Federal Court Cour fédérale

Date: 20090630

Docket: IMM-52-09

Citation: 2009 FC 680

Ottawa, Ontario, June 30, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

MAGDY GAYSR MAGALY BESADH
ENTISAR HIZGYAL EXANDER
MARINA MAGDY GAYSR BESADH
MAKARYOUS BESADH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. BACKGROUND

[1] The Applicants, Mr. Magdy Gaysr Magaly Besadh (the Principal Applicant), his wife (the Female Applicant) and their children (the Minor Applicants) are citizens of Sudan. They left Sudan in 1994 and have resided in Egypt since that date. The Applicants applied for permanent residence in Canada as members of the Convention refugee abroad class or as members of the Humanitarian-protected persons abroad designated class. In a decision dated November 20, 2008, First Secretary H. Dubé (the Officer) of the Government of Canada, Embassy of Canada in Cairo,

Egypt advised the Applicants that their applications were denied. The Applicants seek judicial review of that decision.

II. THE OFFICER'S DECISION

[2] In her decision letter, the Officer stated that she determined that the Applicants "do not meet the requirements for immigration to Canada". Her explanation for the rejection was set out as follows:

> Paragraph 139(1(e) of the regulations states that a permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if, following an examination, it is established that the foreign national is a member of one of the classes described by this Division. The classes are the Convention refugee abroad class, the country of asylum class and the source country class.
>
> After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed because you have not satisfied me that you have a well-founded fear of persecution. I am not satisfied that you do not have a durable solution in Sudan. Although you stated that you were harassed you have not been or continue to be personally and seriously affected by a massive violation of your human rights or you have a well founded fear of persecution. I am not satisfied that you meet the definition of country of asylum or convention refugee. You obtained the assistance of the Sudanese government when you laid charges against the men you allegedly attacked you in the road. You stated that the perpetrators were arrested and charged. Further, you have effected your own departure from Sudan. You managed to obtain an extension of your Sudanese passport from your embassy in Cairo. Therefore, I am satisfied that you and your family have a durable solution available in Sudan. For all these reasons, I am satisfied that you do not meet the definition of a convention refugee or the country of asylum definition. Therefore, you do not meet the requirements of this paragraph.

III. STANDARD OF REVIEW

[3] The decision of the Officer is reviewable on a reasonableness standard (See, for example, *Kamara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 785 at para. 19; *Qarizada v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1310 at para.15-18). As set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47, a decision is reasonable if "it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". However, the issue of the adequacy of reasons, as a question of procedural fairness, is reviewable on a standard of correctness.

IV. ADEQUACY OF THE REASONS

[4] The first issue raised by the Applicants is the adequacy of the reasons of the Officer. However, the Applicants appear to address this issue based on the assumption that the letter of refusal constitutes the entirety of the reasons. This is not correct. The Officer's Computer Assisted Immigration Processing System (CAIPS) notes also form part of the certified record and part of the reasons, in this case. When reviewed together the letter and the CAIPS notes are, in my view, adequate in that they provide the Applicants with the reasons why their applications were denied.

V. COUNTRY CONDITION DOCUMENTATION

[5] The more serious issues raised by the Applicants are:

1. Did the Officer err by failing to specifically refer to and analyze documentary evidence related to the situation in Sudan?

2. Did the Officer err by failing to properly consider the claims of the Female Applicant and her daughter, one of the Minor Applicants?

[6] The Applicants did not submit much supporting material with their application. Some journal articles about the mistreatment of Christians in Egypt were included; however, the Applicants did not refer to any documents that could be described as general country condition documents for Sudan. In her decision, the Officer made no explicit reference to any general country condition documentation related to Sudan. The Applicants submit that the Officer was under an obligation to obtain, review and weigh the documentary evidence, even though it was not referred to by the Applicants.

[7] Guidance on the processing of applications such as this is set out in *Immigration OP5: Overseas Selection and Processing of Convention Refugees Abroad Class and Members of Humanitarian-protected Persons Abroad Classes* (Guideline OP5). The Applicants refers to paragraph 11.2 of OP5. This paragraph, in the Applicants' view, places an obligation on the Officer to carry out independent research of country conditions. Had she done that, the Applicants assert,

the plight of Coptic Christians in Sudan, a predominantly Muslim country, would have been apparent.

