Date: 20071016

Docket: IMM-6093-06

Citation: 2007 FC 1046

Ottawa, Ontario, the 16th day of October 2007

Present: the Honourable Mr. Justice Shore

BETWEEN:

BAKAR OULD SIDNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

OVERVIEW

[1] The evidence presented at the hearing disclosed the many crimes committed by the Mauritanian army during a period when the applicant held important positions in the army, from 1987 to 1995. The documentary evidence referred to massacres perpetrated against the black population and spoke of ethnic cleansing. Further, the documentary evidence mentioned that torture was used, as were mass expulsions and sexual violence against women.

[TRANSLATION]

[2] The Mauritanian security forces are composed of the armed forces, the national guard, the gendarmerie (a paramilitary police) and the police: together these forces provide the authorities with practically unlimited power which allows them to arbitrarily arrest and detain anyone they choose. Blacks are subject to searches and arrests without warrant, often on the basis of contrived facts or without any legal basis.

Since the publication of a manifesto in April 1986 setting out in detail the grievances of the black community (see *infra*), the government has sought to intimidate the black population in order to oblige it to submit. Massive arrests have been one aspect of the government strategy, especially in the second half of the 1980s and early 1990s.

(Court record of transcript of hearing at trial, Exhibit M-27, Human Rights Watch: Mauritania ([TRANSLATION] Campaign of terror in Mauritania – campaign of repression of African blacks supported by government, April 1994), p. 429.)

[3] Widespread human rights **violations**, including political killings, disappearances and the use of torture, were carried out by Mauritanian authorities over many years. In 1986, mass arrests of suspected government opponents from both black and Arab-Berber communities began and a high-level of human rights **violations** continued to be recorded in the early 1990s. **Victims** of **such violations included black Mauritanians** suspected of being members of the opposition, civil servants, as well as farmers and cattle herders from the south.

Between 1989 and 1991 hundreds of **black** African villagers, particularly those from the Senegal River Valley, were targeted by the Mauritanian authorities, who are dominated by the Moors or Beidane group. Political killings, arrests, disappearances and torture occurred in the context of mass expulsions of members of the **black** communities towards neighbouring countries.

The use of torture increased considerably during this period. A variety of torture techniques were used, such as electric shock, burning with hot coals and the jaguar, which involved suspending the victim upside down from a metal bar and beating the soles of the feet.

Tens of thousands of Mauritanians fled **such violations** to Senegal and other neighbouring countries, while those responsible for these crimes remained unpunished.

> A similar case to the one brought against Ely Ould Dha has recently been brought to the attention of the judicial authorities in Paris. However in that case, Ould Hmeid Salem – a Mauritanian army officer receiving specialist medical care in Paris – was informed of the initiative by the French judicial authorities and fled to the Canary Islands.
>
> The French tribunals had declared themselves competent to hear Ould Hmeid Salems case on the basis of the UN Convention Against Torture.

(Court record of transcript of hearing at trial, Exhibit M-21, Mauritania: Investigation of Mauritanian army officer accused of torture – a step towards truth and justice (Amnesty International, July 5, 1999), p. 256.)

[4] The applicant admitted he had knowledge of the atrocities committed by the Mauritanian army (pp. 859 to 867 of Court record of transcript of hearing at trial; also, pp. 817 and 818 indicate that the army was unified – [TRANSLATION] "the general staff" was responsible for [TRANSLATION] "all military regions"), at a time in his career when he held senior positions and was obtaining promotions by climbing the rungs of the hierarchy.

[5] The panel properly concluded that the applicant was aware of the crimes perpetrated by the army and knowingly tolerated them, without dissociating himself from the acts committed at the first opportunity.

[6] These principles were restated in *El-Kachi v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 403, [2002] F.C.J. No. 554 (QL):

[18] The question of complicity was also considered by Reed J. in *Penate v. Canada (Minister of Citizenship and Immigration)*, [1994] 2 F.C. 79. Following an analysis of *Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306 (C.A.), *Moreno v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 298 (C.A.) and *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433, Reed J. concluded at 84-85:

> As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and who neither takes steps to prevent them occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist. I note that the situation envisaged by this jurisprudence is not one in which isolated incidents of international offences have occurred but where the commission of such offences is a continuous and regular part of the operation.

