

Federal Court



Cour fédérale

Date: 20090723

Docket: IMM-50-09

Citation: 2009 FC 745

Ottawa, Ontario, July 23, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**FUAD MASUD AL MANSURI
NURIA BEN AMER**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of the decision of L. Krajcovic (the Officer) dated September 5, 2008, wherein the Officer determined that the applicants were not at risk in Libya and accordingly refused the applicants' applications for the Minister's protection. Having carefully considered the applicants' record as well as the written and oral submissions of both parties, I have come to the conclusion that the Officer erred in assessing the new evidence as it relates to the applicants' *sur place* claim.

BACKGROUND

[2] The background to the applicants' refugee claim was well summarized by my colleague Madam Justice Eleanor R. Dawson in her reasons to dismiss the application for judicial review of the first PRRA decision: see *Fuad Al Mansuri and Nuria Ben Amer v. The Minister of Public Safety and Emergency Preparedness and the Solicitor General*, 2007 FC 22.

[3] The applicants are citizens of Libya. They entered Canada on January 1, 1999, having left their two children in Libya as the government apparently refused to issue the children visas that would allow them to travel with their parents. They subsequently had four Canadian-born children, but one passed away in 2005.

[4] The applicants' fear of returning to Libya stems from the principal applicant's reluctance to cooperate with the Libyan Intelligence Services. After completing his military service in 1994, he claims that he was forcibly recruited by the Intelligence Service to report any anti-government sentiment at his place of employment. In May 1998, the Military Service issued an order for all former soldiers that had served between certain dates to travel to the eastern part of Libya to fight against suspected terrorists that had entered the country. At the time, the applicants' son was in critical care in the hospital and so the male applicant did not report for military duty. He was arrested and spent 18 days in prison while the government was trying to confirm his story. During that time, the applicant alleges that he was continually harassed and psychologically tortured. He was also warned that if he failed to carry out an order in the future, he would be executed.

[5] In December 1998, the applicant received a personalized order from the Head of the Military Intelligence Services to travel to Romania for the purpose of assassinating a Libyan national living there. This is when the applicants decided to flee the country. Upon their arrival in Canada in January 1999, the applicants claimed refugee status.

[6] The Convention Refugee Determination Division of the Immigration Refugee Board (the Board) determined that the male applicant was excluded from refugee protection under Article 1(F)(a) of the Refugee Convention, due to his involvement with the Libyan Intelligence Service. The Board further considered inclusion, and concluded that the applicant's account was implausible, as it was not credible that he would have been maintained in service by Libyan intelligence and trusted with an overseas assignment after having allegedly previously refused to carry out an order. The Board concluded that the entire account was implausible and inconsistent with the known methods of operation of the Libyan Intelligence Service. As the applicant Nuria had based her claim on that of her husband, her claim also failed since it had no objective basis. In May 2001, this Court denied the applicants leave to seek review of the Board decision.

[7] The applicants then applied for a PRRA. In addition to the grounds raised in their refugee claim, they argued that they would be at risk if returned to Libya because refugee claimants are subjected to human rights abuses in that country. Mr. Al Mansuri's claim could only be properly considered by the PRRA Officer on the basis of the grounds set out in section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), since his claim to refugee protection had been rejected on the basis of section 1(F)(a) of the Refugee Convention.

[8] The evidence adduced on that application included a letter from Mr. Al Mansuri's father and an arrest warrant issued three weeks after the applicants embarked from Libya. The Officer who assessed the PRRA application did not find the letter and arrest warrant credible evidence, as it was the only material received from Libya and materialized only after the applicants were given arrangements for their removal from Canada. The Officer relied on the applicants' own experiences and that of their family to guide the decision. The Officer noted that the Libyan government is ruthless in dealing with dissenters and does not rely on arrest warrants but on arbitrary arrest and detention. The Officer reasoned that if the applicant truly was a dissenter the authorities would have responded vehemently to him. The Officer also relied on the Board findings that the applicants' story was implausible and not well-founded. The Officer did not give effect to the applicants' claim that they were at risk as returning asylum seekers. Justice Dawson dismissed the application for judicial review of that decision in January 2007 (*supra*).

[9] The applicants made another application for a PRRA in October 2007. The rejection of that second application is the subject of the present litigation.

THE IMPUGNED DECISION

[10] In rejecting the second protection application, the Officer relied extensively on the prior determinations of the applicants' case, in particular the findings of the first PRRA. The Officer then considered the new evidence submitted by the applicants, which consisted of a letter from the Refugee Coordinator in the Toronto Office of Amnesty International written specifically about the applicants' case; an article about the applicants that appeared in the Windsor *Star*; a letter addressed

to the Prime Minister of Canada from the American Libyan Freedom Alliance's Chairman, posted on the internet, pleading that Mr. Al Mansuri be granted political asylum and referring to the case of another Libyan citizen expelled from Canada in 2002 only to be imprisoned for life upon his return to his country; and documentary evidence including a United States Department of State Country Reports on Human Rights Practices in Libya (2007), an Amnesty International Report on Libya (2007), and a Human Rights Watch World Report on Libya (2008).

