

Federal Court



Cour fédérale

Date: 20110316

Docket: IMM-2036-10

Citation: 2011 FC 317

Toronto, Ontario, March 16, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AMIRA HAMADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mrs. Hamadi, a Lebanese national, is a widow whose husband was murdered by Hezbollah in 1984. The murder was attributed to his pro-Israel beliefs. He believed that Israel should be allowed to exist in peace. Mrs. Hamadi and her two sons share that view.

[2] She encouraged her two sons flee to the United States, where they had valid student permits. She eventually applied for refugee status in Canada. Her claim was dismissed in 2000. The RPD Member found there were some credibility issues, and expressed concerns with respect to the

strategic location for Hezbollah of her villa. At the time of the decision, the Israeli-Lebanese border was no longer near that villa, and “there is no credible evidence, although admittedly not a lot of time has passed since the withdrawal, that Hezbollah has taken any action against traitors with the exception of prominent SLA figures.”

[3] For reasons not clear from the record, Mrs. Hamadi was only presented with her Pre-Removal Risk Assessment (PRRA) form in 2008. Her PRRA was dismissed in 2010.

[4] Sections 112 and following of the *Immigration and Refugee Protection Act* provide that a person such as Mrs. Hamadi may still apply for protection even though her refugee claim was dismissed. However, she is only entitled to present “new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection” (s.113(a)).

[5] Mrs. Hamadi submitted two letters as new evidence. The PRRA officer gave these letters “minimal weight,” and concluded that while Hezbollah continues to be a threat, there was insufficient evidence to establish that she faced more than a mere possibility of persecution, should she be returned to Lebanon. The officer also found there was insufficient evidence to establish that, more likely than not, she would be subjected to torture or to a risk to her life, or would be at risk of cruel or unusual punishment or treatment.

[6] One cannot always anticipate the evidence which will satisfy a decision maker. Counsel for the Minister submits that this is a question of insufficient evidence, and that I am being asked to re-

weigh the evidence. I characterize the matter as one of credibility, and the officer should have addressed his concerns at a hearing in accordance with section 113(b) of IRPA and section 167 of the *Immigration Regulations*. The evidence is central to the decision with respect to protection and if accepted would certainly have justified allowing the application.

[7] The main thrust of Mrs. Hamadi's application is a "to whom it may concern" letter, not on letterhead but apparently signed by the Secretariat-General of Hezbollah in 2003, stating that she and her two sons were facing both legal and religious prosecution for opposing Hezbollah's principles and ideology, for refusing to abide by its order to become members, and for not participating in *Al Jihad* to fight the Israeli/Zionist enemy in South Lebanon.

[8] The second letter, apparently on Hezbollah letterhead but not dated, states there is a judgment against Mrs. Hamadi: "She is condemned to death for the crime in dealing and cooperating with Israeli or Israeli co-operators and she is considered a traitor to her country with the rights of confiscating her house at the city of Dweir and the right to use it to our own benefit in the area." This letter is signed by Abou Hassan of Hezbollah's main general office of investigations. There is a note that the English translation is unofficial and informal.

[9] One of Mrs. Hamidi's son's applied for refugee status in the United States. His application was originally refused, but then re-opened on the strength of these letters. Apparently, since then the claim of her other son has likewise been re-opened. The PRRA officer pointed out that the American decision was not binding here, which is quite true.

[10] In dealing with the two letters, the officer assigned minimal weight to the first because it was not on Hezbollah's letterhead or logo, did not contain the date it was issued and appears to have been requested by Mrs. Hamadi then-attorney. The officer thought it implausible that Hezbollah would issue a document to assist in the PRRA application. I have grave problems with this opinion. First of all the letter was dated. Second, there was no PRRA pending at that time the document was issued. Third, Hezbollah was treating itself as a government and was simply certifying one of its own records. Why not identify the applicant? If one obtains, and pays for a certified record of this Court, the receipt is addressed to that applicant.

[11] The second letter, the undated one, identifies the Hezbollah files and a judgment hearing number 236KM under which Mrs. Hamadi was condemned to death. The officer found this letter to have minimal probative value, notwithstanding the logo, because the translation was said to be unofficial and informal and because there was no statement as to who translated it, no attestation as to its accuracy, and no explanation as to how the document was obtained.

[12] One cannot give minimal value to a death sentence. One must give it considerable value, or no value whatsoever. If one gives no value to it, it follows that the officer considered it a forgery, and therefore considered Mrs. Hamadi a liar.

[13] The burden of proof is on Mrs. Hamidi to establish that she is at risk, and the standard is that of the balance of probabilities (*Carrillo v Canada (Minister of Citizenship and Immigration)* 2008 FCA 94, [2008] 4 FCR 636).

[14] It seems to be conceded that if Hezbollah intended to execute Mrs. Hamadi, no state protection would be available. It is not contested that Hezbollah is in the position to carry out its own sentence of death should Mrs. Hamadi be returned to Lebanon. Thus, if the two so-called Hezbollah documents are legitimate she would clearly be at risk. Therefore, this decision turned on a credibility issue, not an insufficiency of evidence issue. If the officer was concerned about the provenance of the letters and the accuracy of one of the translations, he should have put these issues to Mrs. Hamidi at a hearing.

[15] In the result, the decision is both unreasonable and procedurally unfair.

ORDER

FOR REASONS GIVEN:

1. The judicial review is granted;
2. The matter is referred back to a different Pre-Removal Risk Assessment Officer for reconsideration.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2036-10

STYLE OF CAUSE: AMIRA HAMADI v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 14, 2011

**REASONS FOR ORDER
AND ORDER BY:** HARRINGTON J.

DATED: MARCH 16, 2011

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