

Date: 20070730

Docket: IMM-4299-06

Citation: 2007 FC 794

Ottawa, Ontario, July 30, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**CASSIM MOHAMMED MAMOON
EBRAHIM MOHAMMED MAMOON
(a.k.a. Ebrahim Mohamme Mamoon)**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review arises from a decision of the Refugee Protection Division of the Immigration and Refugee Board rendered on July 19th, 2006 by which the protection claims of Cassim Mohammed Mamoon and Ebrahim Mohammed Mamoon were denied.

BACKGROUND

[2] The Applicants are brothers from Tanzania. They are from a prominent business and political family and their father is a member of the ruling party, Shama Chama Mapinduzi (CCM). He is also a Deputy Mayor of the Ilala Municipal Council at Dar es Salaam.

[3] The Applicants' claims to refugee protection were based on allegations of persecution involving physical violence and threats made by political opponents of their father and directed at all of the members of the family between 2004 and 2005. It appears from the record that the senior Mr. Mamood was instrumental in assisting the Applicants and their sisters to leave Tanzania and he has promoted the within refugee claims.

[4] Notwithstanding the political prominence of the family in Tanzania and the severity and frequency of the alleged persecution (including beatings, threats to the sisters of rape, the precipitation of their mother's suicide and the murders of other CCM members), the Applicants acknowledged in their respective Personal Information Forms (PIF) that neither they nor anyone on their behalf had ever sought police or state protection before they came to Canada. The Applicants' PIF declarations both included the following passage with respect to the issue of state protection:

“Our father, the City Councillor, though subjected to death threats and an assault, did not seek state protection for our family because he was fully aware of the police reputation for corruption and incompetence. He believed that if he approached the authorities, they would only demand a bribe – and fail to deliver any protection, even if he paid the bribe. Tanzania is plagued by widespread official corruption.”

[5] On January 5, 2006, the Applicants' father swore an affidavit which contained the following statement on the same issue:

“That all these incidences have been reported to both police and the Sunni Muslim Jamaat but the CUF members have continued with the aforesaid criminal acts.”

ISSUES

- [6] (a) What is the appropriate standard of review for the issues raised on this application?
- (b) Did the Board err in its treatment of the issue of state protection?

ANALYSIS

[7] The issues raised on this application involve questions of mixed fact and law applicable to the Board's state protection conclusions. These are issues which are reviewable on a standard of reasonableness: see *Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584, 2007 FCA 171, at para. 38.

[8] The Board rejected these claims on the basis a lack of credibility and because the Applicants had failed to rebut the presumption of state protection. Both of those findings are based on a solid evidentiary foundation and cannot be disturbed.

[9] The Board found the Applicants' explanations for failing to pursue police protection and for the inconsistency between their PIF's and their father's affidavit, to be implausible. Inasmuch as the Applicants' PIF's purported to offer an explanation for their father's decision not to pursue state protection, it was reasonable for the Board to expect that these stories would match. Clearly, they

did not. The Board's findings on these credibility issues are unimpeachable. Indeed, the whole idea that a leading political figure in the ruling party of Tanzania could not and would not seek police protection for his family from the history of violence alleged by the Applicants borders on the absurd.

[10] It is also noteworthy that if the Applicants' father had reported these allegations of persecution to the police as he had deposed, he was in a position to provide corroboration of that fact along with detailed evidence bearing on the police response. His affidavit, however, said absolutely nothing about the adequacy of the police response to his reports. Instead, he alluded only vaguely to "continued" criminal activity by his political opponents. That the Board found this affidavit to be unconvincing is hardly surprising and it was, therefore, entirely justified in finding that the Applicants had failed to rebut the presumption of state protection with clear and convincing evidence.

[11] This case is factually similar to the case of *Goolram v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 798, 2005 FC 562 where Justice Judith Snider discussed the obligation to seek police protection in cases such as this:

“The Applicant's efforts to access police assistance and the evidence before the Board, in this case, are much different. The Applicant did not seek out police assistance for his alleged attack by PNC. With respect to the issue of state protection, there was not a single document before the Board that concludes that the police refused to pursue Indo-Guyanese complaints. Thus, the situation before the Board in this case is not one, as was before Justice MacTavish, where there are conflicting reports on police treatment of Indo-Guyanese citizens. Quite simply, there is no objective evidence to support the Applicant's contention that the police would not help him

if he were to find himself victimized by the PNC or any other criminals.”

[12] The Applicants have failed to establish that the Board made any reviewable error in refusing their respective claims to refugee protection. In the result, this application is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4299-06

STYLE OF CAUSE: CASSIM MOHAMMED MAMOON ET AL v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BARNES, J.

DATED: July 30, 2007

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