

Federal Court



Cour fédérale

Date: 20111205

Docket: IMM-7298-10

Citation: 2011 FC 1404

Ottawa, Ontario, December 5, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ABDULWAHAB ZABEBA
MAHIR ABDULWAHAB ZABEBA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Abdulwahab Zabebe and his son Mahir arrived in Canada from Yemen in 2008. They claimed refugee protection on the basis of political opinion.

[2] Mr. Zabebe had previously served as a Yemeni diplomat in Washington, DC. He claims he was transferred to Poland because he was perceived to be an opponent of the President of Yemen,

Mr. Ali Abdullah Saleh. Mr. Zabeba refused the transfer and believes that a charge of treason awaits him in Yemen. He and his son fled to Canada.

[3] A panel of the Immigration and Refugee Board refused to afford the applicants refugee protection. They then applied for a pre-removal risk assessment [PRRA]. In his PRRA, Mr. Zabeba claimed to fear a risk of mistreatment in Yemen both on the basis of political opinion and because he had converted from Islam to Christianity while in Washington. Apostasy is a crime in Yemen.

[4] A PRRA officer dismissed the application. The officer found that the risk based on political opinion was the same risk that the Board had found to be unsupported. Regarding potential religious persecution, the officer concluded that while apostasy is illegal in Yemen, and punishable by death, the persons at risk are those who openly proselytize. Mr. Zabeba does not fit that profile.

[5] Mr. Zabeba argues that the officer's decision was unreasonable because he ignored or misconstrued the evidence. He asks me to overturn the officer's decision and order a reassessment of his application by a different officer. I agree that the officer overlooked important evidence and must, therefore, allow this application for judicial review.

[6] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[7] As mentioned, the officer found the risk of political persecution had already been assessed by the Board. The Board found that Mr. Zabebe was not credible, and was not an opponent of the Yemeni Government. Rather, he made a refugee claim in Canada instead of the United States because our health care programs are better. In effect, Mr. Zabebe was an economic migrant. The officer determined that there was no new evidence before him on this issue, so the Board's decision must stand.

[8] On the other hand, the alleged risk based on apostasy was new.

[9] The officer acknowledged that apostasy is a crime in Yemen, punishable by death. However, the government does not actively enforce the law. The question was whether Mr. Zabebe's religious profile as a Christian convert would bring him and his son within the definition of convention refugees or persons in need of protection.

[10] Mr. Zabebe tendered letters from the minister of his church in Ottawa, and from a friend in Washington. Both letters asserted he would be in danger in Yemen. The officer gave the letters little weight because they were vague, speculative and self-serving. Further, they did not come from sources with first-hand knowledge.

[11] The officer also found that the documentary evidence did not support the applicants' assertions:

- Yemen's Constitution does not protect or inhibit freedom of religion, though government policies imposed some restrictions;

- There were an estimated 3000 Christians living throughout the country, most of whom are refugees or temporary residents;
- While there was a decrease in respect for religious freedom by the Yemeni government in 2008, it was mainly with respect to the Baha'i and Jewish communities;
- There was a reported incident from June 2008 of a Christian convert being arrested for promoting Christianity and distributing the Bible;
- Under the government's interpretation of Islam, conversion to another religion by a Muslim is considered apostasy, and there were a few reports of arrests in cases related to proselytizing or apostasy in 2008;
- A 2009 report indicated that while there were no specific reports of monitoring, harassment or censorship of people possessing non-Islamic religious literature by government authorities, there was reason to believe such actions persisted; and
- Religious minorities are not required to register with the state; however, all non-Muslims are barred from running for Parliament, and Jews are not eligible to serve in the military or in government positions.

[12] The officer also cited evidence indicating that Christians are a recognized religious minority in Yemen, and that only those who openly proselytize or conduct other overt religious activity are at a risk of harm or persecution.

[13] Against this evidence, the officer noted that Mr. Zabeba was merely a member of his church; he had not proselytized or expressed any intention of doing so. Therefore, he did not fit the profile of those who would be at risk of harm from the government, religious zealots, or others in Yemen.

[14] Finally, the officer also found that the allegation that Mahir was at risk as the son of a former diplomat who had embarrassed the government was vague, speculative and unsupported by the evidence.

III. Was the Officer's Decision Unreasonable?

[15] Mr. Zabebe submits that the officer failed to take adequate account of the fact that conversion itself was a crime, not just proselytizing. He also maintains that the officer failed to deal with evidence to the contrary, and did not provide reasons for preferring some evidence over other pieces of evidence.

[16] In my view, the officer considered the actual risk to Mr. Zabebe as a person who converted to Christianity. The officer explicitly considered documentary evidence on the particular issue of apostasy in Yemen, as well as the evidence relating to the treatment of Christians generally in that country.

[17] Some of the evidence the officer was alleged to have ignored was not central to the officer's decision; nor did it contradict it. For example, "The Islamic Law of Apostasy" simply indicated that apostasy is punishable by death in Yemen, a fact that the officer had already accepted. Similarly, "Apostates from Islam: No place to call home" notes that apostates face serious penalties, such as "the annulment of marriage, termination of citizenship, confiscation of identity papers and the loss of further social and economic rights". It also states that "Muslim nations often refrain from official executions of apostates". However, this article was not specific to Yemen.

[18] The officer relied on documentary evidence that was specific to Yemen which recorded few arrests related to apostasy in 2008. An earlier report indicated that there were no reports of charges

or prosecutions. The officer concluded that Mr. Zabeba did not face a risk of harm in Yemen as an apostate or as a Christian.

[19] However, there was other evidence in the record supporting Mr. Zabeba's claim that was not cited by the officer. The record includes a report of an apostate who was imprisoned, beaten and charged with a crime in 2000. The trial was halted after the case received international attention. In addition, the 2009 US DOS report stated that there were credible reports "that several converts from Islam to Christianity continued to be detained by authorities". Another document stated that the number of apostasy cases before the courts had steadily increased in Yemen since the 1980s.

[20] In my view, the officer properly identified the risk feared by Mr. Zabeba. However, there was evidence in the record that directly contradicted the officer's conclusion that only Christians who proselytized were at risk. The officer had a duty to explain why that evidence did not support Mr. Zabeba's claim. Accordingly, the officer's conclusion was unreasonable considering the material before him.

IV. Conclusion and Disposition

[21] In my view, the officer's conclusion was not a defensible outcome based on the facts and the law. Therefore, it was unreasonable. I must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7298-10

STYLE OF CAUSE: ABDULWAHAB ZABEBA, ET AL v MCI

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: July 5, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: December 5, 2011

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