

Date: 20090128

Docket: IMM-3171-08

Citation: 2009 FC 93

Ottawa, Ontario, January 28, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NEIMAT ZOMRAWI HAMED

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is an application for judicial review of a negative pre-removal risk assessment (PRRA) determination in respect of a citizen of Sudan.

II. BACKGROUND

[2] The Applicant, a 68-year old citizen of Sudan, alleged fear of persecution based upon her husband's alleged membership in the Sudanese Farmers' Union. She had claimed before the Refugee Protection Division (RPD) that her husband had been arrested and disappeared, that she had also been arrested, and that her children had been forced into hiding.

[3] The RPD dismissed the application for refugee status on the basis of credibility. In particular, the RPD had difficulty with the absence of evidence of the husband's membership in the Sudanese Farmers' Union, as well as other aspects of the Applicant's story. Leave to appeal the RPD's decision was denied.

[4] The Applicant then applied for a PRRA, which is the subject matter of this judicial review. In support of her PRRA application, the Applicant submitted five pieces of evidence:

1. A letter from an NGO (the High Committee for Development and Promotion of Karma Albald) attesting to the membership of the Applicant's husband in the Farmers' Union;
2. A letter from the same NGO attesting to the Applicant's son being subjected to detention and surveillance in order to secure information about his mother;
3. Summonses to surrender for both the Applicant and her son from the Political Security Division of the National Security Board;
4. A letter from the Applicant's aunt stating that the police had been looking for the Applicant; and

5. A medical certificate from the Sudanese Federal Ministry of Health attesting to the fact that the Applicant had chest bruises and high blood sugar and that she had been treated at the hospital for six days.

[5] In the PRRA decision the Officer concluded that there was insufficient evidence to come to a conclusion which was different from that of the RPD. The Officer found that, notwithstanding the difficulties in Sudan, there was insufficient evidence to establish the level of risk necessary for a successful PRRA. The Officer's comments with respect to the five pieces of evidence are discussed further in these Reasons.

III. ANALYSIS

A. *Standard of Review*

[6] The standard of review for a PRRA decision has been established as reasonableness (see *Woldegabriel v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1223). I see no reason to depart from that conclusion on the standard of review. Some deference is owed to the Officer's credibility findings and ability to assess evidence in this area; however, because the evidence at issue is largely documentary, the Court must be satisfied that the Officer's decision can stand up to a probing inquiry.

[7] The Applicant's case turns principally on an argument about the weight given to documents submitted. As an overarching consideration, it is not this Court's function to re-weigh the evidence

and substitute its decision for that of the Officer's (*see Canada (Minister of Citizenship and Immigration) v. Qureshi*, 2007 FC 1049 at paragraph 8). In this case, the Officer's reasons for giving little or no weight to certain documents is clear, transparent, and consistent with the responsibilities of an officer to make such a decision. Therefore, the Court finds that the Officer's decision was reasonable in the circumstances.

B. *NGO Letters*

[8] The PRRA Officer gave minimal weight to the two letters from the NGO. The letters did not provide information, details, or a claim of personal knowledge to substantiate the facts stated. As such, the Officer was suspicious of the authority of that NGO to make such statements.

[9] The Court can find nothing unreasonable in the Officer's concerns about the letters from the NGO. The Officer's comments must be taken in light of the RPD decision that the Applicant's evidence had been found to be contradictory and not credible. The Applicant's failure to reliably demonstrate that her husband was indeed politically involved – given that her claim of risk was largely based upon the alleged political involvement of her husband – also colours the reasonableness of the conclusions with respect to the summonses and the aunt's letter.

C. *Summonses/Aunt's Letter*

[10] It was the Applicant's position that the summonses and the aunt's letter (which is supposedly corroborative of the summonses) is evidence of persecution by reason of showing that

the Sudanese officials are seeking out the Applicant. The Applicant contends that the summonses are tantamount to an arrest warrant. The submission is that the Officer was obliged to engage in an analysis of risk on the basis of arrest and on the basis of the political circumstances surrounding the Applicant's family.

[11] The difficulty with this submission is that the Officer did that very analysis of the summonses and reached a conclusion, a reasonable one in the circumstances, that the summonses were too vague to constitute an arrest warrant. Since the Applicant had failed to make out the political aspect of her claim, it was reasonable for the Officer to conclude that the summonses themselves were not evidence of persecution. Moreover, the Applicant, in her counsel's submissions to the PRRA Officer, did not make out a nexus between the summonses and the likelihood of persecution.

[12] The same can be said about the aunt's letter stating that the police were looking for the Applicant. Furthermore, despite having counsel to aid her, the Applicant did not point to any specific evidence which established a nexus between the summonses, the alleged police inquiries, and persecution in the various country reports filed.

D. *Medical Evidence*

[13] The Applicant had submitted a medical report which addressed the presence of high blood sugar and bruises at the time she was treated. The Officer gave no weight to the medical evidence because it failed to link the injuries to abusive treatment by the police. In addition, the report

referred to medical treatment in May 2007 rather than 2005. It is acknowledged by all parties that the error was in the translation, not in the original document. The Applicant submits that, in the face of such a glaring error, there was a positive obligation on the Officer to confront the Applicant - even after the hearing - for an explanation. The Applicant says that the failure to do so is a denial of natural justice.

[14] The Applicant's submission ignores the fact that the Applicant had counsel and it was the responsibility of the Applicant through counsel to bring the error and an explanation to the Officer's attention. It is difficult to attribute responsibility to the Officer for relying on a document sworn to be a translation of the original.

[15] Further, the real reason for discounting the medical evidence was the absence of a nexus between the injuries described and police action. While it would be hearsay for the doctor to opine that the cause of the injuries was police brutality (unless he were a witness), there is not even the suggestion in the report that the injuries were the result of physical assaults or trauma. In the absence of even hearsay from the doctor, there is no evidence to ground a conclusion that the injuries were consistent with the Applicant's allegations. As such, there is no evidence of any nexus, and the Officer's decision in this regard was reasonable.

IV. CONCLUSION

[16] The Court concludes that the Officer's decision was reasonable in light of the evidence before the Officer. Therefore, this application for judicial review must be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3171-08

STYLE OF CAUSE: NEIMAT ZOMRAWI HAMED

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 20, 2009

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

DATED: January 28, 2009

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