

Federal Court



Cour fédérale

Date: 20131210

Docket: IMM-12488-12

Citation: 2013 FC 1240

Ottawa, Ontario, December 10, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HAMID KOROM MAHAMAT

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The core allegation of torture for a period of eight months is not even specified in the Personal Information Form [PIF] of the Applicant. As that central issue for the request for refugee status, is not, at all, the very focus of any discussion in the written narrative, the Applicant cannot then expect a reasonable outcome to be otherwise than negative as to his request for refugee status.

[2] The Refugee Protection Division of the Immigration and Refugee Board [IRB] is a first-instance decision-maker of fact; it is a specialized tribunal and has the jurisdiction to determine

issues of plausibility. On issues of plausibility, intervention by this Court is only warranted when the IRB draws unreasonable inferences (*Aguebor v Canada (Minister of Employment and Immigration)* (1993) 160 NR 315 (FCA); *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339)

[3] This decision is in response to an application for judicial review from the IRB which decided that the Applicant is not a Convention refugee or a person in need of protection.

[4] The Applicant, a citizen of Chad, alleged he was arrested, detained and beaten due to his uncle's suspected activities of spiritually guiding and assisting rebels implicated in an aborted coup in Chad in February of 2008.

[5] The Applicant's PIF demonstrated an absence of significant allegations in respect to the Applicant's torture that had been raised outside of the PIF. Such an absence from the PIF, itself, can be pivotal to an adverse credibility determination.

[6] In addition, the aftermath to the torture and follow-up in respect to the Applicant's physical safety led to even greater doubts in the tribunal's opinion in regard to the allegations specified.

[7] Also, the Applicant's narrative in respect of his departure from Chad presented credibility issues that were considered to lack inherent logic in view of the very context of the narrative (*Khosa*, above).

[8] Rule 37(3) of the *IRPA*, in and of itself, could have given the IRB a valid reason to reject evidence on the basis that a document which could have been presented at a hearing, was not.

[9] An adverse inference, although inconclusive, in and of itself, had also been drawn by the IRB in respect of the Applicant's failure to claim protection at the first opportunity (*Bello v Canada (Minister of Citizenship and Immigration)* (1997), 70 ACWS (3d) 888, [1997] FCJ No 446 (QL/Lexis) (TD)).

[10] The medical document, even if disclosed at the appropriate time, would not have set aside significant outstanding credibility concerns as they were determined to be irreconcilable in view of the narrative as a whole (*Aguebor*, above).

[11] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-12488-12

STYLE OF CAUSE: HAMID KOROM MAHAMAT v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 5, 2013

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

DATED: DECEMBER 10, 2013

APPEARANCES:

Howard P. Eisenberg

FOR THE APPLICANT

Leanne Briscoe

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Howard P. Eisenberg
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT