Federal Court  Cour fédérale

Date: 20180706

Docket: IMM-5469-17

Citation: 2018 FC 698

[ENGLISH TRANSLATION]

Montréal, Quebec, July 6, 2018

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KOKOI DJIBRINE HISSEIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

> [3] It is insufficient for claimants to submit documentary evidence consisting of reports on problematic situations in their country to be recognized as a "Convention refugee" or "person in need of protection." Claimants must also demonstrate a link between this evidence and their personal situation, which they have not successfully done. (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] F.C.J. No. 302 (F.C.A.) (QL).)

> [4] Documentary evidence concerning the general situation prevailing in a refugee claimant's country cannot, in and of itself, establish the merit of the refugee claim. (*Alexibich v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 53, [2002] F.C.J. No. 57 (QL); *Ithibu v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 288, [2001] F.C.J. No. 499 (QL).)
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> (*Morales Alba v. Canada (Citizenship and Immigration)*, 2007 FC 1116.)

II. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [Board] made on December 13, 2017, under subsection 111(1) of the IRPA. In that decision, the RAD upheld the decision of the Refugee Protection Division [RPD], finding that the applicant is not a "Convention refugee" or "person in need of protection" within the meaning of sections 96 and 97 of the IRPA.

III. Facts

[2] The applicant, age 23, is a citizen of the Republic of Chad of Gorane ethnicity.

[3] As a young child, the applicant lived with a Dr. Albissaty Saleh Alazam, supposedly a paternal uncle also known to be an opponent of the Chadian government.

[4] On April 4, 2016, following the arrest of his uncle, the applicant apparently decided to organize, with his cousins and other young people in his neighbourhood, a peaceful march in the city of Ndjamena to call for the release of Dr. Alazam.

[5] On April 25, 2016, the applicant claims that he was arrested, detained and subsequently accused of planning the march in question. According to the applicant, the security forces discovered that he was an opponent of the current regime after consulting his Facebook profile and seeing that he was a member of the group "Déby Dégage."

[6] On June 1, 2016, the Chadian authorities apparently released the applicant after prohibiting him from taking part in subversive activities against the regime of President Idriss Déby.

[7] In late June 2016, the applicant states that a demonstration against the Chadian government took place and that two secret-service agents intercepted him while he was in the area. After verifying his identity, the agents apparently released the applicant.

[8] According to the applicant, the Chadian authorities arrested him a second time on July 3, 2016, and charged him with public disorder and civil disobedience. After spending two months and eight days in the Amsinéné prison, the applicant alleges that he escaped from prison on September 10, 2016. His escape was apparently aided by a prison guard that the applicant's cousin, Abdelrahim Mahamat Bahar, had bribed.

[9] Based on the applicant's account, he spent the next eight months hiding at the home of his cousin Abdelrahim in Mandélia, a small town located approximately 50 kilometres outside of Ndjamena.

[10] The applicant claims that the Chadian authorities also arrested his father in January 2017. The applicant reports that his father died of a heart attack on February 10, 2017, after being tortured at the Koro Toro prison.

[11] On May 30, 2017, the applicant left Chad after obtaining an American visa. It is noted that the applicant had applied for a visa for the United States in October 2016, but his application was denied. He consequently travelled to the United States before entering Canada to go stay with an uncle of Canadian nationality.

[12] The applicant claims that if he returns to his country, he fears the serious possibility of persecution due to his political opinions and Gorane ethnic background. On July 21, 2017, he filed a claim for refugee protection in Canada.

IV. The RPD's decision

[13] On September 21, 2017, the RPD refused the applicant's claim for refugee protection on the grounds that he was not a refugee within the meaning of the United Nations' *Convention relating to the Status of Refugees* or a person in need of protection.

