Date: 20070116

Docket: IMM-2481-06

Citation: 2007 FC 34

Ottawa, Ontario, January 16, 2007

PRESENT: THE HONOURABLE MADAM JUSTICE JOHANNE GAUTHIER

BETWEEN:

SABA ASAAD HADDAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Haddad is asking the Court to set aside the decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD) dismissing his claim for refugee protection on the grounds that there were serious reasons for believing that he had participated (as an accomplice by association) in crimes against humanity committed by the Lebanese Forces (Section 1F(*a*) of the *United Nations Convention relating to the Status of Refugees*), and that he was therefore excluded under section 98 of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (the Act).

[2] For the following reasons, I am satisfied that the application for judicial review must be dismissed.

Relevant facts

[3] Mr. Haddad is a citizen of Lebanon who arrived in Canada on April 16, 2004, at which date he indicated his intention to claim refugee status.

[4] The applicant stated that he had a well-founded fear of persecution in Lebanon because of the political opinions that were attributed to him. More precisely, at his first hearing before the RPD, the applicant indicated that he had worked for the secret service of the South Lebanese Army (SLA) from 1977 to 1987 and that, since 1999, he has been threatened by Hezbollah supporters who hold against him that he collaborated with the Lebanese Forces and/or the SLA. At that time, he also indicated that his work consisted in obtaining information from friends, and by telephone, as to Hezbollah activities, in particular [TRANSLATION] "where they have centres or positions . . . what they are doing, where they are going . . . " (at page 422 of the certified file).

[5] During subsequent hearings, the applicant changed his story. Rather, he indicated that he has been working for the Lebanese Forces, another Christian militia operating in southern Lebanon. From 1977 to 1984, his work consisted in sailing on a small ferryboat (20 to 25 passengers) belonging to the Lebanese Forces which shuttled between Beirut and Israel. He claimed to have accepted this work because he didn't want to engage in combat for the Lebanese Forces and because he could swim and could therefore act as a lifeguard in an emergency. He also had to gather all

useful information exchanged by the passengers. Although the ferryboat ceased sailing in 1984, the applicant continued to be paid by the Lebanese Forces until 1987, even though, according to him, he never in fact supplied any information coming from the passengers from 1977 to 1984 nor provided any other services beyond 1984.

[6] To explain his first testimony, the applicant stated that it was the Lebanese Forces who had asked him to forward to the SLA whatever useful information he heard. However, here again, he indicated that in fact, he never supplied any information to the SLA.

[7] It is in this context that the SLA or the Lebanese Forces are said to have warned him in 1990 that he was listed as a [TRANSLATION] "collaborator" in Hezbollah files and that he should not go to Tyre where he was being sought.

[8] In its decision, the RPD noted that it was the Minister who was seeking exclusion pursuant to Section 98 of the Act who bore the burden of proof. It recalled that it was the Minister's duty to establish that there were [TRANSLATION] "serious reasons for believing that an individual has committed a crime against humanity." On the basis of the decision of the Federal Court of Appeal in *Ramirez v. Canada (M.C.I.)*, [1992] 2 F.C. 306 (QL), the RPD noted that this standard of proof was not as stringent as that of the balance of probabilities. It then examined the case law on the question of participation in such a crime by complicity (including all the authorities cited by the applicant during the hearing before me).

[9] The RPD then found, after having examined the documentary evidence before it, that the Lebanese Forces and the SLA have in fact committed many crimes against humanity and that such was the case during all of the lengthy period during which the applicant worked for the Lebanese Forces. This finding was not disputed by the applicant. Moreover, the Court noted that this Court and the Federal Court of Appeal have approved many decisions containing similar findings with regard to these two militia. (*Harb v. Canada (MCI)*, 2003 FCA 39, [2003] F.C.R. No. 108 (C.A.) (QL); *El Hayek v. Canada (MCI)*, 2005 FC 835, [2005] F.C.R. No. 1045 (QL); *Sleiman v. Canada (MCI)*, 2005 FC 285, [2005] F.C.R. No. 344 (QL); *Alwan v. Canada (MCI)*, 2004 FC 807, [2004] F.C.R. No. 982 (QL); *El-Kachi v. Canada (MCI)*, 2002 FCTD 403, [2002] F.C.R. No. 554 (QL); *Srour v. Canada (Solicitor General)*, [1995] F.C.R. No. 133 (QL)).

[10] The RPD also found that the applicant was aware of the crimes committed by the Lebanese Forces and that in spite of this, he never tried to end his activities mainly because his employer paid him well.

