

Federal Court



Cour fédérale

Date: 20100727

Docket: IMM-5597-09

Citation: 2010 FC 702

Ottawa, Ontario, July 27, 2010

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**FAISAL RAFAT**

**Applicant**

and

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**AMENDED REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Faisal Rafat (the “Applicant”) seeks judicial review of a decision, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”), dismissing his application for a determination that he was criminally rehabilitated. He sought this determination in order to avoid the effect of being found inadmissible for serious criminality, pursuant to the statutory scheme of the Act and the Regulations.

[2] The Applicant was tried and convicted in Iraq in 1995, for two offences of armed robbery. He was sentenced to a term of 15 years imprisonment. The convictions were entered on or about October 21, 1995 and the Applicant subsequently went to jail in Sulaimaniya City, Iraq.

[3] In August 1996, during a period of civil unrest, the prison was destroyed and all the inmates, including the Applicant, escaped. According to his affidavit filed in support of this application for judicial review, the Applicant hid himself in Iraq until September 1996. He then went to Iran and lived with an aunt until February 1997 when he left for Turkey. He stayed in Turkey from February until July 1997, when he fled to Germany. He remained in Germany from July 1997 until September 1988 when he went to Canada.

[4] The Applicant entered Canada under an assumed name and obtained employment, eventually establishing a company. He established personal relationships, community ties and obtained a clean record, dated March 31, 2006, from the Toronto Police Service. In 2007, the Applicant applied to Citizenship and Immigration Canada (“CIC”) for criminal rehabilitation.

[5] Having regard to the record, the application records filed by the parties and the submissions of Counsel, I am of the opinion that this application for judicial review must be dismissed.

[6] The Applicant has been convicted of two offences outside Canada that would, if committed in Canada, be an offence under an Act of Parliament, in this case the *Criminal Code*, R.S.C. 1985,

c. C-46. The Applicant falls within the provisions of paragraph 36(1)(b) and is inadmissible for serious criminality. This inadmissibility triggers consideration of paragraph 36(3) of the Act if a person seeks a determination of rehabilitation. Paragraph 36(3)(c) provides as follows:

36 (3) The following provisions govern subsections (1) and (2):	(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :
...	...
(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;	c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

[7] Subsection 17(a) of the Regulations is relevant and provides as follows:

17. For the purposes of paragraph 36(3)(c) of the Act, the prescribed period is five years	17. Pour l'application de l'alinéa 36(3)c) de la Loi, le délai réglementaire est de cinq ans à compter:
(a) after the completion of an imposed sentence, in the case of matters referred to in paragraphs 36(1)(b) and (2)(b) of the Act, if the person has not been convicted of a subsequent offence other than an offence designated as a contravention under the Contraventions Act or an offence under the Young Offenders Act; and	a) dans le cas des faits visés aux alinéas 36(1)b) ou (2)b) de la Loi, du moment où la peine imposée a été purgée, pourvu que la personne n'ait pas été déclarée coupable d'une infraction subséquente autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions ou une infraction à la Loi sur les jeunes

contrevenants;

[8] The Applicant did not complete his sentence. At first glance, it appears that the Applicant is ineligible for the benefit of the criminal rehabilitation process. There is no discretion provided in paragraph 36(3)(c) respecting the reasons why a convicted person did not complete a sentence. I conclude that the Applicant does not meet the criterion of this section of the Regulations.

[9] Neither can the Applicant claim the benefit of a “deemed rehabilitation” because he does not fall within the prescribed class as defined in subsection 18(1) and paragraph 18(2)(a) of the Regulations which provides as follows:

18. (1) For the purposes of paragraph 36(3)(c) of the Act, the class of persons deemed to have been rehabilitated is a prescribed class.  
Members of the class

18. (1) Pour l'application de l'alinéa 36(3)c de la Loi, la catégorie des personnes présumées réadaptées est une catégorie réglementaire.  
Qualité

(2) The following persons are members of the class of persons deemed to have been rehabilitated:

(2) Font partie de la catégorie des personnes présumées réadaptées les personnes suivantes :

(a) persons who have been convicted outside Canada of no more than one offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if all of the following conditions apply, namely,

a) la personne déclarée coupable, à l'extérieur du Canada, d'au plus une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation si les conditions suivantes sont réunies:

(i) the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,

(i) l'infraction est punissable au Canada d'un emprisonnement maximal de moins de dix ans,

(ii) at least 10 years have elapsed since the day after the completion of the imposed sentence,

(ii) au moins dix ans se sont écoulés depuis le moment où la peine imposée a été purgée,

(iii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,

(iii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation,

(iv) the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the Contraventions Act or an offence under the Youth Criminal Justice Act,

(iv) elle n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par procédure sommaire dans les dix dernières années ou de plus d'une telle infraction avant les dix dernières années, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions ou une infraction à la Loi sur le système de justice pénale pour les adolescents,

(v) the person has not within the last 10 years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the Contraventions Act or an offence under the Youth Criminal Justice Act,

(v) elle n'a pas, dans les dix dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions ou une infraction à la Loi sur le système de justice pénale pour les adolescents,

(vi) the person has not before the last 10 years been convicted outside Canada of more than

(vi) elle n'a pas, avant les dix dernières années, été déclarée coupable, à l'extérieur du

one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and	Canada, de plus d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par procédure sommaire,
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(vii) the person has not committed an act described in paragraph 36(2)(c) of the Act;	(vii) elle n'a pas commis l'infraction visée à l'alinéa 36(2)c) de la Loi;
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[10] The Applicant has been convicted of two offences which are equivalent to indictable offences in Canada, under an Act of Parliament. The Applicant cannot avail of any provision of section 18 of the Regulations. He should pursue relief pursuant to subsection 25(1) of the Act by submitting an application for admission to Canada on humanitarian and compassionate grounds upon review of the evidence by the delegate of the Minister.

[11] The application for judicial review is dismissed, there is no question for certification proposed by the parties.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed, no question for certification arising.

“E. Heneghan”

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Judge

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5597-09

**STYLE OF CAUSE:** FAISAL RAFAT v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** June 23, 2010

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

**DATED:** June 29, 2010

**AMENDED:** July 27, 2010

**APPEARANCES:**

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Jamie Todd FOR THE RESPONDENT

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