Date: 20061220

Docket: IMM-2894-06

Citation: 2006 FC 1517

BETWEEN:

MOHAMMED ALI AHEMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the IRB) dated May 3, 2006, ruling that the applicant is not a "Convention refugee" or a "person in need of protection" within the meaning of sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] Mohammed Ali Ahemed (the applicant) is a Muslim and a citizen of India. He was the owner of an electrical appliance importing company in Tiruchy, Tamil Nadu state, India, and he often travelled outside of India on business.

[3] In February 2005, the applicant was brought before a rival businessman, Mr. Kannappan, who told him that he would have to give up his business because he was Muslim. Kannappan told him that he would have to pay him every time he or his father went on a business trip and he would have to smuggle for him (importing goods). The applicant was beaten by Kannappan's men and allegedly suffered partial hearing loss in his right ear.

[4] In November 2004, the applicant's father went on a business trip and paid Kannappan the extortion money.

[5] In February 2005, the applicant was threatened by Kannappan once again. On the advice of his father, the applicant went to live with his father-in-law in Chennai.

[6] On May 12, 2005, the applicant's father was found dead. According to the applicant, Kannappan was behind the murder.

[7] The applicant arrived in Canada on July 10, 2005.

* * * * * * * *

[8] The IRB accepted the facts on which the applicant's claim was based, particularly the fact that he was persecuted by Kannappan and has a well-founded fear in his village and in the Tamil Nadu state.

[9] However, the IRB rejected the applicant's claim, concluding that he had an internal flight alternative elsewhere in India, in Delhi, for example, and possibly in Chennai.

[10] The only issue in this case is whether the IRB erred in concluding there was an internal flight alternative available to the applicant in India. The IRB used the proper test to determine if there was an internal flight alternative in this case, that test being the two-pronged one set out in *Rasaratnam v. Canada (M.E.I.)*, [1992] 1 F.C. 706 (C.A.), namely, whether on a balance of probabilities there is no serious possibility that the applicant would be persecuted in the part of the country where an internal flight alternative exists, and whether it would not be unreasonable, in all the circumstances, for him to take refuge there.

[11] However, in my opinion, the IRB erred in applying the second part of this test.

[12] A psychological or medical report may constitute objective evidence that it would be "unduly harsh" to expect an applicant who has already been persecuted in the past in one region of his or her native country to move to another part of that same country (*Singh v. Canada (M.C.I.)*, [1995] F.C.J. No. 1044 (T.D.) (QL)). In the case at bar, the applicant submitted a note from a social worker, Dolorès Denis, indicating that he shows symptoms of depression. He also submitted a letter from a

physician, Dr. Dagher, who states that the applicant suffers from post-traumatic stress syndrome and depression with suicidal ideation.

[13] At first sight, this is a serious psychological condition. On this point, the applicant underlined the fact that the IRB did not specifically refer to the doctor's letter and did not take into consideration the applicant's psychological condition in its analysis of whether it was reasonable for him to seek protection from persecution in another part of India.

[14] In *Javaid v. Canada (M.C.I.)*, [1998] F.C.J. No. 1730 (T.D.) (QL), Mr. Justice Rothstein noted that evidence of the psychological condition of an applicant is important to consider when determining whether an internal flight alternative exists:

> [9] However, a panel does not immunize itself from judicial review simply because it says it considered evidence. The circumstances must be taken into account. Where the evidence is specific and important to the applicant's case, *prima facie* credible and persuasive, I think a panel has some obligation, even very briefly, to explain why it is not persuaded by that evidence. In this case, I am not satisfied that the panel did have regard for the psychological assessment in arriving at its conclusion.

[15] *Cepeda-Gutierrez v. Canada (M.C.I.)*, [1998] F.C.J. No. 1425 (T.D.) (QL), is very similar to the case at bar, because in that case the IRB determined that the claimants were credible and had a well-founded fear of persecution. It is useful to reproduce paragraphs 27 and 28 of this decision:

> Finally, I must consider whether the Refugee Division made this erroneous finding of fact "without regard for the material before it." In my view, the evidence was so important to the applicant's case that it can be inferred from the Refugee Division's failure to mention it in its reasons that the finding of fact was made without regard to it. This inference is made easier to draw because the Board's reasons dealt with other items of evidence indicating that a return would not be unduly harsh. The inclusion of the "boilerplate" assertion that the

> Board considered all the evidence before it is not sufficient to prevent this inference from being drawn, given the importance of the evidence to the applicant's claim
>
> I am supported in this conclusion by the decision of Richard J. (as he then was) in *Singh v. Canada (Minister of Citizenship and Immigration)* (1995), 30 Imm. L.R. (2d) 226 (F.C.T.D.), where the failure of the Refugee Division to mention a relevant and credible psychological report respecting the reasonableness of requiring a refugee claimant to return to his country of origin was held to be an error of law. There are other cases where the omission of any discussion of similar reports has been found not to vitiate the decision: *Jhutty v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 763 (F.C.T.D.); *Canizalez v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1492 (F.C.T.D.); *Randhawa v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 749 (F.C.T.D.). However, in these cases, unlike the case at bar, the Board did at least specifically mention or acknowledge the report, so as to justify an inference that the Board had had regard to it.

[16] In the case at bar, the IRB found the applicant to be credible and determined that he had a well-founded fear of persecution. At the hearing, the applicant testified that he had consulted his doctor about 20 times since his arrival in Canada. When his counsel asked him why he had consulted the doctor, he answered as follows (at page 228 of the tribunal record):

> You know, due to the incidents which happened in my home town, and because they had beaten in the ear, my ear then started aching continuously. Further, in the night I was not able to sleep at all properly. Two to three hours I would sleep and after that I would suddenly get a dream as if somebody is coming to strangle me. So even now I’m continuing to take medicine.

[17] At the end of the hearing, counsel also referred to the applicant’s psychological condition, as appears at page 248 of the tribunal record.

[18] In my opinion, in these circumstances, the IRB should have at least mentioned the doctor's report in its reasons, which it failed to do. The IRB might have attached some weight to this report, but because it did not mention it at all, it is impossible to know if it even considered it. Therefore, the failure to mention the doctor's report in its decision is a serious error warranting intervention by this Court. Accordingly, the application for judicial review is allowed; the decision of the IRB dated May 3, 2006, ruling that the applicant is not a "Convention refugee" or a "person in need of protection" within the meaning of sections 96 and 97 of the Act, respectively, is set aside; and the matter is referred back to a differently constituted panel for rehearing and redetermination.

"Yvon Pinard"

Judge

Ottawa, Ontario
December 20, 2006

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2894-06
STYLE OF CAUSE:	MOHAMMED ALI AHEMED v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 22, 2006
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Pinard
DATED:	December 20, 2006

APPEARANCES:

Michel Le Brun	FOR THE APPLICANT
Annie Van der Meerschen Héloïse Dumont	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Le Brun Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT