

Federal Court



Cour fédérale

Date: 20190124

Docket: IMM-5210-17

Citation: 2019 FC 102

Ottawa, Ontario, January 24, 2019

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MUSTAFA IBRAHIM EL ATRASH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated November 7, 2017, in which the RPD refused the Applicant's refugee claim. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. Background

[2] The Applicant is a thirty-one year old citizen of Libya. He claimed protection based on his fear of persecution by militia groups. He also said that he was at risk as a perceived supporter of Muammar Gaddafi, who was formerly the Leader of Libya.

[3] The Applicant is a locksmith. He operated his own business in Tripoli. In his Basis of Claim form [BOC], he stated that he worked on expensive cars for Gaddafi's security forces. He claimed that following the ousting of Gaddafi, he began to receive written requests for his services from Islamist militias [the Militias].

[4] The Applicant claimed that he initially refused to work for the Militias. He then began to be harassed and he received anonymous telephone calls in which he was accused of being an infidel because he had worked for the Gaddafi regime, but refused to work for the Militias.

[5] The Applicant alleged that on April 5, 2012, he was abducted [the First Abduction] by a group of radical Muslim militias called the "Revolutionary militia coalition of Misrata" [the Coalition]. He alleged that he was held for approximately 3 weeks, during which time he was beaten daily. He claimed that the Coalition wanted him to work as a locksmith on the high-end cars they had stolen during the revolution. Those cars had advanced digital security systems and the Applicant had the skills to make the cars operational.

[6] The Applicant alleged that on April 29, 2012, at the conclusion of the First Abduction, he was left on the street to die. He was rescued and subsequently had several operations in Tunisia to repair his nose and restore broken bones around his right eye.

[7] The Applicant alleged that notwithstanding the First Abduction, he continued to live in Tripoli with his parents until August 2012. During this three month period, he travelled by car to Tunisia four times for relaxation and medical treatment. After each trip, he returned to Libya.

[8] In mid-August 2012, the Coalition sent a letter to his home demanding that he report to their base. He did so, and was detained for two days and interrogated about his activities in Tunisia [the Second Abduction]. He was accused of being an informer for the CIA. In the end, the Applicant agreed to work for the Coalition and he was released so that he could collect his equipment.

[9] The Applicant alleged that after he was released, he hid at his cousin's home about 25 miles outside of Tripoli. He spent the rest of 2012 and most of 2013 travelling to Malta (via Spain) and to Morocco and Tunisia. He returned to Libya six times during this period. In January of 2013, he closed his locksmith shop.

[10] The Applicant stated in the hearing that he went to Malta in August 2013 to obtain a student visa for the United States. The visa was issued on September 30, 2013. Thereafter, he returned to Libya on October 14, 2013 to gather his belongings and left for the United States on December 11, 2013.

[11] The conflict in Libya escalated in 2014. The Applicant alleged in his BOC that his family and friends told him throughout 2014 that the Coalition continued to ask about him. The Applicant alleged that during the time he was in the United States, his family continued to receive notices from the Coalition. They initially said that he should report for work but later said that they were going to kill him.

[12] The Applicant alleged that the Coalition abducted his younger brother and held him from September 20, 2014 to February 20, 2015. After he was released because he promised to work for them, his brother fled Libya. In his testimony, the Applicant stated that after his brother was released, his family received two letters [the Summons Letters] from the Coalition demanding that he and his brother report for work.

[13] On March 31, 2015, the Applicant applied for asylum in the United States. However, after two years and before a hearing was held, the Applicant abandoned his claim and came to Canada. Here, he made a refugee claim on March 1, 2017.

[14] The determinative issues in the RPD's Decision were credibility and the Applicant's profile as someone at future risk as a perceived supporter of the Gaddafi regime.