[11] It is clear that the RPD gave weight to the applicant's testimony at the first hearing (see at page 6 of the decision, at paragraph 3) while it found that during the subsequent hearings, the applicant simply tried to minimize his collaboration with the Lebanese Forces (at page 7, first paragraph). It also noted that the work he supposedly did as an informant on a ferryboat was not mentioned in the applicant's Personal Information Form. The Court noted that in his form, the applicant was to list his professional activities during that period and that in this regard, he only indicated that he had worked in his aluminum plant although according to his testimony, he really

did not have any orders during this period. Nor was his involvement with the Lebanese Forces mentioned in his account although it was, according to his testimony, the very cause of his problems with Hezbollah supporters.

Issues

[12] The applicant agreed at the hearing that the RPD applied the proper test and that it understood correctly the applicable law to determine whether a person has committed or participated in the commission of a crime by complicity. According to him, it is in applying the law to the facts in this case that the RPD has erred.

[13] It should also have accepted his testimony to the effect that he never engaged in combat nor participated actively in any activity linked to the crimes committed by the Lebanese Forces or the SLA and that he had to work for the Lebanese Forces to subsist. According to him, he had no choice if he wanted to support his family.

[14] Finally, according to the applicant, considering the nature of his involvement and the evidence before the RPD, it could not find that he had been an accomplice in the crimes committed by the Lebanese Forces.

Analysis

[15] The case law is well settled: the standard applicable to judicial review of a decision of the RPD depends on the nature of the finding being challenged. For a question of law, the standard is that of correctness; for a question of fact and with regard to findings on the credibility of testimony and the probative value of evidence, it is that of patent unreasonableness which applies. Finally, for a mixed question of fact and law, it is that of reasonableness. This approach has been confirmed by the Supreme Court of Canada in *Mugesera v. Canada (MCI),* 2005 SCC 40, [2005] 2 S.C.R. 100 (QL). (see also *Harb, supra*).

[16] The question as to whether there were serious reasons for believing that the applicant was an accomplice in crimes committed by the Lebanese Forces is a mixed question of fact and law to which I will therefore apply the standard of reasonableness. As to whether or not in fact, the applicant tried to minimize his collaboration with these militia, whether he tried to dissociate himself from the Lebanese Forces and if not why, these are questions of fact and of assessing the evidence to which the standard of patent unreasonableness applies.

[17] The Court has reviewed very carefully the certified file, including the transcript of all the hearings before the RPD and it is satisfied that the findings of fact made by the RPD and its assessment of the applicant's testimony contain no reviewable error. They are all supported by evidence and are neither arbitrary, illogical, nor absurd.

[18] As to the applicant's complicity, after an in-depth study of the file, the Court is also convinced that the RPD's conclusion was reasonable.

[19] It is appropriate to recall in this connection that in *Harb, supra,* the Federal Court of Appeal has once again made clear at paragraph 11 that:

> . . . It is not the nature of the crimes with which the appellant was charged that led to his exclusion, but that of the crimes alleged against the organizations with which he was supposed to be associated. Once those organizations have committed crimes against humanity and the appellant meets the requirements for membership in the group, knowledge, participation or complicity imposed by precedent . . ., the exclusion applies even if the specific acts committed by the appellant himself are not crimes against humanity as such . . .

[20] To find that a person shared a common intention with the author of crimes committed against humanity, the case law has never required that this person's activities be directly linked to the commission of the alleged crimes or that these crimes be directly attributable to specific acts or omissions of an applicant. Deliberate and personal participation may be indirect and it is not required that a person be a fighting member of a militia.

[21] In this case, the RPD could reasonably infer that the applicant had a common intention with the Lebanese Forces from the following facts: knowledge of crimes committed by this organization, his long association with it, and the fact that he did not try to dissociate himself from it when such would not have endangered his life nor his safety.

[22] The fact that the applicant denied having shared the intentions or objectives of the Lebanese Forces and stated rather that he could not care less about them and simply wanted to provide for his family's needs does not suffice to deny the existence of such a common intention (see *Harb*, *supra,* at paragraph 27).

[23] The secret service and the network of informants of organizations such as the Lebanese Forces are functions as essential as financing and propaganda (see for example *Diab v. Canada (MEI),* [1994] F.C.R. No. 947 (QL); *Szekely v. Canada (MCI),* [1999] F.C.R. No. 1983 (QL) and *Zoya v. Canada (MCI),* [2000] F.C.R. No. 1884 (QL)). And as was indicated by the Federal Court of Appeal in *Bazargan v. Canada (MCI),* [1996] F.C.R. No. 1209 (QL), one who puts his own hand to the workings of an organization exposes himself to the application of the exclusion clause in the same way as one who participates directly in the operation.

[24] The parties agreed at the hearing that this matter does not raise any question of general interest. The Court is satisfied that there is no question to be certified in this case.

JUDGMENT

THE COURT ORDERS THAT:

The application be dismissed.

"Johanne Gauthier"
Judge

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

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