[14] The RPD's decision was based solely on the finding that the applicant was not credible, his identity having been established to the tribunal's satisfaction. The RPD identified the following contradictions in the applicant's testimony concerning key elements of his refugee claim:

> i. [TRANSLATION] In his written account, the applicant indicated that he was imprisoned on July 3, 2016, and that he went into hiding at his cousin's home in Mandélia after escaping from prison on September 10, 2016. At the hearing, he responded that he had returned to Ndjamena while in hiding, on June 3, 2016, aided by the same guard who had helped him escape from prison. The tribunal concluded that it was inconsistent for the applicant to leave hiding on June 3, 2016, to go write his school-leaving examinations;
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> ii. On form IMM 5669, the applicant neglected to provide his cousin's address in Mandélia. The tribunal noted that this significant omission contradicted his account to the effect that he went into hiding in Mandélia after escaping from prison;
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> iii. The applicant responded "no" to questions 9(a) and (b) on the Schedule 12 form; however, the tribunal noted that the applicant contradicted himself by failing to mention another key element from his written account concerning his being arrested and charged with civil disobedience and public disorder;
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> iv. Based on a letter from the applicant's cousin, the cousin helped him to get out of the country; however, the tribunal noted that there is no mention of this important claim in the applicant's written account. At the hearing, the applicant was unable to respond directly to the member's question when confronted with this omission.

[15] When these contradictions were raised, the applicant replied each time either that he had misunderstood the member's questions or that he had been stressed. The RPD deemed his responses to be unreasonable in light of the applicant's circumstances. After considering all of the evidence, the RPD concluded that the applicant had failed to discharge his burden of proof.

[16] On October 6, 2017, the applicant filed an appeal of the RPD's decision.

V. The RAD's decision

[17] In a decision dated December 13, 2017, the RAD upheld the RPD's decision under subsection 111(1) of the IRPA. That decision is the subject of this judicial review.

[18] First, the RAD concluded that the RPD did not err with respect to the applicant's credibility. After listening to the recording of the hearing and reviewing the evidence on record, the RAD member came to the conclusion that the applicant was not credible concerning key elements of his account. The RAD conducted an independent analysis of the evidence and identified inconsistencies in the applicant's testimony. For example, the member noted that the applicant provided an inconsistent testimony when questioned as to why he feared for his safety.

[19] Second, the RAD noted that on multiple occasions, the applicant simply [TRANSLATION] "recited from rote" the details of the account appended to the Basis of Claim [BOC] form. According to the RAD, the questions put to the applicant had been [TRANSLATION] "simple questions." The RAD found that the RPD had also considered the explanations provided by the applicant and had given clear justification as to why it could not take them into consideration. The applicant was consequently unable to prove the truthfulness of the facts alleged in his account.

[20] Third, with regard to the applicant's alleged fears due to his Gorane ethnicity, the RAD indicated in its decision that the RPD had not specifically expressed an opinion concerning this claim; however, the RAD explained that [TRANSLATION] "[t]he fact that a decision-maker did not

make a determination as to a reason may constitute failure to exercise its jurisdiction and should be reviewed on the standard of correctness. The RPD does not have any advantage over the RAD with respect to addressing this issue" [notes omitted]. The RAD consequently proceeded with its own analysis of the matter. After considering the applicant's submissions and the documentary evidence on record (tabs 4.6 and 4.11 from the National Documentation Package [NDP] on Chad dated March 31, 2017), the RAD concluded that the applicant had not established a serious possibility of persecution based solely on his Gorane ethnicity.

VI. Issue

[21] Having considered the parties' submissions, the Court finds that this application for judicial review raises the sole issue disputed by the respondent: was the RAD reasonable in concluding that the applicant had not established a serious possibility of persecution based solely on his Gorane ethnicity?

[22] Based on the conclusion of the Federal Court of Appeal, the standard of review applicable to decisions handed down by the RAD is that of reasonableness (*Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 at paragraph 35). This standard of review requires deference to the RAD's findings of fact and evaluation of the evidence (*Koky v. Canada (Citizenship and Immigration)*, 2017 FC 1035 at paragraph 11). The Court will not intervene if the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]).

VII. Relevant provisions

[23] The following provisions of the IRPA are relevant:

Convention refugee	**Définition de « réfugié »**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of	a) soit au risque, s'il y a des motifs sérieux de le croire,

torture within the meaning of Article 1 of the Convention Against Torture; or	d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.
…	[…]
Decision	**Décision**
111 (1) After considering the	**111** (1) La Section d'appel des

appeal, the Refugee Appeal Division shall make one of the following decisions:	réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.
(a) confirm the determination of the Refugee Protection Division;	
(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or	
(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.	