INTRODUCTION

[7] This is an application for leave and judicial review from a decision by the Refugee Protection Division (RPD) on October 24, 2006 by which the applicant was excluded from the definition of a “Convention refugee” under section 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), since he is covered by article 1F(*a*) and (*c*) of the *United Nations Convention on the Status of Refugees* (the Convention).

FACTS

[8] Bakar Ould Sidna, the applicant, is a citizen of Mauritania. He alleged he feared being persecuted for his alleged political opinions. In particular, Mr. Ould Sidna alleged he feared the military government of Mauritania.

[9] Mr. Ould Sidna joined the ranks of the Mauritanian army voluntarily on January 30, 1976 to make a career in the army, provide himself with a living and support his family.

[10] Mr. Ould Sidna was a member of the Mauritanian army for over 20 years, until 1999. In the army, Mr. Ould Sidna learned how to handle automatic weapons, throw grenades and use 81mm mortar weapons. He also received training in combat techniques and military strategy.

[11] Mr. Ould Sidna stated that essentially he held a position of manager in the army. However, during his testimony Mr. Ould Sidna stated that he rose in the ranks of the military. Thus, from 1976 to 1982 he was a sub-lieutenant; he later rose to the rank of lieutenant, until January 1990, and was then promoted to captain, the fourth highest rank in the Mauritanian army. He worked for the army until his departure from military headquarters in October 1999.

[12] During the period from 1987 to 1995, the documentary evidence sets out human rights violations by the Mauritanian army which were directed against the black population. The documentary evidence refers to ethnic cleansing (massacres, tortures, arrests and detentions, expulsions and expropriation of land, sexual violence against women).

[13] Mr. Ould Sidna admitted he was aware of the army's actions against the black population. However, Mr. Ould Sidna remained in the military forces until 1999.

[14] On October 14, 1999 Mr. Ould Sidna left his country for the U.S., where he filed a claim for refugee status in May 2000. The said refugee status claim was dismissed in 2003 for non-political reasons. In December 2004 Mr. Ould Sidna went to the Canadian border and claimed refugee status.

[15] As the panel had good reason to believe that Mr. Ould Sidna had been an accomplice in crimes against humanity and actions contrary to the aims and principles of the United Nations, it excluded him from the benefit of refugee status pursuant to article 1F(*a*) and (*c*) of the Convention.

ISSUE

[16] Is Mr. Ould Sidna's exclusion reasonable?

APPLICABLE STANDARD OF REVIEW

[17] The purely factual points decided by the panel in arriving at the impugned decision are subject to review by the patently unreasonable standard (*Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108 (QL), at para. 14; *Stadnyk v. Canada (Employment and Immigration Commission)* (2000), 257 N.R. 385 (F.C.A.), [2000] F.C.J. No. 1225, at para. 22.)

[18] Additionally, purely legal points with wide application decided by the panel are reviewable by the correctness standard (*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] S.C.R. 982, at p. 1019; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] SCC 3, [2002] F.C.J. No. 1 (QL).

[19] The panel's ultimate decisions, a mixture of fact and law, that applicants do not have a valid fear of persecution and are in fact covered by article 1F(*a*) and (*c*) of the Convention, can only be set aside if they are unreasonable (*Harb, supra*, at para. 14).

Applicable provisions on causes of exclusion

[20] Section F of article 1 of the *Convention on the Status of Refugees* reads as follows:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**F.** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(*a*) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	*a*) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
(*b*) he has committed a serious non-political crime	*b*) Qu'elles ont commis un crime grave de droit

outside the country of refuge prior to his admission to that country as a refugee;	commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
(*c*) he has been guilty of acts contrary to the purposes and principles of the United Nations.	*c*) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

Definition of crime against humanity and acts contrary to purposes and principles of United Nations

[21] Paragraph 150 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol on the Status of Refugees (the Handbook) states the following regarding article 1F(*a*):

