

Date: 20060816

Docket: IMM-5108-05

Citation: 2006 FC 987

Ottawa, Ontario, August 16, 2006

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**WAFFA AZIZ ISMAIL
SAMIR ABDULHADI ABBAS
MURAD SAMIR ABDULHADI ABBAS
AWS SAMIR ABDULHADI ABBAS
MANAR S. ABDULHADI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This judicial review concerns an applicant who was alleged to be a senior official in the Iraqi government and, as a consequence, neither he nor his family was admissible to Canada. The central issue was whether he was a senior official.

[2] The Applicants were found by a visa officer (Visa Officer) to be members of an inadmissible class of persons on the grounds of engaging in terrorism, systematic or gross human rights violations, genocide, a war crime or a crime against humanity, and therefore they were refused an outside-of-Canada application for permanent resident visas. An appeal to the Immigration Appeal Division was denied.

II. Facts

[3] The adult male Applicant, Samir Abdulhadi Abbas (Abbas), was an officer in the Iraqi army during the regimes of Ahmed Hassan Al-Bakr and Saddam Hussein. These governments, in power since 1968, were designated by the responsible Minister on September 3, 1996 as governments that engage in terrorism, systematic or gross human rights violations, genocide, war crimes or crimes against humanity.

[4] Abbas was either a Brigadier (Administrative) or Brigadier General in the Iraqi army. He claimed that he joined the army in 1975 voluntarily because he had few other career prospects as a member of the Turkmen minority. Beginning in 1984 and ending in 1996, he received automatic promotions every four years as a result of non-combat related injuries suffered in the Iran-Iraq war.

[5] It was Abbas' contention that in 1996 he was arrested and imprisoned upon the order of President Hussein. He stated that he paid a bribe to the President's personal secretary for his release and restoration of rank. Subsequently, he fled to Turkey where his wife and children had been living since 1995.

[6] The Applicants' visa applications were refused by the Visa Officer in Turkey. That decision refers to section 35(1)(b) of the *Immigration and Refugee Protection Act* (Act) and section 16 of the *Immigration and Refugee Protection Regulations* (Regulations) and concludes with a finding that, as a Brigadier General, Abbas was in the upper echelon of the Iraqi military. As such, he fell within the definition of a prescribed senior government official and is therefore inadmissible.

[7] It was Abbas' assertion in this judicial review that he was not a Brigadier General but the lower rank of Brigadier (Administrative).

III. Analysis

[8] While the Applicants raise a number of issues which they argue arise in this case, the only substantive issue is whether the Visa Officer's factual determination of Abbas as a senior official is sustainable.

[9] The parties both agreed that the standard of review was patent unreasonableness. However, in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court of Canada found that decisions of immigration officers with regard to immigration applications are discretionary and should be accorded high deference. In the context of that case, the Supreme Court held the standard to be reasonableness *simpliciter*. Likewise Justice Heneghan in *Nezam v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 446, [2005] F.C.J. No. 554 (QL), a case similar to this judicial review, held the standard of review to be reasonableness *simpliciter* in regards to the determination of "senior official". I accept that less deferential standard for purposes of this case.

[10] The Applicant submitted that certain materials (Tabs 1-8 of his Record) should be admitted on this judicial review. The evidence relates to events described to the Visa Officer or points to the credibility of the Applicants. The Respondent accepts, and I concur, that such material is admissible in this judicial review.

[11] The Applicants have raised an issue of procedural fairness – that the Visa Officer had not informed Abbas of his concerns about rank and seniority. Abbas’ comments at the end of the interview, that if his rank/involvement in Iraqi government was to be detrimental to his family’s claim, he would “sacrifice” his claim, are inconsistent with the argument of failure to give notice of the issues.

[12] As to the Visa Officer’s decision on rank, Abbas asserts that it was patently unreasonable. Abbas claims that he was a Brigadier (Administrative) and not a Brigadier General. The Applicants also point out that there is no definition of “senior” as in “senior official” and that, given his true rank, he did not have that status.

[13] There are two factual issues raised – was Abbas a Brigadier or a Brigadier General and is the relevant rank one which made him a senior official?

[14] Some of the critical evidence that Abbas was a Brigadier General include:

- the military ranking charts of the Iraqi Army in the Applicant’s Record (Tab 7) record the officer rankings from 2nd Lieutenant to Colonel then to Brigadier General

onward to General of the Army. There is no rank of Brigadier or, more importantly, Brigadier (Administrative);

- Abbas rose through the officer ranks to Colonel before his next promotion, which, based on the military rank chart, is “Brigadier General”; and
- Abbas’ Ministry of Defence pass, as translated, describes him as a Brigadier General. That pass was signed by a Major-General.

[15] In the face of this record, and absent other credible evidence before the Visa Officer, the finding that Abbas was a Brigadier General is reasonable.

[16] Abbas contended before this Court that the translation of his military pass was incorrect. He submitted a new translation which showed his rank as Brigadier. This translation, however, also reduced the signing officer from Major-General to Staff Brigadier General. In the face of all the other evidence, it is not possible to accept this new translation as conclusive as to Abbas’ rank.

[17] Abbas also argues that the Visa Officer failed to consider the roles and responsibilities that he held as an officer in the Iraqi Army. He also underscores that his role was that of an administrator not a combatant.

[18] The inquiry under section 35(1)(b) of the Act is not as to complicity in prohibited acts but whether a position is “senior”. The fact that an officer is an administrator is not an exclusion from seniority.

[19] The Applicants rely on the decisions of this Court in *Lutfi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1391, [2005] F.C.J. No. 1703 (QL) and *Nejad v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1168 (QL) as support for the argument that the Visa Officer failed to make adequate inquiries as to Abbas' seniority.

[20] However, in *Lutfi*, the finding that there was no basis for concluding that the official was senior is grounded in the failure to reach the correct conclusion as to that applicant's rank. He was, in fact, a lieutenant-colonel (not colonel) and was in the bottom half of the army.

[21] In *Nejad*, the applicants give a broad interpretation to the decision. However, in that case, there was a complete absence of establishing the individual's rank within the context of the applicable military regime.

[22] In the present case, the Visa Officer had evidence of the official military ranking, its equivalent in military regimes similar to Canada's, the precise history of Abbas' promotions and evidence of functions and his length of service in the Iraqi Army.

[23] On the basis of the record in this case, it was reasonable for the Visa Officer to conclude that Abbas was a "senior official".

[24] It must be borne in mind that the obligation to adduce evidence of admissibility rests on an applicant. Abbas was aware of this central issue in the visa application. Under the circumstances, it

was incumbent on him to rebut the reasonable conclusion that he was a senior official in a prescribed government.

[25] The Applicant asks that the Court certify a question as to the meaning of “senior official”. The inquiry is largely a factual one and there is not a basis in this instance for such a certification.

[26] For these reasons, this application for judicial review will be dismissed. No question will be certified.

JUDGMENT

IT IS ORDERED THAT this application for judicial review is dismissed.

“Michael L. Phelan”

Judge