

Date: 20080526

Docket: IMM-4900-07

Citation: 2008 FC 662

Ottawa, Ontario, May 26, 2008

PRESENT: The Honourable Mr. Orville Frenette

BETWEEN:

SAMIR MAMOOD MUHAMED ATIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Samir Mamood Muhamed Atia (the applicant) seeks Judicial Review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2002, c. 27 (the Act) of a decision made October 24, 2007 (the Decision) by the Refugee Protection Division (RPD) that he is neither a Convention refugee nor a person in need of protection.

I. Background

[2] The applicant is a 35 year old stateless Palestinian whose parents were originally Palestinians and migrated to Iraq in 1948. He was born in Iraq and lived there with residency status until 2006. He is married and a father to four children who currently reside in Syria with their mother. He practises Sunni-Islam religion.

II. Palestinians in Iraq generally

[3] The former regime of Saddam Hussein sheltered Palestinians in Iraq. In particular, Palestinians such as the applicant and his family were provided free accommodations in secure complexes. However, Palestinians, including Palestinians born in Iraq, did not become citizens and did not have the right to own property.

[4] Following the invasion in 2003, the situation deteriorated for Palestinians. The United Nations High Commission for Refugees (UNHCR) noted that “[b]ecause segments of the Iraqi population feel that Palestinians received favourable treatment under the former regime, they have faced serious repercussions such as evictions, threats and harassment.” A September 2006 report by Human Rights Watch also noted that they had difficulty maintaining their residency status.

Where previously Palestinian refugees in Iraq had little trouble obtaining and maintaining their residency status, the Ministry of Interior ordered Palestinian refugees to obtain short-term residency permits, treating them as non-resident foreigners instead of as recognized refugees. The residency requirements are onerous, requiring Palestinian refugees to bring all members of their families

to Ministry of Interior offices to renew the permits, which can take days or even weeks, and the new permits are only valid for one to two months.

[5] The Human Rights Watch report noted that Palestinians have been targeted more than other minorities. Militias, primarily Shiite, have attacked, threatened and often murdered Palestinians. Leaflets have been scattered in Palestinian neighbourhoods warning Palestinians to leave the country or face death. It is also widely reported that Palestinians were subjected to various human rights violations by government agents, including arbitrary arrest, detention, harassment and house raids.

III. The applicant's history

[6] The applicant lived with his family in a Palestinian complex in Baghdad. He worked in that complex as a mechanic and his children attended school there. He claims that his residency permits expired and that the government refused to renew them. However, since he did not have to leave the Palestinian complex, he claims he was able to stay in Iraq. Unfortunately, while the travel document which supported the applicant's claims of residency status was shown at the RPD hearing, two stamps on that document were not translated at that time (much of the rest of the document was in both Arabic and English). The first of these two stamps, dated 22 June 2005, requests the applicant to "Please report within 30 days". The second of these two stamps states that "[t]he validity of this document is valid for one year until 22 June 2006".

[7] The applicant claimed that he witnessed the murder of his uncle by militants at the end of April 2006. He did not, however, have a copy of the death certificate. He claimed that Palestinians were the object of persecution and death threats from radicals of both Shiite and Sunnis.

[8] He also claimed that he had been threatened on a number of occasions. He had also received a leaflet that threatened to kill him and his family if he did not leave within 72 hours. However, that document was not addressed to the applicant specifically, but to all Palestinians.

[9] As a result, the applicant obtained a fraudulent travel document to get himself and his family to Syria. After that, his sister-in-law, an American citizen, came and flew with the applicant to Canada using his brother's passport (also an American citizen). He arrived August 15, 2006 and made a claim for refugee status.

[10] The evidence only shows one other attempt by the applicant to leave Iraq. In 2005, one of the applicant's sons had been ill, apparently with emotional or psychological problems caused by the violence. The applicant testified that his brother had contacted a lawyer to see if the applicant's son could go to the U.S.A. for treatment "but not as a refugee or an asylum." The applicant's brother determined that this would not work out and no application or claim was made as a result.

[11] The applicant testified that none of his family remains in Iraq. The applicant's brother and father had gone to the U.S.A.; the former obtained citizenship because he married an American and the latter was sponsored by the applicant's brother. The applicant's mother was a Jordanian in Syria

who, at the time of the hearing, had just obtained her green card to go to the U.S.A. The rest of the applicant's family is still in Syria, some (including his wife and children) illegally.

