

Federal Court



Cour fédérale

**Date: 20150730**

**Docket: IMM-2289-15**

**Citation: 2015 FC 936**

**Ottawa, Ontario, July 30, 2015**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**ALI MOHAMMED DERAR AHMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] Ali Mohammed Derar Ahmed has brought a motion for an order staying his removal to Sudan pending determination by this Court of his application for leave and for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board]. The Board found that he is neither a Convention refugee nor a person in need of

protection pursuant to ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Mr. Ahmed is a citizen of Sudan. His claim for refugee protection was based on the following assertions:

- In 2005, Mr. Ahmed left Sudan to attend university in India.
- While in India, Mr. Ahmed was involved in student groups that advocated for civil liberties and promoted political, economic, social and cultural activities.
- Mr. Ahmed's involvement in these groups included protesting against the Sudanese government and its attempts to spy on Sudanese students in India. Mr. Ahmed also opposed the Sudanese government's efforts to recruit these students into political positions.
- After graduating from university in 2010, Mr. Ahmed left India to work in Qatar. Once in Qatar, Mr. Ahmed continued his political activities. These included participation in campaigns to expose corruption within the Sudanese government and raising money for opposing political groups.
- After Sudan experienced massive flooding in 2013, Mr. Ahmed became involved in charitable relief efforts through an initiative called "Nafeer". Mr. Ahmed joined the

Nafeer steering committee in Qatar and collected money, clothes and tents to send to Sudan.

- The Nafeer group was committed to the direct distribution of aid in Sudan in order to avoid the loss of donations to corrupt government officials or employees of international organizations. However, the Sudanese embassy in Qatar refused to allow Mr. Ahmed's group to send the donated items to Sudan. Mr. Ahmed's difficulties with the Sudanese embassy became known within the Sudanese community in Qatar.
- As part of the Nafeer campaign, Mr. Ahmed organized a concert to raise money for flood relief. The concert was well-attended by members of the Sudanese community in Qatar. The concert was followed by a rally, during which the Sudanese government was criticized for its inaction in dealing with the crisis caused by the flood.
- In October, 2014, Mr. Ahmed returned to Sudan for the first time since 2005. Upon arrival he was detained by immigration officials and interrogated about his involvement with student groups in India, opposition groups in Qatar, and the Nafeer movement. When Mr. Ahmed denied any involvement with these groups he was accused of collaborating with enemies of the state and beaten with a club.
- Mr. Ahmed was released after he agreed to cooperate with Sudanese officials and act as an operative in Qatar. He was told that he would be contacted in Qatar upon his return.

- Mr. Ahmed returned to Qatar two weeks later. After telling his friends and colleagues in Qatar about his ordeal with the Sudanese authorities, he was advised to leave the country given the strong domestic relations between Qatar and Sudan.
- Mr. Ahmed left Qatar and travelled to the United States in December, 2014. He then made his way to Canada where he made a refugee claim.

[3] Mr. Ahmed's refugee claim was rejected by the Board on April 22, 2015, primarily on the ground that there was insufficient credible and trustworthy evidence to establish that he continued to be of interest to Sudanese authorities. He applied for leave and for judicial review of the Board's decision on May 15, 2015. The application for leave has not yet been decided by this Court. Mr. Ahmed was issued a Direction to Report for removal by the Canada Border Services Agency on July 14, 2015, and his removal is currently scheduled to take place on August 1, 2015.

[4] A stay of removal is extraordinary equitable relief. The tripartite test in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302, 6 Imm LR (2d) 123 (FCA) [*Toth*], requires that there be a serious issue to be tried, that the applicant suffer irreparable harm by reason of his removal from Canada, and that the balance of convenience favour the applicant. The test is conjunctive, and so each branch of the *Toth* test must be met.

[5] The test for establishing a serious issue to be tried is relatively low. The issue must not be frivolous and there must be at least some prospect of success (*Abazi v Canada (Minister of*

*Citizenship and Immigration*), [2000] FCJ No 429). Mr. Ahmed challenges the Board's decision on the ground that its rejection of his credibility, with the exception of a single factual omission from his Basis of Claim [BOC] form, was based on unreasonable findings of implausibility.

[6] Mr. Ahmed does not dispute that he neglected to mention in his BOC form that while he was a student in India he received a telephone call from the Sudanese consul to advise him that he should stop criticising the government. However, he says that he did not include this in his BOC form because he was unable to substantiate it with documentation. He also says that this was a peripheral aspect of his claim, and that his well-founded fear of persecution was primarily due to his detention and abuse when he returned to Sudan in October, 2014. On that occasion he was accused by Sudanese authorities of being a communist, an infidel, an enemy of Islam, and someone who has a problem with the Sudanese government.