[11] With respect to the Amnesty International letter, the Officer acknowledged that such a particularized letter carries significant weight, but determined that the conclusions drawn in that letter were "problematic" as they are based on the applicants' own account, which had been found not to be credible. Also, the Officer concluded that the facts upon which the conclusions in the letter were based had not been established. In particular, while the Officer concluded that the evidence established that the Libyan government was aware of the applicants' presence in Canada, there was no evidence that the Libyan government had knowledge of the details of the applicants' refugee claim. The Officer further indicated that there was no evidence that the applicants had made any public allegations against the Libyan government.

[12] The Officer then considered the documentary evidence and quoted extensively from it. He then concluded that while the evidence revealed that dissidents could face arrest, detention, and human rights violations, the applicants were not similarly situated to the dissidents referred to in the evidence. More specifically, he wrote:

The applicants claim that they are at risk of arrest and detention upon return to Libya because the male applicant did not follow orders of the Libyan Intelligence Service, their filing of a refugee claim in

Canada and the media attention brought to their claim. However, after review of the above-noted documentary evidence, I do not find that the male applicant is similarly situated to the individuals who were arrested and detained on the basis of their political acts, which resulted in them being perceived of as dissidents or politically opposed to the government. I do not find that the male applicant's refusal to obey orders of the Intelligence Service and his refugee claim in Canada constitute "political activism" to an extent that the applicants face risk on this basis. As a result, I find that the applicant has not established the facts of his case on a balance of probabilities, namely that he holds the profile of an individual who is perceived of as a dissident or politically opposed to the government.

ISSUES

[13] In his written and oral submissions, counsel for the applicants raised three questions which all go to the assessment of the evidence by the Officer. The crucial issue, it seems to me, is whether the Officer adequately assessed the applicants' new argument as it relates to a *sur place* claim, and whether the new evidence was properly analyzed in that light.

ANALYSIS

[14] There is no dispute between the parties as to the applicable standard of review. The determination of risk on return to a particular country is in large part a fact-driven inquiry. Whether the Officer had proper regard to all the evidence that was before him is clearly the kind of decision calling for deference from a reviewing court. It is now well established, as a result of *Dunsmuir v. New Brunswick*, 2008 SCC 9, that such a decision must be reviewed on a standard of

reasonableness: see, e.g., *Erdogu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 407; *Campbell c. Canada (Minister of Citizenship and Immigration)*, 2009 FC 682; *Aleziri v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 38. As a result, it may only be overturned if it does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir, supra*, at para. 47).

[15] The Officer was certainly entitled to give little weight to the Amnesty International letter, to the extent that it was based on the applicants’ own personal account that was determined to be not credible by the Board. The problem, however, is that the letter is based not only on the information provided by the applicants, but also on Amnesty International’s objective documentation on the human rights situation in Libya, which was then applied to the specific facts of the applicants’ circumstances. Indeed, the factors identified in the letter that would put Mr. Al Mansuri at risk have nothing to do with the credibility of the applicants. They include the fact that Mr. Al Mansuri was an employee of the Libyan government and did not return to Libya but made a refugee claim in Canada, the details of that claim and his presence in Canada are known to the Libyan authorities, he has made public allegations against the Libyan authorities, and the details of Mr. Al Mansuri’s case have been reported in the media in Canada and on the internet.

[16] These facts do not depend on Mr. Al Mansouri’s credibility and can be easily verified. For example, the letter to the Prime Minister is publicly available, and the Amnesty International letter refers to the website where it can be found. That letter details the consequences of the Canadian government’s actions against similarly situated persons returned to Libya. Yet, it was only briefly mentioned in the Officer’s reasons without any discussion.

[17] The Officer also questions whether the details of the applicants' refugee claim are known to Libyan authorities, and whether the male applicant has made public allegations against the Libyan authorities. It is for that reason that the Officer doubts the conclusions drawn by Amnesty International, and eventually concludes that the applicants are not similarly situated to the individuals who were arrested and detained because they were perceived of as dissidents or politically opposed to the government.

[18] This conclusion is flawed and is not supported by the evidence. The Amnesty International letter itself makes it clear that the applicants are seeking refugee status, and that Mr. Al Mansouri opposes the government. The letter from the American Libyan Freedom Alliance similarly indicates that Mr. Al Mansouri applied for political asylum. The mere fact that a non-governmental organization like Amnesty International and a dissident group advocating constitutional democracy in Libya support Mr. Al Mansouri and his wife would, in all likelihood, be sufficient to make the applicants suspect in the eyes of the Libyan authorities.

[19] But there is more. The publicity surrounding Mr. Al Mansouri's refugee claim and his attempts to remain in Canada have been publicized in the media, and there is evidence that failed refugee claimants returned to Libya are harassed, intimidated, detained, and tortured. It may well be, as the respondent suggests, that Libyan officials do not read the *Windsor Star* on a daily basis, but one need only look for the applicant's name on an internet search engine to find it and other sites related to the applicants' story.

[20] I am therefore of the view that the Officer did not properly assess the evidence that was before him, and failed to give proper consideration to the applicants' *sur place* claim. While the Officer could rely on previous credibility findings, these were not determinative of the applicants' new basis to seek protection from the Canadian authorities.

[21] For all the foregoing reasons, this application for judicial review is granted. Neither party has suggested a question for certification, and none arises here.

ORDER

THIS COURT ORDERS that this application for judicial review is allowed, and the matter is remitted to a different immigration officer for redetermination. No question is certified.

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-50-09

STYLE OF CAUSE: FUAD MASUD AL MANSURI ET AL
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 23, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** de Montigny, J.

DATED: July 23, 2009

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