C.J. No. 638 (QL) at para. 15; *Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1193, 279 F.T.R. 24, [2005] F.C.J. No. 1470 (QL) at paras. 34 to 38; *Kakonyi v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1410, [2008] F.C.J. No. 1807 (QL) at para. 37.
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> …
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> [34] Consequently, I find that no reviewable error has been made by the Officer in refusing to consider the evidence based on humanitarian and compassionate factors offered by the Applicant.
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> [35] The fundamental problem in this case is that the Applicant has confused a pre-removal risk assessment under section 112 of the Act and a request for exemption on humanitarian and compassionate grounds under section 25 of the Act. This confusion has resulted in the Applicant submitting an odd pre-removal risk assessment application. The Officer in this case carried out a risk assessment on the basis of the information which the Applicant provided. Any alleged failure to assess risk is of the Applicant's own making. [Emphasis added.]

(*Mandida v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 491).

[66] In the present case, Abdel-Karim Mus Eid did not file an application for permanent residence based on humanitarian and compassionate considerations, and he would have needed to do so in order for such considerations, and his establishment in Canada, to be examined.

[67] **Secondly**, Abdel-Karim Mus Eid submits that the officer unjustifiably rejected the evidence because originals were not produced.

[68] It is clear, from the reasons for decision, that each of the documents was carefully examined and that no evidence was rejected solely because the original had not been submitted. The officer raised several other problems regarding the documents (incomplete translation, missing date, irrelevant document, fundamental information missing from the document, etc.) (Exhibit "A": PRRA decision, at pages 4-7).

[69] The contention that the officer rejected the evidence simply because originals were not adduced is incorrect. Thus, there was no error on the officer's part here. As this Court has stated:

> [31] It is obvious that the officer considered and commented on every document submitted by the applicant. The Officer was entitled to award very little (or no) probative value to the letters written by interested parties. Indeed, the evaluation of the evidence submitted comes wholly within her jurisdiction, and should be considered with deference: *Morales Alba* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 1116, at para. 36; *Chakrabarty* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 695, at paras. 10-14; *Chang* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FC 157, at para. 37.

(*Obeng v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 61, 325 F.T.R. 143 at paragraphs 36-38).

[70] It must also be remembered that the assessment of evidence comes within the officer's expertise, and that it is an officer's responsibility to examine the evidence and determine the probative weight to be given to it. This Court has stated:

> [21] As this Court has found that "it was within the purview of the officer to consider the evidence and weigh its probative value, […] I can find nothing wrong with the officer's decision to conclude that the document in question was of little probative value" (*Hassabala*, above, para. 27).

(*Faiz v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 833;

[2009] F.C.J. No. 963 (QL)).

[71] In a judicial review, it is not this Court's role to re-examine the evidence and substitute its opinion for that of the officer. Abdel-Karim Mus Eid's disagreement with the analysis does not warrant the Court's intervention:

> [39] Since the RPD rejected their refugee protection claim, the applicants have submitted **no new evidence or facts** that would have supported the alleged personal risks. It was up to the PRRA officer to determine the weight to be attached to the various pieces of evidence filed in support of the PRRA application, including the letters of support (*Singh v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1329 (QL) at paragraph 3; *Diallo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1063 at paragraph 17, and *Malhi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 802 at paragraph 6). The PRRA officer did not err in the assessment of that evidence. In their claims, the applicants are essentially expressing their disagreement with the PRRA officer's findings. In my opinion, the applicants have not demonstrated in what way these findings pertaining to the risks to their lives and safety were unreasonable. Consequently, the Court's intervention is not warranted.
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> [40] Despite the lack of new evidence and facts, the PRRA officer conducted an analysis of the contemporaneous documentary evidence on the situation in Nigeria. The task of weighing this evidence and attaching more weight to evidence from sources that she believed to be more reliable and credible than to other evidence was the responsibility of the PRRA officer, after a thorough examination of that evidence. I am of the opinion that the PRRA officer made no errors in her assessment of that evidence. [Emphasis added.]

(*Obidigbo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 705, 329 F.T.R. 205).

