

**Date: 20071113**

**Docket: IMM-5978-06**

**Citation: 2007 FC 1171**

**Ottawa, Ontario, November 13, 2007**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ESAMELDIN ABDELHALIM ARBAB HAMID**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION and  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Esameldin Abdelhalim Arbab Hamid says that, as a member of the Fur tribe from the Darfur region of Sudan, he will face persecution and mistreatment if he is sent back to Sudan. However, an immigration officer who carried out a pre-removal risk assessment found that there was little risk of any harm to Mr. Arbab. Mr. Arbab disputes several areas of the officer's conclusion and asks me to order a re-assessment by a different officer.

[2] I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review.

I. Issues

1. Did the officer impose a standard of proof on Mr. Arbab that was too high?
2. Did the officer rely unfairly on evidence that was not disclosed to Mr. Arbab?
3. Did the officer ignore important evidence that supported Mr. Arbab's claim?

II. Analysis

(a) Factual Background

[3] Mr. Arbab came to Canada in 2003. He had a job lined up as a live-in caregiver but the job fell through. He made a claim for refugee status on the basis of his alleged support for the Darfur Youth Alliance. A panel of the Immigration and Refugee Board dismissed his claim, finding that the Darfur Youth Alliance did not exist and that Mr. Arbab had not suffered any persecution in Sudan. It also concluded that, while his ancestors were from Darfur, Mr. Arbab was actually from Shendi in the northeast of Sudan, far from the current conflicts.

[4] Mr. Arbab told the officer conducting the risk assessment that he would be in danger in Sudan because of his ethnic ties to the Fur tribe, whose members are persecuted in Darfur, as well as his activities in Canada on behalf of the people of Darfur. He presented some new evidence that had not been considered in his refugee claim.

(b) The officer's decision

[5] The officer concluded that Mr. Arbab had presented no evidence casting doubt on the conclusions of the Immigration and Refugee Board. As for Mr. Arbab's claim that his activities in Canada created a new source of risk, the officer found that there was no evidence showing that authorities in Sudan would be aware of Mr. Arbab's involvement in support groups here. In the absence of any evidence, the officer could not conclude that Mr. Arbab would be persecuted, or subjected to any serious personal risk, if he returned to Sudan.

1. *Did the officer impose a standard of proof on Mr. Arbab that was too high?*

[6] Mr. Arbab submits that the officer's use of the word "would" indicates that the officer was looking for proof of persecution on a balance of probabilities. A person is entitled to refugee protection if he or she can show exposure to a "reasonable chance" of persecution, which is less than proof on the balance of probabilities: *Adjei v. Canada (Minister of Citizenship and Immigration)*, [1989] F.C.J. No. 67 (F.C.C.) (QL). Accordingly, it is an error of law to require applicants to prove that they would be persecuted if returned to their country of nationality.

[7] I can see no error in the officer's choice of words. In several places, the officer was citing the standard of proof in relation to s. 97 of the *Immigration and Refugee Protection Act* (i.e. risk of torture, cruel and unusual treatment or punishment, or death – see Annex for relevant provisions).

The standard of proof under s. 97 is, indeed, on the balance of probabilities. As for the officer's discussion of refugee protection (under s. 96), where the standard of proof is lower, the officer said:

[The applicant] has not provided objective evidence to demonstrate that because of this activity, upon his return to Sudan, he would be treated any differently than any other returnee and that that treatment would amount to persecution.

[8] As I read this passage, the officer simply noted the absence of objective evidence that might demonstrate that Mr. Arbab's subjective fear of persecution was well-founded. In its context, this statement does not express a burden or standard of proof.

2. *Did the officer rely unfairly on evidence that was not disclosed to Mr. Arbab?*

[9] The officer made clear in his reasons that he had conducted his own research on the situation in Sudan. Mr. Arbab says that he was not made aware of the sources on which the officer relied. Indeed, they are not specified in the reasons. Accordingly, Mr. Arbab argues that he did not have a fair opportunity to make submissions in the areas in which the officer felt he needed more information.

[10] While the officer does state that he conducted his own research, his reasons expressly cite two common sources of information on country conditions, frequently cited by decision-makers in the area of immigration – a report by Amnesty International and a United States Department of State report on human rights. These sources are also identified in the officer's bibliography.