150. In mentioning crimes against peace, war crimes or crimes against humanity, the Convention refers generally to "international instruments drawn up to make provision in respect of such crimes". There are a considerable number of such instruments dating from the end of the Second World War up to the present time. All of them contain definitions of what constitute "crimes against peace, war crimes and crimes against humanity".	**150.** La mention des crimes contre . . . l'humanité s'accompagne d'une référence générale aux «instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes». Il existe un nombre considérable de ces instruments, conclus depuis la fin de la Seconde Guerre mondiale jusqu'à l'époque actuelle. Tous contiennent des définitions des crimes contre la paix, crimes de guerre et crimes contre l'humanité.

(Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol on the Status of Refugees (the Handbook), Geneva, United Nations High Commission for Refugees, 1979.)

[22] Paragraphs 162 and 163 of the Handbook state the following regarding article 1F(*c*):

162. It will be seen that this very generally-worded exclusion clause overlaps with the exclusion clause in Article 1 F (*a*); for it is evident that a crime against peace, a war crime or a crime against humanity is also an act contrary to the purposes and principles of the United Nations. While Article 1 F (*c*) does not introduce any specific new element, it is intended to cover in a general way such acts against the purposes and principles of the United Nations that might not be fully covered by the two preceding exclusion clauses. Taken in conjunction with the latter, it has to be assumed, although this is not specifically stated, that the acts covered by the present clause must also be of a criminal nature.	**162.** Cette clause d'exclusion rédigée en termes très généraux recouvre en partie la clause d'exclusion de la section F, alinéa *a*) de l'article premier. Il est évident, en effet, qu'un crime contre la paix, un crime de guerre ou un crime contre l'humanité est également un acte contraire aux buts et principes des Nations Unies. Si l'alinéa *c*) de la section F n'introduit concrètement aucun élément nouveau, il vise de manière générale les agissements contraires aux buts et principes des Nations Unies qui ne seraient pas entièrement couverts par les deux clauses d'exclusion précédentes. Si l'on rapproche l'alinéa c) des deux clauses précédentes, il apparaît, bien que cela ne soit pas dit expressément, que les agissements visés par cet alinéa doivent être également de nature criminelle.
163. The purposes and principles of the United Nations are set out in the Preamble and	**163.** Les buts et principes des Nations Unies sont énoncés dans le préambule et dans les

Articles 1 and 2 of the Charter of the United Nations. They enumerate fundamental principles that should govern the conduct of their members in relation to each other and in relation to the international community as a whole. From this it could be inferred that an individual, in order to have committed an act contrary to these principles, must have been in a position of power in a member State and instrumental to his State's infringing these principles. However, there are hardly any precedents on record for the application of this clause, which, due to its very general character, should be applied with caution.	articles premier et 2 de la Charte des Nations Unies. Ces dispositions énumèrent les principes fondamentaux qui doivent régir la conduite des Membres de l'Organisation dans leurs relations entre eux et dans leurs relations avec la communauté internationale dans son ensemble. Cela implique que, pour s'être rendu coupable d'agissements contraires à ces principes, une personne doit avoir participé à l'exercice du pouvoir dans un État Membre et avoir contribué à la violation des principes en question par cet État. Cependant, les précédents font défaut en ce qui concerne l'application de cette clause.

[23] Appendix VI of the Handbook states that the Statute of the International Military Tribunal (SIMT), known as the London Accord, and Council Control Law No. 10 for Germany (Law 10) are part of the principal international instruments dealing with article 1F(*a*) (Handbook, *supra*, p. 99 – Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, August 8, 1945, 82 U.N.T.S. 279.)

[24] In *Harb, supra*, at paragraph 10, the Court of Appeal concluded that to apply article 1F(*a*) reference must also be made to the definitions of a crime against humanity contained in the SIMT, Law 10 and the Rome Statute of the International Criminal Court.

[25] With regard to the latter instrument the Court of Appeal, again in *Harb, supra*, at para. 8, stated that article 1F(*a*) should be interpreted so as to include the international instruments concluded since its adoption in 1951, with the result that in order to apply this provision we should also take into account the definition of a crime against humanity in the Rome Statute adopted on July 17, 1998 and in effect on July 1, 2002.

