

Federal Court



Cour fédérale

Date: 20191030

Docket: IMM-1191-19

Citation: 2019 FC 1360

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 30, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

HAMIT HAGGAR MAHAMAT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a Chadian national who arrived in Canada in October 2015 to pursue his studies. By way of this judicial review, he is contesting the pre-removal risk assessment [PRRA] conducted by an immigration officer [the Officer] on January 10, 2019, based on which the Officer found that the applicant had failed to demonstrate that his return to his country of origin would subject him personally to a risk to his life, or to a risk of cruel and unusual treatment or

punishment, in accordance with sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] Alleging that he was being sought by the Chadian police for participating in a student demonstration in March 2015, the applicant was initially refused refugee protection by the Refugee Protection Division [RPD], which found that his story was not credible. This decision was upheld by the Refugee Appeal Division [RAD] on July 4, 2017. An application for leave and for judicial review of this decision was dismissed by this Court in October 2017.

[3] It was at this point that the applicant availed himself of the PRRA procedure. He provided the Officer with a certain number of documents purporting to support his application, most notably, a copy of an arrest warrant issued by Chad's national security agency [NSA] and nine letters of support from members of his family, friends and acquaintances living in Chad and in Canada.

[4] The applicant criticizes the Officer for arbitrarily disregarding this documentary evidence, to which the Officer ascribed little or no probative value, given his opinion that the adduced documentary evidence served to [TRANSLATION] "give substance to a continuation of the debates concerning the Chadian authorities' alleged intention to . . . harm [the applicant], which the RPD did not believe".

[5] More specifically, with respect to the arrest warrant, whose authenticity was called into question, the Officer determined that it was written in broken French and was vague about the

date of the alleged student demonstration, simply referring to the period “2015-2016”, while the applicant alleged that it occurred on March 15, 2015. The Officer also criticized the applicant for failing to explain how he had obtained this document. He also noted that certain letters of support referred to situations or issues which the applicant had not disclosed in his PRRA application, such as his ethnicity and the problems experienced by his family in connection with the actions of the NSA.

[6] The hearing for this judicial review was initially scheduled to be held before me on July 24, 2019. However, on June 20, 2019, since he was unable to track down his client, counsel for the applicant filed a motion to withdraw as solicitor of record. This motion was granted on July 16 by another judge of the Court. I nevertheless opened the proceedings on July 24 and noted the applicant’s absence. However, I instructed the clerk to send a copy of the order authorizing his counsel’s withdrawal as solicitor of record to the applicant, at his last known address, since this did not appear to have been done by his counsel. I also indicated that, no later than August 30, 2019, the applicant was required to either appear on his own behalf in this case or appoint another lawyer to represent him. I set all this out in an order that I signed on July 25, 2019.

[7] To date, the applicant has not appeared in person in this case or mandated another lawyer to represent him, nor has he otherwise come forward to address the Court. There is every reason to believe, assuming that he is still in Canada, that the applicant has opted to go into hiding.

[8] Having read and analyzed the record, including the written submissions of the parties, and having briefly heard counsel for the respondent at the hearing held on October 28, 2019, it is my opinion that this application for judicial review should be dismissed.

[9] First, as noted by the respondent in his written submissions, the applicant did not sign the affidavit in support of his application for judicial review as required under the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. This significant irregularity is enough, in itself, to result in the summary dismissal of an application for judicial review commenced under the Act (*Fatima v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1086 at para 5).

[10] Second, and ignoring this significant irregularity, a review of the applicant's written submissions has failed to persuade me that it would be appropriate to intervene. For the Court to intervene, it would have been necessary to demonstrate that the Officer's findings were unreasonable, in other words, that they lacked intelligibility, transparency and justification and that, in any event, they fell outside a range of possible, acceptable outcomes which are defensible with respect to the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[11] This was not demonstrated. Indeed, in my view, the Officer's findings concerning the arrest warrant allegedly issued by the NSA are reasonable, to the extent that the substantive quality of the document leaves something to be desired with respect to crucial elements, most notably, the date of the demonstration or even the [TRANSLATION] "evidence" sought. Furthermore, with respect to the probative value of the letters of support submitted by the

applicant, I cannot say that the Officer's handling of this was problematic in terms of reasonableness, to the extent that most of the letters simply reiterated the applicant's allegations and did so without indicating how the letters' authors learned of the problems that the applicant allegedly faced, not to mention that some of the letters referenced issues that the applicant did not raise in his refugee protection claim or in his PRRA application.

[12] This is in addition to the lack of credibility surrounding the applicant's arrest, noted by the RPD and confirmed by the RAD, an arrest which lay at the heart of the claim for protection he made to the Canadian authorities. It is well established that a PRRA officer must respect the RPD's decision, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, at para 13). In the Officer's opinion, this was not demonstrated, and, as I have already stated, I find this conclusion to be reasonable.

[13] Lastly, I do not see any merit in the applicant's argument that the Officer in fact made a finding concerning his credibility, which first required him to hold a hearing in order to allow the applicant to respond to his concerns in that regard. In my opinion, the Officer was simply not convinced of the authenticity or probative value of the documentary evidence adduced by the applicant. As Justice Denis Gascon recently pointed out in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940, at para 39, a PRRA officer is entitled to refer to the basis of the RPD's decision without the PRRA decision itself assessing the applicant's credibility. That situation is applicable here because, in my opinion, the central focus of the Officer's decision

was not the applicant's credibility but the quality of the documentary evidence provided to persuade the Officer to approve his application after the RPD denied him refugee status.

[14] This case does not give rise to any question of general importance.

JUDGMENT in IMM-1191-19

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed;
2. No question is certified.

“René LeBlanc”

Judge

Certified true translation
This 15th day of November, 2019.
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1191-19

STYLE OF CAUSE: HAMIT HAGGAR MAHAMAT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 28, 2019

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

DATED: OCTOBER 30, 2019

APPEARANCES:

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FOR THE APPLICANT

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FOR THE APPLICANT

FOR THE RESPONDENT