[8] Paragraph 11.2 of OP5 is not directive. Indeed, as stated, it only purports to guide an immigration officer who is unfamiliar with the social or political situation in a specific area. As an immigration officer in Egypt – a country not far from Sudan, with many similar cultural complexities – it is reasonable to conclude that this Officer would be familiar with the country conditions of Sudan. There is no evidence that the Officer failed to take the country conditions into account. In any event, such documentary evidence, including country condition reports, that the Applicants wished the Officer to consider should have been presented as part of their application (*Qarizada*, above, at para. 30).

[9] Furthermore, even had the Officer consulted the evidence upon which the Applicants are now seeking to rely, it would not, in my view, have led to a finding that Coptic Christians are systematically subject to persecution by virtue of being in Sudan. Although the evidence cited by the Applicant indicates that there are incidents of harassment on the basis of religion and pressures to convert to Islam, the evidence does not show that all Coptic Christians are inherently at risk in Sudan. Thus, even if the Officer had a duty to seek out the country documents in support of the Applicants' claim, her determination that the Applicants did not face a well-founded fear of persecution would nonetheless be reasonable.

VI. GENDER-RELATED PERSECUTION

[10] The Applicants assert that the Officer was obliged to consider the factors related to gender as set out in Appendix B – "CIC Declaration on refugee protection for women" – Guideline OP 5, given that the Female Applicant and her 16 year old daughter were claiming gender-based persecution. In support, the Applicant cites the decision of Justice Campbell in *Latif v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 63. As such, the Officer was required to assess the documentary evidence that related to problems faced by women in Sudan. Because the Officer failed to understand or apply the gender-related guidelines of OP5, it follows that the Officer committed a further error by not ensuring that the interpreter was female.

[11] The problem with this argument is that neither the Female Applicant nor her daughter identified any gender-related concerns related to Sudan. The only risks identified in the Female Applicant's written submissions to the Officer were very vague and related solely to her identity as a Christian. She did not describe any incidents that occurred because she was a woman or express any fear of being a woman in Khartoum, Sudan. The only reference in the Certified Tribunal Record to her gender is contained in a letter dated March 24, 1997 signed by a person identifying himself as the Secretary-General of the Sudan Human Rights Organization. In that letter, the author claims that the Female Applicant:

> is a victim of gross human rights violations committed by the Sudan government in the Sudan, specially that she is a female Christian. [The Female Applicant] was a Christian teacher at Mar Girgis church when she was approached by the regime supporters to convince her of changing her religion and become a moslim. After her refusal she was subjected to intimidation, persecution . . . and in fact the whole family became a target of the Islamic fundamentalists.

[12] It is noteworthy that the Female Applicant made no mention of any such incident in her application narrative. In any event, even if it is an accurate reflection of events, the letter describes religious-based concerns; there is nothing in that letter that describes the Female Applicant in terms that would cause the Officer to believe that she might be a woman at risk of gender-related persecution. Further, the Female Applicant, during her interview with the Officer specifically and repeatedly denied that she had any problems or incidents in Sudan. She finally agreed with the Officer that she was accused of trying to convert Muslims to Christianity in Sudan but stated that "I did not think it was a real problem".

[13] The Female Applicant and her daughter are part of a stable family unit. There are no allegations of domestic abuse.

[14] In short, there was absolutely nothing on the record to indicate that there were signs of gender-related persecution, or that she was in any way vulnerable, or that she was a Woman-at-risk, as described in Guideline OP5. On these facts, it was not unreasonable for the Officer to fail to carry out any analysis of possible gender-related risks to the Female Applicant and her daughter when they themselves did not assert any such fears.

VII. CONCLUSION

[15] In conclusion, I cannot find a reviewable error in the Officer's reasoning, any indication that her decision was based on conjecture, or any deficiencies in the reasons provided in her refusal decision. Ultimately, the Applicants simply failed to show that they met the definition of Convention refugees or country of asylum refugees with no durable solution in a country other than Canada. There is, therefore, no error. The application for judicial review will be dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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