[7] Mr. Ahmed also says that it was unreasonable for the Board to reject as implausible his testimony that he was asked by Sudanese authorities to spy on his compatriots in Qatar and was given a valid Sudanese passport for this purpose. He notes that this Court has previously overturned decisions of the Board that relied upon findings of implausibility that were not properly supported by the evidence or that assumed standards of behaviour that prevail in Canada but may not in other countries (*Vanegas Beltran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1475; *Ndjavera v Canada (Minister of Citizenship and Immigration)*, 2013 FC 452).

[8] I am satisfied that Mr. Ahmed has met the relatively low threshold for establishing a serious issue to be tried. It is therefore necessary to consider the second branch of the *Toth* test: whether he will suffer irreparable if he is removed from Canada to Sudan. The threshold for establishing irreparable harm is comparatively high. It must be personal to the Applicant and must be demonstrated on the balance of probabilities with clear and non-speculative evidence (*Radji v Canada (Citizenship and Immigration)*, 2007 FC 100).

[9] The Minister says that Mr. Ahmed cannot establish irreparable harm with reference to the same risks that were assessed by the Board: *Magyar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1255 [Magyar] at para 6, citing *Ellero v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1364 at para 49 [Ellero]; *Golubyev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 394 [Golubyev] at para 13; and *Manohararaj v Canada (Minister of Citizenship and Immigration)*, 2006 FC 376 [Manohararaj] at para 36.

[10] The Minister acknowledges that the underlying applications for leave in the three cases cited in *Magyar* were not decisions of the Board. In *Ellero*, the underlying application challenged an adverse Pre-Removal Risk Assessment [PRRA]. In *Golubyev*, the underlying application challenged an adverse PRRA and an adverse decision regarding an application for humanitarian and compassionate consideration. In *Manohararaj*, the underlying application challenged a refusal to defer removal.

[11] In this case, Mr. Ahmed has sought leave to challenge the Board's decision. Although his application for leave and for judicial review has been perfected, this Court has not yet decided whether to grant leave. His case is therefore analogous to *Koca v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 473 and *Figurado v. Canada (Solicitor General)*, 2005 FC 347.

[12] I agree with the Minister that the establishment of a serious issue based on the low threshold of the *Toth* test does not mean that irreparable harm will necessarily result and the balance of convenience will normally favour the applicant (*Astatke v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1174 at paras 3-7). However, because Mr. Ahmed is challenging the Board's assessment of the risk that he faces in Sudan, he is not precluded from relying on that same risk in order to establish irreparable harm.

[13] I have found that Mr. Ahmed has raised a serious issue regarding the Board's assessment of his credibility. The documentary evidence adduced before the Board and this Court demonstrates that those who were involved in Nafeer have been detained, tortured and even killed by Sudanese authorities. The Board found that people associated with Nafeer ceased to be of interest to the Sudanese authorities in 2013, and furthermore that Mr. Ahmed is no longer politically active. However, his uncontradicted evidence was that he was detained and abused in Sudan not only because of his involvement in Nafeer, but also because he was regarded as a communist, an infidel, an enemy of Islam, and someone who has a problem with the Sudanese government. He says that his risk profile today is exacerbated by his refusal to spy on his compatriots in Qatar and his decision to flee to Canada.

[14] Given the well-documented poor human rights record of Sudan, I am satisfied that Mr. Ahmed will suffer irreparable harm if he is returned to Sudan. The second branch of the *Toth* test is met.

[15] Mr. Ahmed's application for leave and for judicial review has been perfected. A decision respecting leave will be made in the near future. If leave is granted, then the application for judicial review will be heard within a matter of months. Mr. Ahmed does not have a history of abusing Canada's immigration laws, nor does he present a threat to the Canadian public. The balance of convenience favours Mr. Ahmed.

[16] The motion for a stay of removal is therefore granted.



**ORDER**

**THIS COURT ORDERS** that the motion for a stay of removal is granted pending this Court's final disposition of the application for leave and for judicial review.

"Simon Fothergill"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2289-15

**STYLE OF CAUSE:** ALI MOHAMMED DERAR AHMED V THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JULY 29, 2015

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

**DATED:** JULY 30, 2015

**APPEARANCES:**

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