[11] I see no error on the officer's part. True, it would have been clearer if he had expressly cited these documents when he referred to his own research. However, looking at his reasons as a whole, it is clear that the officer relied on readily accessible public documents, as well, of course, as Mr. Arbab's written submissions.

*3. Did the officer ignore important evidence that supported Mr. Arbab's claim?*

[12] Mr. Arbab submitted two letters from Canadian groups – the Sudanese Canadian Human Rights Organization (SCHRO) and the Darfur Association of Canada (DAC). The SCHRO expressed its belief that failed Sudanese refugee claimants are tortured or executed on return to Sudan. It stated that this was confirmed by “many reliable sources”, which it failed to cite. The letter goes on to mention the cases of two particular returnees. In the first, a Sudanese political activist was arrested and tortured in Sudan after having been deported from Jordan in 1996. In the second, a woman was detained and subsequently held without charge after returning from Eritrea in 2002. Both cases were reported by Amnesty International. The SCHRO expressed its concern that Mr. Arbab would receive similar treatment on his return to Sudan. The officer referred to the SCHRO letter but concluded that it represented no more than speculation about the treatment Mr. Arbab would receive on return to Sudan.

[13] The DAC letter states that persons from Darfur experience discrimination and brutal treatment from Sudanese authorities because they are assumed to be supporters of the rebels in Darfur. Therefore, Mr. Arbab would be targeted on his return. The officer concluded that this letter

did not constitute new evidence as it could have been submitted as part of Mr. Arbab's refugee claim. Accordingly, he did not consider it.

[14] I cannot find any error in the officer's treatment of this evidence. The SCHRO letter was vague and provided no basis for believing that Mr. Arbab would be harmed on his return.. It was open to the officer to give it little weight. The DAC letter could have been obtained any time after Mr. Arbab joined the group in 2003 and, therefore, could certainly have been presented in support of his refugee claim.

[15] Mr. Arbab also faults the officer for not taking note of the treatment of persons similarly situated to him as described in some of the documentary evidence. I have reviewed the documentary evidence cited by Mr. Arbab and, while it certainly outlines the problems faced by many groups and individuals in Sudan, it does not disclose a basis for believing that persons in Mr. Arbab's particular circumstances would be at risk.

[16] Finally, Mr. Arbab also submits that the officer drew unwarranted inferences from the sources he consulted independently. In particular, the officer concluded that Mr. Arbab's activities in Canada would not give rise to a risk of persecution in Sudan given that there was no evidence that Sudanese authorities monitor the political activities of persons in Canada. The sources cited by the officer made no mention of any persecution of returnees for their conduct abroad. Mr. Arbab suggests that the officer should not have inferred from the lack of specific reference to this practice in general human rights surveys that Mr. Arbab's activities would be unknown to Sudanese

authorities. Rather, the better evidence on this point, Mr. Arbab suggests, is contained in the two letters described above. Again, I cannot fault the officer's treatment of the evidence before him. If persons who were involved in support groups for the people Darfur were persecuted on their return to Sudan, one could reasonably expect to see some reference to that possibility in detailed human rights reports. Further, as mentioned, there was nothing concrete or current set out in the two letters Mr. Arbab submitted to the officer that supported this aspect of his application.

[17] Accordingly, I can find no basis for overturning the officer's decision and must dismiss 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 ORDER IS that**

3. The application for judicial review is dismissed.
  
4. No question of general importance is stated.

“James W. O’Reilly”

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Judge



## Annex

*Immigration and Refugee Protection Act, S.C. 2001, c. 27*

*Loi sur l'immigration et la protection des réfugiés, L.R. 2001, ch. 27*

## Convention refugee

**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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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

## Person in need of protection

**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

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that

## Définition de « réfugié »

**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) 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) 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.

## Personne à protéger

**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) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se

risk, unwilling to avail themselves of the protection of that country,

(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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

réclamer de la protection de ce pays,

(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) 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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

#### Person in need of protection

(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.

#### Personne à protéger

(2) A également qualifié 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.

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

**DOCKET:** IMM-5978-06

**STYLE OF CAUSE:** ESAMELDIN ABDELHALIM ARBAB HAMID v.  
THE MINISTER OF CITIZENSHIP AND  
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