VIII. Submissions of the parties

A. *Submissions of the applicant*

[24] According to the applicant, the RPD failed to give weight to an important ground supporting his refugee claim, this being the applicant's fear of persecution due to his Gorane ethnicity. He contends that the RAD erred in its analysis of the RPD's decision when it indicated in its decision that [TRANSLATION] "the RPD did not believe that the appellant had been arrested due to his political opinions or ethnicity" (Tribunal Record [TR], Reasons and Decision of the RAD, at paragraph 48). The applicant submits that there is nothing to show that the RPD had considered his ethnic profile in its decision. On this ground, he cites *Kandel c. Canada*

(Citoyenneté et Immigration), 2014 CF 659 [*Kandel*] concerning an application for a pre-removal risk assessment to argue that the RPD's error is sufficient to invalidate its decision:

> [TRANSLATION]
> [26] As stated previously, the first issue in this case is sufficient to conclude that the impugned decision is invalid and that the case should be referred back to another CIC officer for reassessment.
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> [27] This is because the Officer's decision concerning the applicant's PRRA application, particularly with regard to one of the two reasons cited, does not stand up to review on a correctness standard. Upon reading the decision, it is evident that the Officer did not made any direct conclusion concerning the applicant's sexual orientation despite the central role of this element in his PRRA application. [Applicant's emphasis.]

[25] Similarly, the applicant submits that the RPD's failure to mention specifically in its reasons its ground for not believing the applicant's fear of persecution due to his Gorane ethnicity is a reviewable error (*Odetoyinbo v. Canada (Citizenship and Immigration)*, 2009 FC 501 at paragraphs 6 and 8 [*Odetoyinbo*]).

[26] The applicant argues that the RAD's conclusion that the applicant had not established a serious possibility of persecution based solely on his ethnicity is erroneous. The applicant claims that he mentioned his fears in both his BOC and his testimony. He claims further that he testified concerning problems encountered by other persons due to their Gorane ethnicity. According to the applicant, Goranes are persecuted in Chad, and the documentary evidence illustrates this situation clearly:

> Those arrested were often accused by the government of complicity with the attackers or the conspirators because of their ethnic or regional origin or of their criticism towards government policies and practices.

> (TR, NDP on Chad dated March 31, 2017, tab 4.6, Chad: "In the Name of Security? Arrests, Detentions and Restrictions on Freedom of Expression in Chad", October 24, 2013, page 5 of NDP.)
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> [TRANSLATION] According to sources, the UFDD is a rebel group (ACLED Feb. 2009, 11; Human Rights Watch 2007, 5; PHW 2015, 270) that recruits primarily from the Gorane ethnic group (*ibid.*; Human Rights Watch 2007, 6). Sources indicate that the UFDD was founded in 2006 (*ibid.*; ACLED Feb. 2009, 11). According to Human Rights Watch, the Goranes are a mainly nomadic tribe in northern Chad (2007, 5). For information concerning the Gorane ethnic group, please see Response to Information Request TCD104695.
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> . . .
>
> According to Freedom House, human rights advocacy groups have accused the Chadian government of engaging in "extrajudicial detentions and executions" against alleged rebels, sympathizers and members of the Gorane ethnic group, "some of whom took part in the attempted coup d'état in 2008" (Freedom House 2009). Similarly, Amnesty International reports that following the rebel coalition's attack on the capital in 2008, "suspected political opponents" were detained, "tortured," killed or subjected to forced disappearance (AI Feb. 2011, 10). For additional information concerning the attempted coup d'état, please see Response to Information Request TCD102896. [Applicant's emphasis.]
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> (TR, NDP on Chad dated March 31, 2017, "Chad: information on the Union des forces pour la démocratie et le développement [UFDD], including its origins, structure, ideology and activities; treatment of UFDD members and their families by the authorities; information as to whether government agents harassed UFDD members or their families or removed them from their homes in Saudi Arabia," October 28, 2015.)

B. *Submissions of the respondent*

[27] The respondent argues to the contrary that the RAD's decision was reasonable. According to the respondent, the RAD conducted an independent analysis of all the evidence on record, including the documentary evidence from the NDP on Chad. Consequently, the

respondent supports the RAD's conclusion that the applicant did not discharge his burden by demonstrating the existence of a serious possibility of persecution due to his Gorane ethnicity.

