

B E T W E E N:

ALI MOHAMED HAMIDI

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

HEALD, D.J.:

This is an application for judicial review of a decision of the Convention Refugee Determination Division (the "CRDD") which denied the applicant's claim to Convention refugee status.

THE FACTS

The applicant is a citizen of Afghanistan. He arrived in Canada via England and Pakistan on February 3, 1995. He claimed Convention refugee status on February 13, 1995. In 1990, as a student in Afghanistan, he became a member of the Democratic Youth Organization of Afghanistan (the "DYO A"). This was a Communist youth organization organized by the Communist government of Afghanistan. In 1992 the new government formed by the Mujaheddin banned all activities previously supported by the

Communist government. The applicant was arrested in June of 1993 by the new government and was imprisoned. He was released but subsequently arrested again in January of 1994. He was detained for 6 months in a dark cell, beaten and abused physically. He was released upon the intervention of his father who bribed his captors. In October 1994, he was beaten and sexually abused by the Hazaris, a Mujaheddin group, while his mother watched.

After this incident, the applicant's father decided that the applicant could not remain in Afghanistan. He left Afghanistan in October 1994 through the assistance of his father's business partner. He went to Pakistan for 3 months, then to London, thence to Canada on a false Swiss passport.

THE DECISION OF THE CRDD

A panel of the CRDD denied the applicant's claim. The panel's decision contains a number of comments that could be construed as impugning the applicant's credibility. The panel did not believe that the applicant was arrested for a second time by the Mujaheddin. They concluded that there was lack of credibility in a number of other facets of the applicant's evidence. Because they doubted the applicant's credibility in a number of areas, they also doubted the extent of the injuries suffered by him. The panel also found that the claimant's allegation of sexual abuse at the hands of the Hazaris was not credible. They further concluded that the applicant did not leave Afghanistan for political reasons but rather to escape the extortions of the Hazaris which were not politically motivated. Finally, the panel determined that the applicant had not established that he met the definition of a Convention refugee. Furthermore, it was their decision that the requirements for an Internal Flight Alternative in Northern Afghanistan had been fulfilled.

ANALYSIS

In essence, the CRDD decided that had the applicant's testimony been credible, it would have found that the applicant had a well founded fear of persecution. However, the CRDD did not find credibility in the applicant's evidence. The leading decision on this issue is the decision of the Federal Court of Appeal in *Aguebor v. M.E.I.*¹ In that case Marceau J.A. stated:

"There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony. ... As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review".

In my view, the Tribunal's credibility findings are supported by the evidence and should not be set aside. I would also rely on the decision of the Federal Court of Appeal in the case of *Djama v. M.E.I.* A-738-90 June 5, 1992, where it was held that the Board's reasons should not be examined microscopically with a view to finding every possible inconsistency or implausibility and that evidence should not be rejected *in toto* because of minor inconsistencies on a subject matter that is not central to the applicant's claim. This view of the matter was confirmed in *Mohammadi v. M.C.I.* IMM-2507-96, April 16, 1997 on the basis that the CRDD is entitled to prefer documentary evidence over the sworn testimony of an applicant provided that the inferences drawn from that evidence are reasonable and the grounds for preferring the documentary evidence are stated in clear and unmistakable terms.

In view of my conclusion that the negative credibility findings of the CRDD are supported by the record, it becomes unnecessary to examine the issue of IFA.

CONCLUSION

¹ (1993) 160 N.R. 315 at pp. 316-317, per Marceau, J.A.

For the foregoing reasons, I would dismiss the within application for judicial review.

CERTIFICATION

Neither counsel suggested certification of a serious question of general importance pursuant to the provisions of Section 83 of the *Immigration Act*. I agree with that view of the matter. Accordingly no question will be certified.

"Darrel V. Heald"

D.J.

Toronto, Ontario
June 12, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-2908-96

STYLE OF CAUSE: ALI MOHAMED HAMIDI

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

DATE OF HEARING: JUNE 11, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: HEALD, D.J.

DATED: JUNE 12, 1997

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FEDERAL COURT OF CANADA

Court No.: IMM-2908-96

Between:

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