Date: 20071021

Docket: IMM-4338-07

Citation: 2007 FC 1086

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, October 21, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

SAID JAZIRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is seeking a stay of execution of his deportation to Tunisia, which is scheduled for October 22, 2007, pending a decision on his application for leave and for judicial review of the negative decision of the pre-removal risk assessment officer (PRRA) dated September 21, 2007.

[2] First, at the Minister's request and with the consent of the applicant, the style of cause will be amended by the addition of a respondent, the Minister of Public Safety and Emergency Preparedness.

[3] It is admitted that the applicant must satisfy the tri-partite test set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.): there must be a serious issue to be tried; there must be irreparable harm if the stay is not granted; and the balance of convenience must favour the applicant. It is also admitted that the three elements of the test are conjunctive, meaning that if one of the conditions is not met, the motion must be dismissed.

1. The facts

[4] A summary of the facts is in order, so I shall reproduce below the chronology of events relating to the applicant's status since his arrival in Canada:

February 27, 1997:	The applicant arrived in Canada, at Mirabel Airport, and claimed refugee status.
February 11, 1998:	The Immigration and Refugee Board (IRB) granted him Convention refugee status.
January 7, 1999:	He became a permanent resident of Canada as a Convention refugee.
July 19, 2005:	Citizenship and Immigration Canada (CIC), on the basis of information received about the applicant (which he had concealed at the time of his claim for refugee protection), filed an application for vacation of his refugee status with the IRB.
June 22, 2006:	The IRB, after several hearings, vacated the applicant's refugee status in accordance with section 109 of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 (IRPA).

At the same time, pursuant to paragraph 46(1)(*d*) of the IRPA, the applicant lost his permanent resident status.

July 10, 2006: The applicant applied for leave for judicial review of the IRB's decision to vacate his refugee status.

July 31, 2006: The Canada Border Services Agency (CBSA) issued a deportation order against the applicant on the basis that he was inadmissible for misrepresentation within the meaning of paragraph 40(1)(*c*) of the IRPA.

August 28, 2006: The applicant filed an application for leave for judicial review of the deportation order issued by the CBSA.

September 25, 2006: The Federal Court dismissed the application for leave for judicial review of the IRB's decision vacating the applicant's refugee status.

November 8, 2006: The Federal Court dismissed the application for leave for judicial review of the CBSA's decision to issue a deportation order against the applicant.

December 11, 2006: The applicant filed an application for permanent residence in the spouse or common-law partner class.

February 26, 2007: The CBSA offered him the opportunity to file a PRRA application.

March 15, 2007: The applicant filed his PRRA application.

August 24, 2007: His application for permanent residence was refused because he was inadmissible under paragraph 40(1)(*c*) of the IRPA and he could not become a permanent resident pursuant to subparagraph 72(1)(*e*)(i) of the *Immigration and Refugee Protection Regulations*.

September 21, 2007: A PRRA officer (the officer) rendered a negative decision with respect to the applicant's PRRA application.

October 19, 2007: An application for judicial review was filed against the PRRA application decision.

This application for a stay of the deportation order based on the application for judicial review was filed.

2. Analysis

[5] The applicant's credibility is strongly diminished by his major omissions and contradictions before various bodies. The officer found that the applicant was not credible with respect to material aspects of his claim for refugee protection. For example, as noted by the officer at page 6 of his decision dated September 21, 2007:

> [TRANSLATION]
> . . . when applying for refugee status, [the applicant] alleged that he had studied in France from 1988 to 1996 and that he had returned to Tunisia only during the summer vacations between 1988 and 1991. However, he did not mention his arrest in France in March 1994 or his return to Tunisia on March 31, 1994. He did not mention it until the hearing regarding the vacation of his status. He then told the panel that, during his return to Tunisia in March 1994, he had been detained, interrogated and tortured for several days. He was allegedly released by his jailers, who told him that he would be investigated. They allegedly told him to remain at home and that he would be called. When he returned to his family, a big celebration was held to welcome him.
>
> The IRB held that [TRANSLATION] "this very important omission in the applicant's initial Information Form and testimony indicates that he attempted to hide information from the first member who heard his file."
> [Emphasis added.]