[72] **Thirdly**, Abdel-Karim Mus Eid asserts that it is plausible that he did not have the means to prove that a fatwa had been issued against him.

[73] His allegations about the issuance of a fatwa and the impossibility of producing the document were examined by the RPD, which deemed them **not credible** (decision affirmed by the Federal Court). **No new evidence** was brought before the officer in relation to the alleged fatwa.

[74] Abdel-Karim Mus Eid has shown no error in the officer's analysis, but is speculating about the plausibility of being unable to file a copy of the fatwa.

[75] In light of the foregoing, the applicant has not met his burden of showing that there is a serious issue in relation to the PRRA decision.

[76] In order for the Court to allow the applicant's motion for a stay, Abdel-Karim Mus Eid would need to show that he has reasonable chances of success in his principal proceeding, namely, the ALJR against the PRRA. He has not, and so the motion should be dismissed on this ground alone:

> [36] I am not persuaded that Mr. Cardoza Quinteros has raised any serious issue that would warrant the grant of a stay of the removal order. Having failed to meet one of the branches of the tripartite test, this application for a stay will be dismissed. It is not necessary that I examine whether the Applicant has met the other two branches of the *Toth* tripartite test. [Emphasis added.]

(*Quinteros v. Canada v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 643, [2008] F.C.J. No. 812 (QL)).

B. Irreparable harm

[77] In *Kerrutt v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 237 (QL), 53 F.T.R. 93, this Court defined the concept of irreparable harm as the return of a person to a country where **his or her safety or life is in jeopardy**. In the same decision, the Court held that **mere personal inconvenience or family breakup is insufficient**.

[78] This decision has been followed several times, notably in *Calderon v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 393 (QL), 92 F.T.R. 107, where the Court held as follows with respect to the definition of irreparable harm from *Kerrutt*, above:

> [22] In *Kerrutt* v. *M.E.I.* (1992), 53 F.T.R. 93 (F.C.T.D.) Mr. Justice MacKay concluded that, for the purposes of a stay application, irreparable harm implies the serious likelihood of jeopardy to an applicant's life or safety. This is a very strict test and I accept its premise that irreparable harm must be very grave and more than the unfortunate hardship associated with the breakup or relocation of a family. [Emphasis added.]

[79] Abdel-Karim Mus Eid bears the onus of submitting clear evidence of the harm that he alleges:

> [23] The evidence in support of harm must be clear and non-speculative. (*John v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 915 (QL); *Wade v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 579 (QL).)
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> . . .
>
> [25] Moreover, to demonstrate irreparable harm, the Applicants must demonstrate that if removed from Canada, they would suffer irreparable harm between now and the time at which any positive decision is made on their application for leave and for judicial review. The Applicants have not done so. (*Reddy v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 644 (QL); *Bandzar v. Canada*

> *(Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 772 (QL); *Ramirez-Perez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 724 (QL).)
>
> [Emphasis added.]

(*Adams v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 256, [2008] F.C.J. No. 422 (QL)).

[80] Abdel-Karim Mus Eid has not shown that he would be irreparably harmed if returned to Jordan.

[81] **Firstly**, the applicant alleges that his removal would contravene the *Canadian Charter of Rights and Freedoms*, Part I, Schedule B to the *Canada Act 1982* (1982, c. 11) (U.K.) (the Charter) and other international conventions of which Canada is a signatory.

[82] This Court has frequently held that the removal of a person to his or her country of origin following a complete assessment of the risks (which was done in this case) does not contravene the Charter or Canada's international obligations:

> [TRANSLATION]
>
> [38] The Court addressed this point in the following terms in the context of a stay motion:
>
> > [37] It is clearly established in case law that the removal of a person from Canada is not contrary to the principles of natural justice and that the enforcement of a removal order is not contrary to sections 7 and 12 of the *Charter*. (*Canada (Minister of Employment and Immigration) v. Chiarelli*, 1992 CanLII 87 (S.C.C.), [1992] 1 S.C.R. 711, at pages 733-735; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539 at paragraph 46; *Isomi Canada (Minister of Citizenship*

> *and Immigration)*, 2006 FC 1394 (CanLII), 2006 FC 1394, [2006] F.C.J. No. 1753 (QL), at paragraph 32 (Simon Noël J.).)