[26] According to the definition found in article 6(*c*) of the SIMT, crimes against humanity include:

(*c*) … murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.	*c*) . . . l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime.

[27] This definition was adopted by the Federal Court of Appeal in the following cases: *Sivakumar v. Canada (Minister of Employment and Immigration)* (C.A.), [1994] 1 F.C. 433, [1993] F.C.J. No. 1145 (QL); *Gonzalez v. Canada (Minister of Employment and Immigration)* (C.A.),

[1994] 3 F.C. 646, [1994] F.C.J. No. 765 (QL); *Sumaida v. Canada (Minister of Citizenship and Immigration)* (C.A.), [2000] 3 F.C. 66, [2000] F.C.J. No. 10 (QL).

Standard of evidence

[28] On the implementation of article 1F(*a*) and (*c*) in the case at bar, the Minister must only comply with the standard of review included in the phrase "good reasons for considering". This standard is well below that required for the criminal law ("beyond any reasonable doubt") or civil law ("on a balance of probabilities"). (See the following Federal Court of Appeal judgments: *Moreno v. Canada (Minister of Employment and Immigration)* (C.A.), [1994] 1 F.C. 298, [1993] F.C.J. No. 912 (QL); *Sivakumar*, *supra*; *Gonzalez*, *supra*; *Bazargan v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1209 (QL); *Sumaida*, *supra*.)

[29] Additionally, this standard requires more than suspicion or conjecture (*Sivakumar*, *supra*; *Sumaida*, *supra*).

Degree of participation required

[30] A person may be held responsible for a crime without having personally committed it, namely as an accomplice. Consequently, it is possible to apply exclusion clause 1F to an applicant for refugee status if the latter has been an accomplice in a crime mentioned therein (*Sivakumar*, *supra*).

[31] Contrary to what Mr. Ould Sidna mentioned at paragraphs 31 to 38 of his memorandum, the respondent submitted that Canadian law on refugee status exclusion recognizes the existence of the concept of complicity by association.

[32] In *Sivakumar*, *supra*, the Court mentioned that in "complicity through association . . . individuals may be rendered responsible for the acts of others because of their close association with the principal actors".

[33] As the Court of Appeal noted in that case, *Sivakumar*, *supra*, it is knowledge of crimes against humanity committed by an organization to which an individual belongs that makes him or her an accomplice by association in the commission of those crimes. The Court said the following:

> [13] To sum up, **association with a person or organization** responsible for international crimes may constitute complicity if there is personal and **knowing** participation **or toleration of the crimes** . . . (Emphasis by the Court.)

[34] For there to be complicity the refugee status claimant must have exhibited "personal and knowing participation". This is the necessary *mens rea* (*Ramirez v. Canada (Minister of Employment and Immigration)* (C.A.), [1992] 2 F.C. 306, [1992] F.C.J. No. 109 (QL); *Sivakumar*, *supra*).

[35] In *Ramirez* the Federal Court of Appeal mentioned that “At bottom, complicity rests . . . on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it” (*Ramirez*, *supra*, cited with approval in *Bazargan*, *supra*).

[36] Mr. Ould Sidna admitted that he had knowledge of the atrocities committed by the Mauritanian army at a time when in his career he held senior positions and was obtaining promotions by climbing the rungs of the hierarchy.

[37] The panel properly concluded that Mr. Ould Sidna was aware of the crimes committed by the army and knowingly tolerated them, without dissociating himself from the acts at the first opportunity.

[38] The panel regarded as improbable the statement by Mr. Ould Sidna that he had obtained promotions because of his seniority, especially as Mr. Ould Sidna alleged he was charged with complicity to overthrow the government, was suspended and detained and then re-entered the ranks of the army in May 1979.

[39] The panel could question the absence of any military document issued after 1982 to support his statements.

[40] The panel properly concluded that Mr. Ould Sidna had obtained his promotions because he had probably obeyed orders and acted as a good soldier. The panel did not believe Mr. Ould Sidna was an opponent of the government (see page 8 of reasons).