[6] The officer upheld the IRB's finding that the applicant had, directly or indirectly, misrepresented material facts. After considering all of the evidence, the IRB held that the remaining evidence was insufficient to justify the initial decision and allowed the Minister's application to vacate the applicant's "Convention refugee status".

[7] The findings of fact in relation to these material elements were upheld by the Federal Court on September 25, 2006, when it dismissed an application for judicial review of the decision vacating the applicant's refugee status.

[8] The applicant filed essentially the same evidence in support of his PRRA application and raised the same factors on which he had based his claim for refugee protection on February 27, 1997, to obtain refugee status.

3. Serious issue to be tried

[9] The meaning of the term "serious issue" is drawn from the decisions of the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110, and *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. Subject to the two exceptions, which are not applicable in this case, the term "serious issue" implies that the application is neither frivolous nor vexation. The threshold is a low one, requiring a preliminary assessment of the merits of the case. Once persuaded that the application is neither futile nor vexatious, the applications judge must consider the second and third stages of the test. A prolonged examination of the merits is neither necessary nor desirable: *RJR-MacDonald*, at pages 335, 337 and 338.

[10] The applicant essentially submits that the officer erred in his assessment of the facts, particularly with respect to his [TRANSLATION] "clean" criminal record in Tunisia, his incarceration in Tunisia and the conditions of his subsequent release by the Tunisian authorities.

[11] I note that all of the factors raised by the applicant with respect to the serious issue and each document filed by the applicant were considered and analyzed in detail by the PRRA officer. Moreover, the PRRA officer carefully explained the basis for his decisions regarding the weight of the evidence.

[12] In light of the documentary evidence on Tunisia, the PRRA officer also examined the applicant's profile and concluded that his personal characteristics did not support the profile of an extremist Muslim, which would have put him at risk with respect to the Tunisian authorities.

[13] I am satisfied that all of the evidence in the record was considered by the PRRA officer. Having read the decision as a whole, I have not been able to identify any error committed by the PRRA officer in his assessment of the evidence, his findings of fact or his conclusion. Accordingly, I cannot conclude that Said Jaziri has established a serious issue to be tried in his application for judicial review.

[14] Although it is unnecessary to consider the other two elements of the *Toth* test, given that the three elements are conjunctive, I will nevertheless address them briefly.

4. Irreparable harm

[15] In this case, the applicant has been found by three different bodies not to be credible: the IRB on June 22, 2006; the PRRA officer on September 21, 1997; and the member assigned to his detention review on October 17, 2007. The facts on which the applicant based his claim of

irreparable harm were not accepted. These findings of lack of credibility were upheld by the Federal Court. This same evidence cannot be used to support an argument of irreparable harm in the context of an application for a stay (*Ahyol v. Canada (Minister of Citizenship and Immigration*, [2003] F.C.J. No. 1182 (QL)).

5. Balance of convenience

[16] The applicant claims to be a [TRANSLATION] "model citizen" who does not represent a risk to Canada. In his view, these are the factors in his favour with respect to the balance of convenience. Moreover, the applicant notes that because he is still in detention, he does not represent a flight risk.

[17] In my view, these factors are insufficient, in the circumstances, to swing the balance of convenience in the applicant's favour. This is not merely a matter of administrative convenience; it also involves the integrity and fairness of and public confidence in Canada's system of immigration control (*Selliah v. MCI*, 2004 FCA 261, [2004] F.C.J. 1200 (QL)). Subsection 48(2) of the IRPA states that a removal order must be enforced as soon as is reasonably practicable.

[18] I am of the view that the balance of convenience favours the Minister in this case.

6. Conclusion

[19] For these reasons the motion will be dismissed.

ORDER

THE COURT ORDERS that

1. The appeal is dismissed.

2. The style of cause is amended to add the Minister of Public Safety and Emergency Preparedness Canada as a respondent.

"Edmond P. Blanchard"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4338-07
STYLE OF CAUSE:	SAID JAZIRI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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