(*Salazar v. Canada (Ministre de la Sécurité publique et la protection civile)*, 2009 CF 56, [2009] F.C.J. No. 77).

[83] **Secondly**, Abdel-Karim Mus Eid alleges that his life and safety would be in danger because there is a fatwa against him, as well as a judgment for a religious crime.

[84] These risk allegations have already been assessed and rejected by the RPD (decision affirmed by the Federal Court) and by the officer. The RPD found that Abdel-Karim Mus Eid's narrative was not credible, and that he had not met his burden of proof. The officer found that the documents tendered in evidence by Abdel-Karim Mus Eid did not substantiate his allegations. He did not tender any other evidence in this Court to substantiate his allegations.

[85] It is well settled that risk allegations that have already been assessed and determined to be unfounded cannot constitute irreparable harm for the purposes of a stay motion. The same narrative proposed to this Court, with no supporting evidence whatsoever, cannot show irreparable harm:

> [42] The remarks of this Court in this regard are relevant:
>
> > [55] The risks of return were already assessed in two administrative proceedings, by the panel and by the officer, and both made the same findings. Further, this Court confirmed the reasonableness of the Board's decision refusing the ALJR against the Board's decision. Since the order of this Court, the situation has not changed, as the PRRA confirmed.
> >
> > [56] This Court has often held that allegations of risk determined to be unfounded by both the Board and the PRRA cannot serve as a

> basis for establishing irreparable harm in the context of an application to stay (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 145, 137 A.C.W.S. (3d) 156). This principle relative to credibility is adaptable in the context of the failure to reverse the presumption of state protection. [Emphasis added.]

(*Malagon*, above; also, *Javier*, above, at paras. 15-16).

(*Rodriguez v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 423, [2009] F.C.J. No. 540 (QL)).

[86] **Thirdly,** Abdel-Karim Mus Eid submits that he risks being detained arbitrarily upon his arrival in Jordan, due to the fatwa issued against him and the judgment convicting him of a religious crime. His arguments are based on the objective documentary evidence concerning the situation in Jordan, which he has attached to his record.

[87] Abdel-Karim Mus Eid's allegation that he would be detained upon arriving in Jordan is speculative. No document in his record supports this assertion. The RPD, and, subsequently, the officer, found the allegations regarding the fatwa to be unfounded. Similarly, the officer concluded that nothing in the evidence showed that the applicant had actually been convicted of a religious crime.

[88] Abdel-Karim Mus Eid relies on the general evidence regarding the situation in Jordan, but does not tie it to his personal situation.

[89] This general documentary evidence provides an overall portrait of the country by exploring various aspects such as the electoral process, conditions of detention, freedom of the press, official corruption, discrimination against women, the monarchy, the possibility of arresting an individual and detaining the individual for 48 hours without a warrant, the situation involving Palestinian non-citizens who do not have Jordanian citizenship, etc. (Applicant's Record, Exhibit "G" to the Affidavit).

[90] This evidence does not show that Abdel-Karim Mus Eid would suffer irreparable harm upon being returned to his country, nor is it a basis for believing that he would be arrested upon his arrival at the airport. This is conjecture, and, as the Court has stated:

> [32] The evidence in support of irreparable harm must be non-speculative and credible. There must be a high degree of probability that the harm alleged will occur if the stay is not granted (*Radji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 100, 308 F.T.R. 175 at para. 40; *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 457 at para. 13). [Emphasis added.]

(*Simuyu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 41, [2009] F.C.J. No. 53 (QL)).

[91] The documents submitted by Abdel-Karim Mus Eid do not show that there is a high degree of probability that the harm alleged will occur. There is no clear and convincing evidence before the Court.

[92] **Lastly**, Abdel-Karim Mus Eid submits that it is unfair for him to be deported from Canada when the ALJR against the PRRA has not been decided. That argument is without merit.