[41] Finally, while Mr. Ould Sidna's testimony was clear regarding the period up to 1987, this was not true thereafter. The panel found contradictions between his testimony and his Personal Information Form (PIF), and implausibilities regarding his work, especially acts committed by the Mauritanian army against the blacks in that country.

[42] When the question is one of a refugee status claimant's complicity by association, it is the nature of the crimes alleged against the organization with which he is supposed to have been associated that leads to his exclusion (*Harb, supra*, para. 11).

[43] The nature of the crimes committed by the Mauritanian army, especially during a period when Mr. Ould Sidna was climbing the rungs of the hierarchy and obtaining promotions, is not in any doubt.

[44] Mr. Ould Sidna was aware of these crimes and was also in a hierarchical position as a result of which he became more involved in the operations conducted by the army.

[45] It should be borne in mind that on questions of exclusion the courts have never required, in order to conclude that a refugee status claimant is guilty of complicity by association, that he be

connected with specific crimes as their actual perpetrator, or that the crimes committed by an organization be necessarily and directly attributable to specific omissions or acts of the refugee status claimant (*Sumaida, supra*; *Sivakumar, supra*; *Bazargan, supra*; *In the matter of B,* [1997] E.W.J. No. 700 (QL), paras. 7 *et seq.* (C.A. for England and Wales)).

[46] According to well-settled precedent, for a refugee status claimant to obtain refugee status he or she must have dissociated himself or herself from the organization committing the crimes as soon as possible consistent with the person's safety (*Sivakumar, supra*; *Moreno, supra*; *Mohammad v. Canada (Minister of Citizenship and Immigration)* (1995), 115 F.T.R. 161, [1995] F.C.J. No. 1457 (QL), para. 38, points 1 to 10; *Allel v. Canada (Minister of Citizenship and Immigration),* 2002 FCTD 370, [2002] F.C.J. No. 479 (QL), para. 7; *Albuja v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 1707 (QL), paras. 8-9; *Srour v. Canada (Solicitor General)* (1995), 91 F.T.R. 24, [1995] F.C.J. No. 133 (QL), para. 34(f).)

[47] These rules were restated in *El-Kachi, supra*:

> [18] The question of complicity was also considered by Reed J. in *Penate v. Canada (Minister of Citizenship and Immigration),* [1994] 2 F.C. 79. Following an analysis of *Ramirez v. Canada (Minister of Employment and Immigration),* [1992] 2 F.C. 306 (C.A.), *Moreno v. Canada (Minister of Employment and Immigration),* [1994] 1 F.C. 298 (C.A.) and *Sivakumar v. Canada (Minister of Employment and Immigration),* [1994] 1 F.C. 433, Reed J. concluded at 84-85:
>
> > As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and who neither takes steps to prevent them occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity

> (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist. I note that the situation envisaged by this jurisprudence is not one in which isolated incidents of international offences have occurred but where the commission of such offences is a continuous and regular part of the operation.

[48] Mr. Ould Sidna did not dissociate himself from the actions committed by the army and waited to get a visa for the U.S. to obtain treatment.

[49] Finally, the courts have held that these questions are purely factual (*Allel*, *supra*, para. 55).

Exclusion of applicant reasonable

[50] The RPD properly concluded that pursuant to article 1F(*a*) and (*c*) Mr. Ould Sidna, a captain in the Mauritanian army and a member of the army for over 20 years, could not be entitled to refugee status. This conclusion is reasonable in view of the evidence and the applicable rules of law.

Crimes committed by Mauritanian army are "crimes against humanity"

[51] The evidence presented at the hearing disclosed the many crimes committed by the Mauritanian army during a period in which the applicant held important positions in the army, from 1987 to 1995. The documentary evidence referred to massacres perpetrated against the black population and spoke of ethnic cleansing. The documentary evidence also mentioned that torture was used, as were mass expulsions and sexual violence against women.

[52] In view of his position as captain in the army, the fourth-highest rank in the military hierarchy, the panel did not believe that Mr. Ould Sidna had not participated indirectly in the acts committed by the Mauritanian army. Mr. Ould Sidna had carried out his duties for over 20 years of his own accord, had received promotions while he was employed and had never considered leaving the said employment and so dissociating himself from the acts committed.

