

Federal Court



Cour fédérale

**Date: 20130326**

**Docket: IMM-7645-11**

**Citation: 2013 FC 309**

**Ottawa, Ontario, March 26, 2013**

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

**BETWEEN:**

**AL-MUNZIR ES-SAYYID**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks to set aside a decision by a delegate of the Minister of Public Safety and Emergency Preparedness (the Delegate) that he is a danger to the public and would not be at risk if removed from Canada.

[2] The applicant is a Convention refugee who arrived in Canada at the age of 7.

[3] In 2009, the Immigration Division of the Immigration and Refugee Board determined that the applicant was inadmissible to Canada because of serious criminality. He committed various offences as a youth and in 2007, at the age of 18, he committed robbery and armed robbery using an imitation firearm. While in prison he was found in possession of heroin. As a result, the Immigration Division issued a Deportation Order against him.

[4] The principle of *non-refoulement* precludes the applicant's return to Egypt without special consideration under paragraph 115(2)(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*. Following the Delegate's negative decision under that paragraph the applicant unsuccessfully applied to this Court for a stay of his removal. He has since been deported to Egypt.

#### ***Decision Under Review***

[5] The Delegate determined that the applicant's criminal behaviour had escalated from schoolyard theft to pre-meditated armed robberies and threats of violence against vulnerable and marginalized women working in the sex trade. The Delegate considered evidence that he was a leader among his criminal peers, and that as he was not employed his lifestyle likely was funded through crime.

[6] The Delegate concluded that the applicant had not been rehabilitated. He committed offences while on probation and while incarcerated. He was transferred to a maximum security prison because he could not be adequately supervised and controlled in a medium-security facility.

[7] The Delegate noted that the Mubarak regime had been overthrown and the State Security Investigations Service, responsible for torture of dissidents, had been dismantled. None of the examples of those recently arrested involved family members of dissidents of the previous regime. There was no evidence that suggested that, as a young boy at the time he and his family left Egypt, he would be of interest to authorities. Therefore, the Delegate determined that he would not be at risk in Egypt.

[8] The Delegate also considered humanitarian and compassionate (H&C) considerations and found that they did not outweigh the risk the applicant posed to the public.

### *Issues*

[9] There are three issues raised by this judicial review:

- (1) Whether the Court should dismiss the application as moot;
- (2) Whether the applicant was granted procedural fairness; and
- (3) Whether the decision is reasonable.

[10] The applicant contends that the findings are unreasonable in that they are not supported by the evidence, and indeed, are contradicted by some of the evidence before the Delegate. Further, it is contended that as credibility findings were made on four important issues, the principles of procedural fairness required an interview of the applicant before reaching a decision. The applicant also contends that the H&C considerations were inadequately identified and unreasonably assessed, particularly given that the applicant would return to a country in political and economic turmoil,

where he had only a basic ability to speak the language and in which he had not resided since he was 2 years old.

### ***Discussion***

[11] A proceeding is moot when there is no live controversy between the parties: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342.

[12] The purpose of the Delegate's decision under paragraph 115(2)(a) of the *IRPA* was to determine whether the applicant could be removed from Canada. Judicial review of this decision would not affect the applicant's rights as he has already been removed.

[13] In *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 303, the Federal Court of Appeal found that an appeal from the judicial review of an opinion under subsection 115(2) was moot after the applicant was removed from Canada. The Court also declined to exercise its discretion to hear the appeal.

[14] *Borowski* sets out the three factors a court should consider in deciding whether to hear an application on the merits in circumstances such as those before the Court. These factors include: the adversarial system, judicial economy and the court's law-making function.

[15] With regards to judicial economy, there are circumstances where it may be desirable to hear an application if it would have some practical effect on the parties, or if the dispute will likely

reoccur but again become moot before adjudication or if there is a social cost in leaving the matter undecided.

[16] None of these special circumstances are present in this application. As the Federal Court of Appeal found in *Mohamed*, the issues raised on this judicial review can be addressed in another proceeding involving an applicant who is in Canada. Judicial review cannot grant a practical benefit to the applicant in this case because he has already been removed. The *lis* between the parties, namely whether the applicant can be removed from Canada notwithstanding his status, has evaporated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed on the basis that it is moot. There is no question for certification.

"Donald J. Rennie"

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Judge

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

**DOCKET:** IMM-7645-11

**STYLE OF CAUSE:** **AL-MUNZIR ES-SAYYID v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** March 12, 2013

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

**DATED:** March 26, 2013

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