

Federal Court



Cour fédérale

**Date: 20120321**

**Citation: 2012 FC 336**

**Ottawa, Ontario, March 21, 2012**

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

**Docket: IMM-4250-11**

**BETWEEN:**

**NOUH HUSSEIN ABDALLA HAMAD AND  
ABDALLA, AHMAD, ASIA,  
AND ABDERRAHMAN HAMAD  
BY THEIR LITIGATION GUARDIAN  
NOUH HUSSEIN ABDALLA HAMAD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**AND BETWEEN:**

**Docket: IMM-4251-11**

**MUNIRA SALEH MAHMOUD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

## **REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Hamad and his children are the applicants in Court File IMM-4250-11; his wife and the mother of his children, Ms. Mahmoud, is the applicant in Court file IMM-4251-10. The applicants seek to set aside decisions of a visa officer refusing their requests for visas to come to Canada so that Mr. Hamad could study, his young children attend school, and Ms. Mahmoud stay at home or work while in Canada.

[2] The decisions rendered in each application were identical and these applications were heard together. As a result, only one set of reasons will issue but a copy shall be placed in each of the Court files.

[3] These applications are allowed and the decisions of the visa officer are set aside, for the reasons that follow.

### **Background**

[4] Mr. Hamad lives in Benghazi, Libya, with Ms. Mahmoud and their four children who are all under the age of ten (collectively the applicants). All the applicants are Libyan citizens. In June of 2011, Mr. Hamad traveled to the Canadian Embassy in Egypt to apply to study in Canada at George Brown College in a business administration-accounting program. Following the instruction given him at the Embassy, he filed separate applications for his wife and his four children.

[5] Mr. Hamad has two brothers living in Libya. His third brother is a Canadian citizen who lives in Toronto and who, as an affiant on the applications, testified that he was committed to supporting and financially assisting his brother's family during their stay in Canada. Mr. Hamad has previously traveled to Egypt, and in his application stated that he had visited his brother in Canada in 1991, on a visitor's visa valid from January 24, 1991 to July 23, 1991, and that he left Canada before the expiry date.

[6] The applicants have no debts, have a home, an orchard and a well in Libya. Mr. Hamad also owns a transport truck and an interest in a building supply store. He is Head of Teaching Staff Human Resources, Faculty of Agriculture, Garyounis University in Benghazi, and his wife is a teacher. Both of them arranged for leaves of absence from their jobs while in Canada.

[7] On June 14, 2011 their applications were refused. The refusal was because the officer not being satisfied that the applicants would return to Libya after their visit. In reaching this view, the officer examined their travel history; their purpose for the visit; family ties in Egypt, Libya and Canada; employment prospects in Libya; and incentives to return.

[8] The relevant portion of the decision is brief and reads as follows:

...letter from representative stating Libya "is a country experiencing *[sic]* severe *[sic]* instability. The normal patterns of life for its population *[sic]* have been disrupted and it is not possible to discount *[sic]* the risk of harm. By coming to Canada for several years to study Mr. Hamad can ensure that his children are safe and *[sic]* settled." and "It is not possible, of course, to predict the outcome of the conflict in Libya...", "Should the conditions in the country worsen rather than improve in the next several years, then Mr. Hamad would take legal and appropriate steps to retain his status in Canada until it is resolved..." Evidence of funds:- stat dec

from brother, employment letter, Notice of assessment showing funds of \$1,360,147 in 2011 – company docs for building materials company, vehicle, real estate docs I am not satisfied that the applicants meet the requirements for a temporary resident visa based on the applicants' travel history (only limited travel to Egypt in ppts, no documentation given of other travel, purpose for visit (reps letter states his decision to pursue studies in CDA was based on the unstable situation in Libya), family ties in Egypt/Libya and Canada (while family is travelling to CDA), limited employment prospects in Libya (although PA and spouse state they are employed, current situation in Libya is very unstable and future employment is not certain) and weak incentives to return (rep. letter states PA and family will seek to stay in CDA as long as the situation in Libya remains unstable). Applicants lack strong ties which would ensure return after visit as per R179(b). Therefore, this application is refused.

## Issues

[9] The applicants in their memoranda raise the following issues:

1. Did the officer err in law in applying section 179 and consequent provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 with respect to dual intent, and unreasonable conclusions;
2. Did the officer breach the duty of fairness owed to the applicants; and
3. Did the officer err in not providing adequate reasons?