[28] Contrary to the applicant's claims, the respondent submits that the applicant neglected to mention, either in the account appended to his BOC or during his testimony before the RPD, any problems encountered by himself or by family members or associates due to their Gorane ethnicity. In fact, when questioned concerning any problems that he or family members or associates had encountered due to their Gorane ethnicity, the applicant responded at the hearing, [TRANSLATION] "Me personally, I didn't have any" (TR, audio recording of hearing before RPD, 2:28:42 to 2:30:50). Later, the applicant states, [TRANSLATION] "Some people of Gorane origin have run into problems and difficulties" (TR, audio recording of hearing before RPD, 2:28:42 to 2:30:50). For this reason, the respondent argues that the applicant provided [TRANSLATION] "a vague and very general testimony" concerning his fear of persecution due to his Gorane ethnicity (Respondent's Factum, at paragraph 22).

[29] In his supplementary factum filed before this Court, the respondent indicates that tabs 4.6 and 4.11 submitted on appeal by the applicant are taken from the NDP dated March 31, 2017. However, a more recent version, dated September 29, 2017, was available when the RAD rendered its decision. Further to this observation, the respondent then refers this Court to tab 13.1 of the NDP dated September 29, 2017:

> **2. Treatment of members of the Gorane ethnic group by the authorities since the presidential elections of April 2016**
>
> . . . the Gorane are not currently victims of any particular treatment by the authorities as a result of their ethnic affiliation.

> (TR, NDP on Chad dated September 20, 2017, tab 13.1, "Treatment of members of the Gorane ethnic group [also known as Goran, Daza, Toubou, Dazaga and Dazagada] by the authorities since the presidential elections of April 2016, Immigration and Refugee Board of Canada, October 21, 2016.")

[30] Consequently, the respondent maintains that the RAD did not commit any errors and that the preceding excerpt only confirms the RAD's conclusion. Considering that the burden of proof falls on the applicant, the respondent reiterates the RAD's conclusion that tabs 4.6 and 4.11 of the documentary evidence on Chad were not sufficient in and of themselves to conclude that there is a serious possibility that the applicant would be persecuted solely due to his Gorane ethnicity. [Applicant's emphasis.]

[31] In this regard, the respondent cites a Federal Court of Appeal decision in which it was concluded that where a claimant's testimony has not been deemed credible and there are no other items of evidence to consider, "country reports alone are normally not a sufficient basis on which the Board can uphold a claim" (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paragraph 29).

IX. Analysis

[32] For the reasons that follow, this application for judicial review is dismissed.

A. *Was the RAD reasonable in concluding that the applicant had not established a serious possibility of persecution based solely on his Gorane ethnicity?*

[33] Insofar as the applicant did not present any argument other than concerning his fear of persecution due to his Gorane ethnicity, only that issue will be addressed by the Court for the purpose of this application.

[34] First, the Court finds that the applicant does not appear to grasp the role of the RAD with regard to appeals as established under law. The applicant submitted that the RPD failed to consider his ethnic profile in its decision. However, the Court notes that the RPD failed only to provide reasons for its decision as to the applicant's fear of persecution based solely on his ethnicity. At the start of its decision, the RPD states the applicant's allegations constituting the main basis of his refugee claim, this being his fear of persecution due to his political opinions and Gorane ethnicity. Contrary to the applicant's claims, the RPD questioned the applicant at the hearing concerning his fear due to being Gorane. This claim was certainly considered by the RPD, and there is no evidence on record to contradict this finding.