[93] The Federal Court of Appeal has established that removal prior to a decision on the judicial review application underlying the stay motion does not, in and of itself, constitute irreparable harm (*El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42, 137 A.C.W.S. (3d) 161 at paragraph 8; *Palka v. Canada (Minister of Public Safety and Emergency Preparedness*, 2008 FCA 165, 167 A.C.W.S. (3d) 570 at paragraph 20).

[94] Moreover, neither the IRPA nor the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) provide for a stay pending a decision on an ALJR in respect of a PRRA. As this Court has specified:

> [28] In addition, it was clearly not the intent of Parliament to allow all negative PRRA recipients to remain in Canada, pending the outcome of any litigation related to their PRRA decisions. Parliament chose to provide a statutory stay of removal pending the outcome of an application for leave of a negative refugee decision by the RPD. Parliament further envisioned statutory stays in certain specified circumstances related to PRRAs, as set out in R. 232 of Immigration and Refugee Protection Regulations, SOR/2002-227 (Regulations), none of which included applications for leave challenging negative PRRA decisions. (Regulations, ss. 231-232.)
>
> [29] Parliament clearly intended that persons, whose PRRA applications had been rejected, could be removed. This is also consistent with s.48 of the IRPA, which provides that the Minister is obligated to effect valid removal orders as soon as practically possible. Any other interpretation would place the rights of a PRRA applicant, ahead of the legal obligation on the Minister, rights and obligations which Parliament has intentionally balanced through the statutory provisions in IRPA.

(*Paul v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 398, 310 F.T.R. 307).

[95] Nothing in Abdel-Karim Mus Eid's record constitutes clear and convincing evidence of harm. The stay motion must therefore be dismissed:

> [71] The applicant has not discharged his burden of demonstrating that he will suffer irreparable harm by being removed to the Dominican Republic. The application for a stay must therefore be dismissed:
>
> > [TRANSLATION]
> >
> > [38] The applicants have adduced no evidence of personal risk should they return to Mexico.
> >
> > [39] The absence of evidence as to the existence of irreparable harm **is sufficient in and of itself to dismiss the stay application.**
>
> (*Alba v. Canada (Minister of Citizenship and Immigration*), 2007 FC 1116, [2007] F.C.J. No. 1447 (QL)).

(*Fabian v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 424, 345 F.T.R. 250).

C. Balance of convenience

[96] In the absence of a serious issue and irreparable harm, the balance of convenience favours the public interest in ensuring that the immigration process provided for in the IRPA follows its course. As this Court has noted:

> [33] The Federal Court of Appeal has confirmed that the Minister's obligation is "not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control." (*Selliah*, above, para. 22.)
>
> [34] In the present case, the Applicant seeks extraordinary equitable relief. It is trite law that the public interest must be taken into consideration when evaluating this last criterion. In order to demonstrate that the balance of convenience favours the Applicant, the latter should demonstrate that there is a public interest not to remove him as scheduled. (*RJR-MacDonald*, above; *Blum v. Canada (Minister of Citizenship and Immigration)* (1994), 90 F.T.R. 54, [1994] F.C.J. No. 1990 (QL), per Justice Paul Rouleau.)

(*Patterson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 406, 166 A.C.W.S. (3d) 300).

[97] In the present case, Abdel-Karim Mus Eid was admitted to Canada on October 16, 2005, under the terms of a visa, in order to explore business opportunities. On May 1, 2006, the visa was renewed until October 2006.

[98] A few days before his visa expired, Abdel-Karim Mus Eid filed a refugee protection claim, which was rejected because of his lack of credibility.

[99] The applicant filed an ALJR in the Federal Court in respect of that decision, and it was dismissed.

[100] He then filed a PRRA application, which was also dismissed.

[101] Abdel-Karim Mus Eid has pursued the remedies available to him Canada, and all his claims and applications have been dismissed up to now. The balance of convenience favours the Minister, who has an interest in having the procedure take its normal course.

VIII. Conclusion

[102] Abdel-Karim Mus Eid has not shown that he meets the tests for obtaining a stay. Consequently, this motion for a stay is not allowed.

[103] For all of these reasons, the motion for a stay of the removal order is dismissed.

JUDGMENT

THE COURT ORDERS that the motion for a stay of the removal order is dismissed.

"Michel M.J. Shore"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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