Date: 20071212

Docket: IMM-1713-07

Citation: 2007 FC 1302

Ottawa, Ontario, the 12th day of December 2007

Present: the Honourable Mr. Justice Blanchard

BETWEEN:

FATHI ABDALLAH MOSILHY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review from a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) on March 27, 2007 in which it was decided that the applicant did not have the status of a "refugee" pursuant to section 96 of the *Immigration and Refugee Protection Act* (the IRPA), nor that of a "person in need of protection" in accordance with section 97 of the IRPA. The application was made under section 72(2) of the IRPA.

II. Factual background

[2] The applicant was born at Mohafad Dakbalia in a village named Mât Abou Khalid in Egypt on July 1, 1945 and is a citizen of that country. He is married and has four children.

[3] The applicant stated that there was a long-standing dispute between his family and the Reshewan family living in the El Khatateba village, next to the applicant's native village. Although he had been aware of the existence of the dispute since his childhood, he had never understood what it was about. The applicant stated that when he was doing his university studies his mother revealed that the Reshewan family wanted to murder his father, which explained why his family had left the village several times.

[4] After finishing his studies, the applicant was drafted to do his military service on April 6, 1971 and discharged in 1975. He subsequently worked for a company as an agricultural engineer and lived near his parents. The applicant maintained that in 1978 he learned that the Reshewan family had selected him as a target for their vengeance on account of the great esteem in which he was held in his family. The applicant acknowledged that he had a younger brother but the Reshewan family was never interested in him. In 1978, he left the country with his family to go and work in Saudi Arabia as he feared for his life.

[5] The applicant said that on July 7, 1985, Ramadham Mohammed Reshewan (Ramadham) murdered his father and on the same day attacked and injured his mother and sister. With the help of his neighbours, Ramadham was captured and handed over to the authorities. He was sentenced to 25 years in prison. He died there nearly ten years ago.

[6] The applicant returned to Egypt after 18 years' residence in Saudi Arabia. On his return he found that the feud between his family and the Reshewan family still existed. The second generation of the Reshewan family demanded that the applicant be killed as they blamed him for their father's death in prison.

[7] The applicant stated that the two Reshewan brothers attacked him on March 9, 1998, with a knife. Witnesses to the attack arrested the two brothers and took them to the police station. The applicant was seriously injured and had to be in hospital for a month. Fearing for his life, the applicant hired a bodyguard for several years, but had to let him go for lack of money. Following a trial which was held on June 23, 2006, the two Reshewan brothers were found not guilty of the attack.

[8] In June 2002, the two Reshewan brothers confronted the applicant and threatened to kill him as he was going home. On November 11, 2002, the two Reshewan brothers attacked the applicant. Neighbours intervened and took the applicant and the two brothers to the police. The two Reshewan brothers indicated at that time that the dispute concerned a claim to the apartment where the applicant was living. It was then that the applicant filed a complaint with the authorities and obtained a restraining order prohibiting the two brothers from coming near the applicant. Additionally, they were told to report to the courts to answer this complaint. At a hearing on March 21, 2006, the two Reshewan brothers were again found not guilty on the complaint.

[9] In 2002, the applicant applied at the Canadian embassy in Cairo for a visitor's visa to study the Canadian market for the possibility of setting up a cheese factory. On July 4, 2002, a visitor's visa was issued to him and the applicant arrived in Montréal on September 11, 2002.

[10] The applicant twice had his application to extend the visitor's status granted.

[11] On October 18, 2005, the applicant was charged with criminal harassment, but not convicted. On December 5, 2005, he was told that his most recent application to extend his visitor's status had been denied and that he had to leave Canada forthwith. Three days later, on December 8, 2005, the applicant filed an application for protection as a refugee as he stated that his life was in danger if he were to return to Egypt.

[12] On March 27, 2007, the panel rendered a decision rejecting the application for refugee protection. On April 23, 2007, the applicant filed this application for judicial review in this Court.

III. Impugned decision

[13] At the start of its reasons for decision the panel noted the difficulties at the hearing. It mentioned that the applicant avoided answering questions and intervention by the panel and his counsel was necessary to correct the situation. Questions had to be repeated several times as the applicant said he did not fully understand English. The panel dismissed this explanation, noting that the applicant had studied in English in his country of origin and had lived in Canada since 2002.

Further, the panel observed that the applicant often answered questions even before they were translated.

[14] Relying on the documentary evidence, the panel noted the existence of bad feeling in rural areas in southern Egypt. Because the applicant's father was killed and his mother and sister attacked, it found that the existence of bad feeling between his family and the Reshewan family was plausible. However, the panel pointed out that Ramadhan (the attacker) was arrested and sentenced to 25 years in prison. Accordingly, such acts of violence are not accepted by the authorities and they are prepared to protect citizens.

[15] Regarding the attack of which the applicant was a victim in March 1998, the panel observed that even if the incident had a connection with the family ill feeling in question, the authorities were prepared to intervene to protect citizens.