[35] Next, the applicant argued that the RPD did not specifically mention in its decision its reason for not believing the applicant concerning his fear of persecution due to being Gorane. In this regard, the applicant submitted a conclusion taken from *Odetoyinbo*, *supra*, to the effect that an error of this nature on the part of the RPD is reviewable. The Court does not accept this argument for two reasons. First, the purpose of this application for judicial review is not to review the RPD's decision. In *Odetoyinbo*, *supra*, the applicant challenges the lawfulness of the RPD's decision, not the RAD's decision. Second, in the present case, the RAD was responsible

for determining whether, pursuant to subsection 111(2) of the IRPA, the RPD committed an error of law, of fact or of law and fact. In its reasons, the RAD clearly indicated that the RPD's error lay in not making a determination as to a reason in light of the fact that [TRANSLATION] "it did not specifically express an opinion concerning the alleged fear due to [the applicant's ethnicity]" (TR, Reasons and Decision of the RAD, at paragraph 48). However, the RAD explained that the RPD's lack of jurisdiction, in terms of the absence of clear reasons, does not consequently give the RPD [TRANSLATION] "any advantage over the RAD with respect to addressing this issue" (TR, Reasons and Decision of the RAD, at paragraph 47). The Court consequently concludes that the RAD did not err in its analysis of the RPD's decision by undertaking an independent evaluation of the applicant's claims.

[36] The RAD did not have before it a case in which it could refer the matter to the RPD regardless of whether the RPD had committed an error of law. The RAD had the authority to make a decision without holding a new hearing to re-examine the evidence submitted to the RPD. The RAD noted further in its decision that the RPD had questioned the applicant concerning his fear of persecution due to his Gorane ethnicity. This indicates to the Court that the RAD determined that the RPD had not disregarded an important reason alleged by the applicant in support of his refugee claim. There were simply not sufficient clear and explicit reasons for the RPD to conclude as it did. As a result, the Court is convinced that it was reasonable for the RAD to uphold the RPD's decision, since the RPD's conclusions in no way contradict the evidence on record.

[37] Similarly, the applicant cited in his factum a passage taken from *Kandel*, *supra*, which the Court made a point of inserting above. Once again, the Court cannot accept this decision, since it challenges the decision made by a PRRA officer. The fact that the officer failed to render a specific conclusion concerning the applicant's sexual orientation was sufficient to invalidate the decision and have the case referred to another Citizenship and Immigration Canada officer. That decision is not pertinent in the case before the Court since it is the RAD that is responsible for referring the decision back to the RPD under subsection 111(2) of the IRPA.

[38] The Court is convinced that the RAD did not err in conducting its own analysis of the applicant's alleged fear due to his Gorane ethnicity. The RAD fulfilled its duty to undertake an independent evaluation and upheld the RPD's decision. To this end, the Court notes that the RAD clearly [TRANSLATION] "attentively reviewed the documentary evidence and considered the facts on record" before concluding that the applicant had not established a serious possibility of persecution due solely to his ethnicity. The documentary evidence submitted by the applicant did not demonstrate the problems encountered by Goranes or the extent to which Goranes were persecuted in Chad due solely to their ethnicity. "The Applicant must establish his claim. He did not do so." (*Walite v. Canada (Citizenship and Immigration)*, 2017 FC 49 at paragraph 52).

[39] Finally, considering the decision as a whole, the RAD and the RPD also concluded that the applicant lacked credibility. Neither the RAD nor the RPD believed the applicant's account to the effect that he feared persecution due to his political opinions after organizing a peaceful march calling for his uncle's release. This Court has already concluded that "a general finding of lack of credibility extends to all relevant evidence emanating from the Applicant's version"

(*Moriom v. Canada (Citizenship and Immigration)*, 2015 FC 588 at paragraph 24). In other words, in finding that the applicant was not credible, the RAD did not believe the applicant's alleged fear due solely to the fact that he is Gorane, since there was nothing in the objective documentary evidence submitted by the applicant to demonstrate otherwise. Upon reviewing the applicant's entire record, the Court concludes that there is nothing in the evidence on record to contradict the RAD's conclusion to indicate that [TRANSLATION] "a serious possibility of persecution exists due solely to the fact that an individual is Gorane" (TR, Reasons and Decision of the RAD, at paragraph 49). The applicant was responsible for demonstrating that this evidence exists, and the RAD concluded that the excerpts taken from tabs 4.6 and 4.11 of the NDP on Chad were not, in and of themselves, sufficient to decide in the applicant's favour.

[40] For these reasons, the Court is convinced that the RAD made a reasonable decision. The IAD's decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, *supra* at paragraph 47).

X. Conclusion

[41] For the reasons stated above, the application for judicial review is dismissed.

JUDGMENT in IMM-5469-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to be certified.

"Michel M. J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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