III. The RPD Decision

[15] In my view, in assessing the Applicant's credibility, the RPD was principally concerned with the Applicant's numerous reavailments to Libya after his Abductions, his failure to claim protection in four different countries before reaching the United States, his delay in leaving Libya once he had his US Visa, his abandonment of his US claim, and his submission of fraudulent work orders. The RPD also based its negative credibility finding on the renewal of his business license, his delay in claiming in the US, his medical reports, and the fact that his family lost the Summons Letters.

[16] I will deal, in turn, only with the matters that I have identified as the RPD's principal concerns. They are, in my view, sufficient to support the Decision.

IV. Credibility Concerns

[17] The Applicant was detained for three weeks and beaten daily. His face was smashed and he was left on the street to die at the end of the First Abduction. He required surgery to repair his eye and nose and was detained a second time. In his BOC, he stated that radical Islamist militia groups “wanted” him and that he was very frightened of being given a summary hearing and perhaps killed. His family and friends told him that the Militants described him as an “infidel”. In his hearing, when he spoke of driving between Libya and Tunisia, he said “There was a high element of risk and danger”. He said that he had been lucky not to have been caught and that, although he used his own passport, he was able to avoid detection because he spoke to fellow travellers to determine who was manning the border points and internal checkpoints and because the militias at the borders were local groups whose members did not know him.

[18] In my view, the RPD reasonably rejected this explanation because, in the circumstances described above, it was implausible. It was reasonable of the RPD to conclude that people who are wanted by the Coalition do not approach border points and checkpoints operated by like-minded militias. Further, because the Applicant said that he did not know which militias were members of the Coalition, information about the identity of the militia members at the borders and checkpoints would not have helped him avoid capture. In these circumstances, it was reasonable of the RPD to conclude that his four reavailments to Libya after the First Abduction and six reavailments after the Second Abduction undermined his subjective fear.

[19] The same logic applies to his delay of over 2 months in leaving for the US, after he secured a visa. This delay occurred notwithstanding that when he was applying to US colleges, he was feeling “very frightened of living in Libya” and that the Coalition still wanted him.

[20] The Applicant's failure to claim protection in the four countries he visited after the Second Abduction, which are all signatories to the Refugee Convention, was also a reasonable basis for the RPD's conclusion that he lacked a subjective fear. His explanation was that he "hoped" the situation in Libya would improve. This was not credible given the threats and treatment he had received.

[21] The evidence showed that there were several hundred militias in Libya at the relevant time. The Applicant submitted work orders from several militias which had different logos and referred to different vehicles. The RPD did not believe that the militias would be issuing traceable work orders for work on stolen cars. However, the Applicant explained that the forms were used because the Militias were attempting to appear to be legitimate. There was no documentary evidence to show that this was the case and in the chaos of the time, it is my view that the RPD reasonably concluded that signed and stamped work orders with logos identifying the relevant militia would not be used.

[22] Notwithstanding these findings, I have concluded that the RPD's approach to the Applicant's abandonment of his refugee claim in the US was unreasonable. While it was true that his claim would not have been terminated by the government's introduction of a policy to refuse entry to people from a number of countries including Libya, it is reasonable to accept the Applicant's explanation that, in that political climate, he believed that his refugee claim would not be fairly considered. However, this conclusion does not alter my overall determination that the RPD's Decision about the Applicant's credibility was reasonable.

V. Profile

[23] The Applicant also said that he was at risk as a perceived supporter of Gaddafi. He worked for the Gaddafi security services from his shop and it is fair to say that he provided services at a low level. The preponderance of the evidence suggests that such people were unlikely to be at risk unless there were special circumstances. Since, in this case, there were none, the RPD's rejection of this aspect of the Applicant's claim was reasonable.

VI. Certification

[24] No question was posed for certification for appeal.

VII. Conclusion

[25] This application for judicial review will be dismissed.

JUDGMENT in IMM-5210-17

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5210-17

STYLE OF CAUSE: MUSTAFA IBRAHIM EL ATRASH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2019

JUDGMENT AND REASONS: SIMPSON J.

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