[16] On the incident of June 2002, the applicant was unable to produce the decision by the Egyptian court regarding the restraining order against the two Reshewan brothers following the hearing of March 21, 2006 (in Egypt). He explained that he did not believe this was relevant, like the decision on the 1998 incident. The panel dismissed this explanation, noting that the applicant knew the importance of these two documents in his present application. Moreover, the two incidents were added in January 2007 by an amendment to his initial account. The only explanation given by the applicant was that the translator had failed to include the paragraphs on these two incidents. In very clear terms, the panel stated that the applicant's signature on his Personal Information Form (PIF) states that the information translated was complete and accurate. The panel noted that the

applicant added Exhibit R-5 (his father's death certificate) in support of his application at the last minute (on December 22, 2006). The panel considered that the applicant was not credible.

[17] The panel went back to the 2002 incident and noted the following contradiction in the applicant's version:

> Moreover, as for the incident of June 2002 (R9A), the claimant alleged that the mention of a transfer of apartment was the doing of the Rashwan brother who in front of the police had mentioned it was a claim against property but in reality, it had nothing to do with an apartment, it was about their vendetta against the claimant. However, as it is the claimant who is the plaintiff in the matter, it is obviously him with his lawyer who prepared the application and not the Rashwan brothers. [Emphasis added.]

[18] Further, the panel noted that the documentary evidence was that in any question of a vendetta, all family members are at risk. The applicant contended that only his life was in danger. The panel further noted that although the applicant had been in Canada since 2002, he had only applied for refugee status in December 2005 when his visa extension was denied. These factors served to undermine the applicant's credibility.

[19] The panel concluded that the applicant did not have a valid fear of persecution. In view of the action taken by the Egyptian authorities after the applicant's father died and the attacks were made against his person, the panel concluded that the Egyptian government was in a position to protect the applicant.

IV. Issues

[20] The following issues arise in this application:

A. Did the panel member's actions at the hearing infringe the rules of natural justice and procedural fairness?

B. Did the panel err in its findings on a lack of credibility and government protection in Egypt?

V. Standard of review

[21] In any question of government protection, the courts have consistently held that the applicable standard of review is that of reasonableness *simpliciter* (*Resulaj v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 269, at paragraph 17, and *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 403, at paragraph 13).

[22] The applicable standard of review in any question of a lack of procedural fairness or natural justice is that of correctness (*Kamara v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 448, at paragraph 20, and *Olson v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 458, at paragraph 27). In such cases, it is not necessary to make a pragmatic and functional analysis. If the appropriate level of procedural fairness or natural justice is not forthcoming, the Court's intervention is warranted (*Gluvakov v. Canada (Minister of Citizenship and Immigration*), 2006 FC 1427, at paragraph 10).

[23] It is well-settled law that the standard applicable to a question of credibility is that of patent unreasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, (F.C.A.), [1993] F.C.J. 732 (QL); *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 115, [2003] F.C.J. 162 (QL); and *Khaira v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 62). A decision is patently unreasonable when in the circumstances it is clearly wrongful, patently unfair, against common sense or without foundation in law or fact.

VI. Analysis

A. *Did panel member's actions at hearing infringe rules of natural justice and procedural fairness?*

[24] In his argument at the hearing in this Court, the applicant submitted that the panel did not observe the rules of natural justice or procedural fairness that it was required to observe at the hearing of his application. The applicant maintained that the panel member asked him offensive, aggressive and sometimes harassing questions in his examination, and sometimes in a tone which had an intimidating effect. The applicant noted in particular the panel member's statements regarding interpretation of the applicant's testimony in his mother tongue. He said the member accused the applicant of understanding English and suggested that his behaviour was only wasting the panel's time. I set out below two of the passages from the transcript that were drawn to my attention, and which I regard as relevant:

> BY COUNSEL : (to presiding member)

- No, this is (...inaudible…). If you allow me, Madame President.

A. But, you know, what I'm reading this.

- Yes, exactly. I want him to see what you're telling him, madam, that's why.

A. Well, he must know, ah. He must know, ah. No, it's not gonna work this way, ah. I'm sorry. You know, I could be patient but there's a limit to my patience here. This man understands English and he's fooling around and it's not appreciated.

BY PERSON CONCERNED (to presiding member)

- I understand not perfectly English.

A. You understand enough to know what I'm saying.

Sir, this document says that the plaintiff, which is you, that… I'm sorry. I'll do this again.

. . . . .

BY PRESIDING MEMBER (to person concerned)

- No, sir, no, sir, no, sir. You could tell me what you want, but you know, what, that's not true. Okay. So don't lose your time. There is an application. The courts in your country don't act without a reason. And you have been notified to appear in court and because of that application. So there is a document that exists.

A. No, no. You know, what, your claimant understands very well what's going on. Okay.

- Oh, no, I understand. No, no, for the…

A. He understands.

[25] I have carefully reviewed the whole transcript of the hearing and I consider that, despite the passages drawn to my attention, the applicant did not establish that the hearing was conducted in disregard of the rules of procedural fairness and natural justice.