[10] In my view, the real issue in this application is whether the officer's decision was reasonable in the manner described in *Dunsmuir v New Brunswick*, 2008 SCC 9.

## **Analysis**

[11] I find that the decision of the officer lacks justification in the decision-making process and falls outside a range of possible, acceptable outcomes defensible in respect of the facts. The following summarizes why I have reached this view.

[12] First, the officer noted only Mr. Hamad's limited travel to Egypt but completely disregarded or ignored his travel to Canada in 1991 and the fact that he returned to Libya before the expiry of his Canadian visa.

[13] Second, the officer's conclusion that the applicants' ties to Libya were weak is unreasonable and not supported by the record. The evidence is that Mr. Hamad has one brother in Canada, but he has his mother and his two brothers and their families in Libya. Ms. Mahmoud has no immediate family in Canada, but she has her parents, two sisters and two brothers and their families in Libya.

[14] Third, the officer's finding of limited future employment in Libya resulting from the current instability is speculative, and an unreasonable conclusion not supported by the record. The evidence before the officer was that Mr. Hamad and his wife have been working for years, and that Mr. Hamad owns businesses, a transport truck and a building supply store, all of which he intends to leave in the control of his brothers and business partner while in Canada.

[15] Fourth, the officer's statement that "the family will seek to stay in [Canada] as long as situation in Libya remains unstable" mischaracterizes the statements made in the application.

What the letter from the applicants' counsel states is that the applicants, although expecting the situation to improve, would take all legal steps to remain in Canada if the conditions in Libya worsened but that they would not remain in Canada without status. It reads as follows:

He has every expectation that the country will stabilize, as it cannot continue as it is at present. He wants to return when he completes his course and contribute to the development of the country. Should the conditions in the country worsen rather than improve in the next several years, then Mr. Hamad would take legal and appropriate steps to retain his status in Canada until it is resolved. Please be assured that he has no intention, with a wife and four children, of attempting to remain without status in Canada.

It is also of note that the visa was requested for a three year period ending in 2014. The officer made his decision at a time the citizens of Libya were attempting, with the support of the international community, to oust Muammar Gaddafi. The danger of the officer's speculation as to the country conditions some three years in the future is shown by the fact that since then, Muammar Gaddafi has been ousted and killed, and although the current administration has issues, the stability in Libya has significantly improved.

[16] Fifth, the officer unreasonably suggests that the entire purpose of the visit to Canada is to escape the instability in Libya. He writes: "the decision to pursue studies in [Canada] was based on the unstable situation in Libya." This is not an accurate reflection of the information in the record which was more aptly described by counsel as the instability in Libya affected the timing of the study in Canada, not its validity. Although there is little doubt that all were looking to Canada as a safer environment for the children, this does not imply that the study was not bona fide, especially when, as here, there is a description of the value of the study to Mr. Hamad as was outlined in the application.

Mr. Hamad has the opportunity to develop his English language abilities and his professional skills, which he can put to good use in Libya when he and his family return there, and at the same time he can remove his family from danger and uncertainty in their lives for the next three years. It can be expected that the children will become fluent in English, which will benefit them in their later lives.

[17] Neither party proposed a question for certification.

[18] The visa applications indicate that Mr. Hamad, who he can speak English, was to take an intensive English program from the end of August to the end of the year before embarking in January on the administration-accounting program at George Brown College in Toronto. In light of the timing of these programs, I find it appropriate to direct that the applications be considered and a new determination made within the next ninety (90) days. He should not lose a second year due to any delay in making the determination.

**JUDGMENT**

**THIS COURT ORDERS that** the decisions of the visa officer refusing the applicants' visa is set aside; the applicants' applications are referred to a different visa officer for determination to be made no later than 90 days from the date hereof in accordance with these reasons; and no question is certified.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-4250-11  
**STYLE OF CAUSE:** NOUH HUSSEIN ABDALKLA HAMAD ET AL. v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**DOCKET:** IMM-4251-11  
**STYLE OF CAUSE:** MUNIRA SALEH MAHMOUD v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 1, 2012

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

**DATED:** March 21, 2012

**APPEARANCES:**

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