

**Date: 20090213**

**Docket: IMM-2408-08**

**Citation: 2009 FC 157**

**Ottawa, Ontario, February 13, 2009**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**ABOULAYE HABIB HAMIT MAHAMAT  
AMIR HAMIT MAHAMAT  
HAMIT MAHAMAT ADOUM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel), dated April 24, 2008, that the applicants were neither Convention refugees nor persons in need of protection under section 96 or 97 of the Act.

**Issue**

[2] Did the panel err in finding that the applicants were not credible?

[3] The application for judicial review is dismissed for the following reasons.

[4] The applicants are citizens of Chad, and fear the Agence Nationale de Sécurité (ANS) [National Security Agency] because their brother is a member of the rebel movement United Front for Democratic Change (Mouvement Rebelle du Front Uni pour le Changement - FUC). They allege a well-founded fear of persecution based on their imputed political opinion.

[5] In matters of credibility, implausibility and weighing of evidence, it is settled law, under paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, that the Court will intervene only if the decision is based on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the evidence.

[6] The panel is a specialized tribunal, and its findings in matters of credibility are questions of fact. Therefore, the Court should not intervene in the absence of a patently unreasonable error (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.), 42 A.C.W.S. (3d) 886).

[7] Assessing credibility and weighing the evidence are within the jurisdiction of the administrative tribunal that must assess a refugee claimant's allegation of subjective fear (*Cepeda-*

*Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14).

[8] Before *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the applicable standard of review under similar circumstances was patent unreasonableness. Since then, it has been reasonableness.

[9] In this case, the applicants claim that the panel did not clearly understand that their father did not have the financial means to get all of his sons out of Cameroon at the same time, and that the citizens of Chad are sought in Cameroon, and must therefore flee. However, the panel expressed doubts about the ease with which the applicants returned to Chad to obtain travel documents in order to flee to Canada. The panel deemed that this return was incompatible with their fear of persecution (*Caballero v. Canada (Minister of Employment and Immigration)* (1993), 154 N.R. 345 (F.C.A.), 41 A.C.W.S. (3d) 707). This finding, in light of the evidence, is not unreasonable.

[10] The panel also noted the inconsistency in the applicants' testimony on the precarious health of their brothers who remained with their father in Cameroon. The panel questioned the father's ability to ensure that these brothers received medical care while living in hiding. The panel drew a negative inference from this. I do not believe that the Court's intervention is warranted in this regard.

[11] The panel is in the best position to assess the explanations submitted by the applicants regarding any perceived contradictions and implausibilities. It is not up to the Court to substitute its judgment for the panel's findings of fact (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (QL)).

[12] As for the fact that the applicants waited for some time before leaving Cameroon, it must be admitted that such a delay does not always mean that there is no subjective fear of persecution. In this case, the explanation, which has to do with the father's precarious financial situation, was not deemed sufficient by the panel, which could legitimately make adverse findings on that basis (*Espinosa v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, 127 A.C.W.S. (3d) 329).

[13] The panel also found it unlikely that the three applicants could have left their country without difficulty given their claim that they were being sought (see panel record, photocopies of applicants' passports, pages 92 to 105).

[14] Therefore, I consider that the impugned decision cannot be deemed unreasonable. The panel's finding may be deemed rational and acceptable based on the evidence submitted (*Dunsmuir*, *supra*, paragraph 47).

[15] The parties did not raise any questions to be certified, and this case does not include any.

**JUDGMENT**

**THIS COURT ORDERS THAT:**

1. The application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

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Judge

Certified true translation  
Susan Deichert, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2408-08

**STYLE OF CAUSE:** ABOULAYE HABIB HAMIT MAHAMAT  
AMIR HAMIT MAHAMAT  
HAMIT MAHAMAT ADOUM  
v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 10, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BEAUDRY J.

**DATED:** February 13, 2009

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