[53] The panel properly concluded that Mr. Ould Sidna had been an accomplice in the crimes against humanity.

[54] The many atrocities committed by the Mauritanian army are crimes against humanity as defined by the Court of Appeal in *Sivakumar*, *supra*; *Gonzalez*, *supra*; and *Sumeida*, *supra.*

Mr. Ould Sidna was aware of acts committed by Mauritanian army and shared common purpose

[55] Mr. Ould Sidna admitted he knew about the atrocities committed by the Mauritanian army. The panel did not believe Mr. Ould Sidna when he said that he had never attacked the blacks in his country, during a period in which the documentary evidence disclosed the multiple offences committed by the army. Moreover, this period coincided with a time when Mr. Ould Sidna was rewarded and obtained promotions, and became a captain, a high-ranking position.

[56] The panel could properly conclude that there were good reasons for considering that Mr. Ould Sidna had been an accomplice in the crimes covered by article 1F(*a*) and (*c*), bearing in mind the length of Mr. Ould Sidna's service, the promotions obtained, the knowledge Mr. Ould Sidna had of the atrocities committed by the army against the black population and the fact that for economic reasons he did not quickly get out of the army (*Haddad v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 34, [2007] F.C.J. No. 61 (QL), judgment of Johanne Gauthier J.).

[57] In *Sivakumar*, *supra*, Linden J.A. of the Court of Appeal wrote at paragraph 10 that "the closer one is to a position of leadership or command within an organization, the easier it will be to draw an inference of awareness of the crimes and participation in the plan to commit the crimes".

[58] In *Imama v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1207, [2001] F.C.J. No. 1663 (QL), the applicant had worked in the Ministry of State in Zaïre from 1963 to 1998. In particular, he had held various positions in Zaïrian embassies abroad. The Court mentioned the following:

> [14] . . . Although he was aware of the acts committed by his government, the applicant did nothing to disassociate himself from them. On the contrary, as the panel pointed out, he continued to work for the Mobutu government for several years and was head of the MPR while he was Ambassador. The Refugee Division was right in concluding that he was complicit by association in crimes against humanity committed by the Mobutu government.

[59] Mr. Ould Sidna accordingly remained in the Mauritanian army because it suited him to do so. He was associated at the time with the perpetrators of flagrant breaches of human rights. His

failure to dissociate himself from this system showed that he shared a common purpose with the principal perpetrators of the crimes. He was not just a spectator, but was an integral part of the army's operations.

[60] In *Harb, supra*, the Court of Appeal cited with approval the following passage from its judgment in *Bazargan, supra*:

> [18] . . .
>
> [11] In our view, it goes without saying that "personal and knowing participation" can be direct or indirect and does not require formal membership in the organization that is ultimately engaged in the condemned activities. It is not working within an organization that makes someone an accomplice to the organization's activities, but knowingly contributing to those activities in any way or making them possible, whether from within or from outside the organization. At p. 318 [in *Ramirez*], MacGuigan J.A. said that "[a]t bottom, complicity rests . . . on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it". Those who become involved in an operation that is not theirs, but that they know will probably lead to the commission of an international offence, lay themselves open to the application of the exclusion clause in the same way as those who play a direct part in the operation.

[61] In view of the evidence and the applicable law, it was reasonable for the panel to conclude that Mr. Ould Sidna was an accomplice in crimes against humanity and acts contrary to the purposes and principles of the United Nations.

CONCLUSION

[62] In view of the foregoing, Mr. Ould Sidna’s arguments are not such as to persuade this Court that there are good grounds that would allow it to grant the relief which he is seeking.

JUDGMENT

THE COURT ORDERS that

1. the application for judicial review is dismissed;

2. no serious question of general importance is certified.

"Michel M.J. Shore"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6093-06
STYLE OF CAUSE:	BAKAR OULD SIDNA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 20, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	THE HONOURABLE MR. JUSTICE SHORE
DATED:	October 16, 2007

APPEARANCES:

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