

Federal Court



Cour fédérale

Date: 20110314

Docket: IMM-4717-10

Citation: 2011 FC 303

Toronto, Ontario, March 14, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MALAK LOFTI REYAD GAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Gad is a Coptic Christian who is afraid to return to Egypt. His refugee claim, based on a fear of fanatical Islamists, one Osama (not bin Laden) in particular, was dismissed in 2003. His first pre-removal risk assessment (PRRA) was negative. It was decided in November 2009. He also sought permission to apply for permanent resident status from within Canada on humanitarian and compassionate grounds. That too was denied.

[2] He filed a second PRRA, which like the first, was based on events which occurred in Canada. He submits he is a refugee *sur place*. That assessment, delivered in April 2010, was also negative. This is a judicial review thereof.

[3] This decision does not take into account events occurring since the second PRRA. It is notorious that since then President Hosni Mubarak was ousted from office. A new PRRA, and there will be a new PRRA as I am granting this judicial review, will have to take that factor into account, as well as the current status of Coptic Christians in Egypt.

[4] While in Canada, Mr. Gad has been writing articles critical of the Egyptian regime, and attended four public demonstrations in front of the Egyptian Embassy or Consulates. Two of these occurred before the first PRRA decision, and two after. He also attended a public meeting with Egyptian Government officials in the basement of a Toronto area Coptic church. This meeting took place after the first PRRA decision.

[5] The PRRA officer's decision does not stand up to any probing analysis, and so is unreasonable (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[6] With respect to the four demonstrations, the officer was of the view that the first two demonstrations should have been brought to the attention of the first PRRA officer. She determined that the second two were similar in nature, and so did not consider the impact of any of the four. The issue was whether these demonstrations, which were filmed by Egyptian officials, would have come to the attention of the government in Cairo.

[7] Although counsel submits that it was the PRRA officer's duty to consider the first two demonstrations as they had taken place after the failed refugee claim, even though they were not brought to the attention of the first PRRA officer, it is not necessary for me to comment. The officer's reasoning was circular. Two of the demonstrations took place after the first PRRA decision. These were new facts within the meaning of s. 113 of the *Immigration and Refugee Protection Act* and it certainly was her duty to consider their impact. She failed to do so.

[8] With respect to the church meeting, she discounted Mr. Gad's affidavit which was to the effect that he was extremely vocal and critical and certainly would have come to the attention of the Egyptian authorities. She also discounted a letter of support from another attendee. She relied more on a newspaper article filed by Mr. Gad which she indicates reported that the meeting was more fruitful, and that although diverging opinions were voiced, there was not sufficient objective evidence to demonstrate that increased attention would be paid to him as a result.

[9] She was also of the view that had he come to the attention of the authorities in Egypt, they would have, in one form or another, harassed, or at least communicated with, his family in Egypt, notwithstanding they knew perfectly well he was here.

[10] I question the PRRA officer's account of the newspaper article. First of all, it notes that an aide to the Foreign Affairs Minister was a speaker, and that he did say he wanted to have a dialogue with the Egyptian community in Canada. However, the English translation of the Arabic article says: "at the meeting there was very tense and attracting[sic] moments between the delegation and

Coptic of Canada...” and set out in detail the complaints which were made with respect to the lack of freedom of religion and proper and just investigation of tragic events affecting Coptics in Egypt.

[11] It is pure speculation on the part of the PRRA officer’s part that had Mr. Gad come to the attention of the authorities his family and colleagues in Egypt would have been approached in one way or another by the authorities. How are we to possibly know what is in the mind of the persecutor? The fact of the matter is that the record clearly discloses that the Mubarak regime brooked no dissent and that on the balance of probabilities Mr. Gad certainly had come to the attention of the authorities. In fact, he was in their face.

[12] In light of these findings, I need not consider other submissions brought on Mr. Gad’s behalf, or to certify as a serious question of general importance whether documents and information which could have been presented at the first PRRA, but were not, are still “new”, within the meaning of the Act, when applied to a second PRRA.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is granted.
2. The decision rendered by the PRRA officer is set aside and the matter is returned to another PRRA officer for redetermination.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4717-10

STYLE OF CAUSE: MALA LOFTI REYAD GAD v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 10, 2011

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: MARCH 14, 2011

APPEARANCES:

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