IV. The decision

[12] The RPD found that the applicant was not credible and that this was the determinative issue. In the Decision, the RPD noted that the applicant had specifically identified threats from Shiite militias in his Personal Information Form (PIF) narrative. However, at the hearing, the applicant had testified that he feared both radical Shiites and Sunnis. The applicant said that while he was a Sunni, the radical Sunnis in Iraq wanted to get rid of him not because of his religion but because he is Palestinian. The applicant testified that he had not specifically mentioned Sunnis in his PIF narrative as few Sunnis lived near his home and hence rarely caused problems for him.

[13] The Decision found that the applicant's testimony regarding his uncle's death was not credible, noting that the applicant did not know the date of the incident. The Decision noted that there was no corroborative evidence of this incident.

[14] The RPD also found the applicant's testimony that he had no right of return to Iraq to be implausible. The RPD described the applicant as "an Iraqi of a Palestinian origin."

[15] The RPD noted that all of the applicant's family had fled Iraq. The Decision held that "[t]he evidence states that the claimant has tried different ways to leave Iraq for all his family had left for the US." (This is erroneous since his wife and children still remain in Syria).

[16] Finally, the RPD took into account the general conditions in Iraq. The Decision notes the UNHCR Handbook which states that "persons compelled to leave their country of origin as a result of international or national armed conflict are not normally considered refugees". Instead, "refugee status will depend upon whether the applicant is able to show that he has a well-founded fear of being persecuted in the occupied territory" and that there is no state protection or equivalent. The RPD found that the applicant's "concern is the conditions in Iraq and his bid to leave the war torn country for all his family has migrated to the U.S."

V. Analysis

[17] The Respondent submits that the standard of review is patent unreasonableness. In light of the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the standard of review is that of reasonableness *simpliciter*.

[18] In my view, the RPD made a number of reversible errors in the Decision.

[19] First, the RPD found that the applicant was inconsistent in testifying that he feared both radical Sunnis and Shiites when he had only specifically mentioned Shiite militias in his PIF

narrative. However, it is clear from the PIF narrative that the references to Shiite militias are specific examples of the applicant's fears. The applicant put greater emphasis on his fears of the Shiite militias simply because the Palestinian complex was in a predominantly Shiite area.

[20] Second, the evidence does not support the RPD's conclusion that the applicant did not know the date of his uncle's murder. The applicant testified that his uncle was killed "[a]bout the end of April 2006." The applicant was never asked whether he knew the exact date much less what that date was. The RPD's statement that "[t]he claimant testified that his uncle was killed in 2006" mischaracterizes the applicant's testimony by suggesting it was much less precise than it actually had been.

[21] Third, both the applicant's own evidence as well as the documentary evidence show that the applicant was not an Iraqi but a stateless Palestinian without definite residency rights in Iraq. The evidence strongly supports the applicant's testimony that he has no right of return to Iraq and that he may be detained if he returns there.

[22] Fourth, the RPD clearly erred in suggesting that the applicant's family had all left for the U.S. with the suggestion that the applicant's true purpose was to rejoin them rather than to flee persecution. Only the applicant's brother, father and mother were able to reside in the U.S.A. Moreover, the applicant had come to Canada and not the U.S.A. where he did not have any family.

[23] Finally, the RPD makes no mention of the documentary evidence, some of which is noted above, which shows extensive persecution of Palestinians in Iraq. Members of that nationality are not simply compelled to leave their country of origin as a result of international or national armed conflict. Instead, they clearly face persecution based on their nationality and/or membership in a particular social group and hence are eligible to be Convention refugees. The failure in this case to mention this documentary evidence is a clear error in this case.

VI. Conclusion

[24] The applicant testified and provided some evidence that showed he had subjective fear of persecution in Iraq. There were no major inconsistencies in his testimony to ground a finding that the applicant lacked credibility. Moreover, the applicant's testimony was well supported by the documentary evidence. For these reasons, I have concluded that the RPD erred in making the Decision and that this matter should be referred back to a new panel.

JUDGMENT

UPON reviewing the material filed and hearing the submissions of counsel for both parties in Toronto on Tuesday, May 13, 2008;

AND UPON being advised that no questions are posed for certification;

NOW THEREFORE THIS COURT ORDERS AND ADJUDGES that for the reasons given above the Application is granted.

"Orville Frenette"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4900-07

STYLE OF CAUSE: Samir Mamood Muhamed Atia
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 13, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** FRENETTE D.J.

DATED: May 26, 2008

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