[26] Although during the hearing the member showed some frustration concerning the applicant, and sometimes lacked patience in dealing with him, the transcript also indicated that the applicant did not make the panel member's task an easy one. The member's questions often had to be repeated [and] the answers to the questions were sometimes ambiguous. Despite his contention that he did not understand English, the evidence was that the applicant had studied in English and at the hearing he sometimes answered questions before they were translated.

[27] Moreover, the applicant was represented by counsel before the panel and there was no objection or comment by the latter as to any lack of procedural fairness at the hearing.

[28] Although it would have been better for the member at times to use a more temperate tone and language, I feel that the applicant had an opportunity to be heard and present his arguments in accordance with the rules of procedural fairness and natural justice.

B. Did panel err in its findings on lack of credibility and government protection in Egypt?

(1) Lack of credibility

[29] The applicant maintained that the panel erred in coming to a negative conclusion about the applicant's credibility based on his difficulty in testifying in English. The fact that the applicant obtained his university degree in English and had a partial knowledge of English does not mean he was fully conversant with that language and so able to testify without difficulty.

[30] The panel relied on the following factors in saying that the applicant lacked credibility:

(a) the applicant's conduct at the hearing: the panel noted that the applicant avoided answering questions put to him and contradicted himself during the hearing;

(b) the belated amendments by the applicant to his Personal Information Form (PIF) to add two incidents that were crucial to his account;

(c) the lack of corroborating documentary evidence;

(d) the inconsistency of the applicant's allegations that he was now the only family member at risk with the objective documentary evidence; and

(e) the three-year delay after the applicant's arrival in Canada before he sought refugee status.

[31] The respondent maintained that the panel's finding on the applicant's language skills was based on several factors, including (a) his engineering studies in English; (b) the fact that he had been in Canada since 2002; and (c) the fact that he often answered questions asked even before they were translated for him.

[32] On matters of credibility, there is a well-recognized principle in the case law that an administrative tribunal is well placed to assess the credibility of witnesses. That necessarily means

that the Court must exercise deference when it is reviewing a decision by such a tribunal (*R.K.L., supra*, at paragraphs 7 to 9).

[33] The panel's finding that the applicant lacked credibility is not in my opinion unreasonable. The three-year delay before the applicant sought refugee status, the lack of documentary evidence regarding the 1998 and 2002 incidents, the inconsistency of the applicant's allegations that he was the only family member at risk with the objective evidence (despite the fact that his brother and sister are still in Egypt) and the fact that he had initiated legal proceedings about a piece of property against the Reshewan brothers (and not the contrary) are factors that support the finding of a lack of credibility.

(2) Government protection

[34] On the question of government protection, the applicant disagreed with the panel's finding that the twenty-five-year sentence of his attacker meant that the authorities could in fact protect the applicant. He pointed out that he was attacked by Reshewan family members twice and that his complaints to the authorities [TRANSLATION] "led nowhere".

[35] The judgments of this Court indicate that unless the governmental apparatus has broken down completely, it should be assumed that a government is capable of protecting a claimant. It is also accepted that general documentary evidence on the conditions in a country of origin is not sufficient to rebut this presumption (*Sholla v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 999, and *Ward v. Canada*, [1993] 2 S.C.R. 689). Additionally, the Court recognizes that

the protection provided by the government does not necessarily have to be “perfect” (*Canada (Minister of Citizenship and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (QL), at paragraph 7).

[36] In the case at bar, it was not alleged that the governmental apparatus had broken down, and so a presumption exists that the Egyptian authorities were in a position to protect the applicant. In fact, after Ramadhan’s attack on the applicant’s family, the Egyptian authorities intervened and the attacker was sentenced to 25 years in prison. Additionally, following the 1998 and 2002 incidents in which the applicant was a victim, the Egyptian authorities again took action.

[37] On the evidence in the record, the Egyptian authorities demonstrated an intention to act promptly and without hesitation after the actions committed by the Reshewan brothers. I am satisfied that the panel did not err in its assessment of the evidence on this point, although the restraining order was issued following the 2002 incident, not that of 1998 as reported in the panel’s decision. Such an error is inconsequential and does not in any way affect the fact that the authorities were prepared to take action. The evidence was that family rivalries exist in Egypt in the area from which the applicant comes and he was not able to show that he could not get government protection. In my view, the panel’s conclusion is not unreasonable. The applicant had the opportunity of making use of the Egyptian government’s protection.

[38] Although the existence of government protection is in itself sufficient to dismiss the application, I also feel that the panel’s findings on the applicant’s credibility are not so unreasonable that this Court would be justified in intervening.

VII. Conclusion

[39] For the foregoing reasons, the application for judicial review will be dismissed.

[40] The parties did not suggest a serious question of general importance for certification as contemplated by paragraph 74(*d*) of the IRPA. I am satisfied that no such question was raised in the case at bar. Accordingly, no question will be certified.

JUDGMENT

THE COURT ORDERS AND FINDS that:

1. the application for judicial review of the Immigration and Refugee Board's decision is dismissed;

2. no question is certified.

"Edmond P. Blanchard"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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