

Federal Court



Cour fédérale

Date: 20110609

Docket: IMM-5907-10

Citation: 2011 FC 659

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 9, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**DJIDDA MAHAMAT ACHE,
ALKHALI MAHAMAT SALEH,
HABABA MAHAMAT SALEH,
ZENABA MAHAMAT SALEH,
MAHAMAT AL MOUKHTAR MAHAMAT
SALEH,
MOHAMAD AMINE MAHAMAT SALEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD), dated September 17, determining that the principal applicant and his family are not

refugees or persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[2] The claim for refugee protection was refused on the basis that the credibility of the principal applicant and, in certain respects, that of his wife were found to be problematic. In this regard, the RPD noted inconsistencies, contradictions and omissions in the principal applicant's testimony and in the documentary evidence.

[3] The alleged persecution of the applicant stemmed from the actions of the national security agency (ANS) of Chad, the applicants' country of origin. The principal applicant was vice-president of Chad's chamber of commerce. On the way back from a conference in Quebec, the principal applicant stopped over in Paris, to attend a meeting and then visit his cousin. His cousin is Acheck Ibn Omar, an exiled Chadian dissident supposedly involved in subversive activities against the government of Chad. Because of his renewed contact with his cousin, the principal applicant was allegedly taken aside by the ANS upon his return from Paris. He was allegedly imprisoned, mistreated, beaten and even tortured.

Issues and Standards of Review

[4] The applicants submit three determinative issues that allegedly taint the RPD's decision. First, they submit that the assessment of the applicant's credibility contains errors, *inter alia* because of the principal applicant's recognized status as a "vulnerable person". The assessment of the credibility of a refugee protection claimant is a question of fact on which the Court must defer to the RPD. Accordingly, that decision is assessed according to the standard of

reasonableness, by which the decision must fall within the range of decisions that are defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Semextant v Canada (Citizenship and Immigration)*, 2009 FC 29; *Bunema v Canada (Citizenship and Immigration)*, 2007 FC 774).

More specifically, this issue has two components in this case. First, did the RPD fail to consider the applicant's "vulnerable person" status when assessing his testimony? There is also the issue of whether or not an interpreter was present at the port of entry and how this affected the assessment of credibility.

[5] The applicants also submit that beyond the assessment of credibility, the RPD failed to address the issue of whether they were persons in need of protection within the meaning of section 97 of the IRPA and that, for this reason, the decision should be varied. In light of the arguments raised and given the decision of the RPD, this is a question of law, namely, whether the RPD must analyze the possible grounds under section 97 if it has already decided that the applicants' credibility is lacking. This aspect is assessed on the standard of correctness (see *Meija v Canada (Citizenship and Immigration)*, 2010 FC 410 and *Plancher v Canada (Citizenship and Immigration)*, 2007 FC 1283 for examples of how this question of law has been dealt with).

Analysis

Credibility of the applicants

[6] The RPD's decision deals almost exclusively with this issue. The Member of the RPD noted the following incongruities, among others, and was not satisfied with the answers given by the applicant and his wife:

- i. The principal applicant attended a conference in Washington during the period he was allegedly being detained in Chad. The explanations for failing to mention this trip at the port-of-entry interview and for taking two months to tell his counsel about it were deemed to be unsatisfactory. This trip was described as being [TRANSLATION] “important” in his narrative but was not included until the PIF was amended for the second time.
- ii. The allegations of the principal applicant’s wife and the information provided by the principal applicant in his narrative contradicted each other regarding the circumstances of the departure of the applicant and his children from Chad.
- iii. The principal applicant originally stated that he had been alone with his cousin during his stay in Paris. Later, when questioned, he revealed that several other people had visited his cousin’s apartment during that period.
- iv. There were contradictions regarding the role the director of the ANS played in his interrogations and abuse in Chad.
- v. The plausibility of the applicant’s narrative was called into question in several respects.

[7] Are these findings of fact regarding the applicants’ credibility reasonable, according to the applicable standard of review?

[8] The RPD’s decision is long, detailed and reasonably based on the testimonies of the applicants, the documentation they filed in support of their refugee protection claim and the refugee protection claim process itself as it unfolded. The decision is reasonable, even exemplary, in its assessment of credibility and in its supporting reasons for this assessment.

[9] Thus, two questions arise. First, did the absence or presence of a translator at the port-of-entry interview warrant the intervention of the Court and the rejection of the reasons supporting the assessment of credibility? This is relevant for the principal applicant, as he alleges that stress, having to travel with children and the circumstances meant that his port-of-entry interview was

not the most reliable and therefore should not be regarded negatively, particularly as regards his failure to mention that he had travelled to the United States.

[10] It is indeed risky for the Court to make a ruling regarding the presence of a translator, given the material in the documentation. Thus, the issue is not really whether the applicant understood everything or whether he could express himself well enough to explain his narrative. On the contrary, it is more a question of what *was not said* regarding his presence in the United States when he was supposedly in detention. Whether it was in Chadian Arabic or in French, the applicant did not address this in the interview and did not correct the oversight until much, much later, in a *second* amendment to his PIF. What is more, the explanations he gave were deemed to be insufficient. The Court is satisfied that the RPD's decision is reasonable in this regard.

[11] The principal applicant was later determined to be a "vulnerable person" within the meaning of the applicable directive. However, it appears that procedural accommodations were in fact made by the Member: the hearing began with the applicant's counsel, there were frequent recesses throughout the hearing to check on the applicant's state, and help was offered during testimony. Moreover, the RPD's decision indicates that vulnerable person status was in fact taken into account.

[12] First of all, the RPD is not bound by such directives, and the failure to follow a directive is not *in itself* a ground for judicial review (*Munoz v Canada (Citizenship and Immigration)*, 2006 FC 1273; *Balasingam v Canada (Citizenship and Immigration)*, (1998) 157 FTR 143 (FC); *Sy v Canada (Citizenship and Immigration)*, 2005 FC 379). As the reasons for decision clearly

indicate that the applicant's psychological vulnerability was considered, this is not a ground for review that the Court can accept in the present case. The principal applicant's vulnerability and psychological state in this case do not make up for the serious shortcomings that were uncovered in the assessment of his credibility.

[13] The findings regarding the applicants' credibility are therefore upheld.

Section 97 analysis

[14] It was argued that the RPD failed to conduct an analysis with respect to section 97 of the IRPA. In the applicants' opinion, this analysis had to be done, and the decision is tainted by the failure to do so. Thus, the risks incurred because of family ties with Acheck Ibn Omar and the applicants' ethnic origins had to be analyzed.

[15] However, it is trite law that a "negative credibility finding in relation to section 96 will often obviate the need to consider section 97" (*Meija*, above, at para 20, citing *Plancher*, above, and *Emamgongo v Canada (Citizenship and Immigration)*, 2010 FC 208). In the case at bar, it appears that the section 97 analysis was implicit in the reasons. Accordingly, the RPD found that the absence of threats before June 2008 and the applicant's successful career supported the fact that he was not likely to experience any risks within the meaning of section 97.

[16] This issue is therefore not a question of law; rather, what we have here is a challenge of negative inferences regarding credibility and their impact under a section 97 analysis. A section 97 analysis was done, albeit in a cursory manner; however, because of the concerns

regarding credibility and other factual aspects, this analysis was not more in-depth. This is reasonable in fact and correct in law.

Conclusion

[17] The decision of the RPD is therefore reasonable in terms of the findings made and rests on a well-established legal foundation. Accordingly, the application for judicial review is dismissed. No question was proposed for certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Simon Noël”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

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v MCI

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