

Date: 20080221

Docket: IMM-3306-07

Citation: 2008 FC 230

Ottawa, Ontario, February 21, 2008

Present: The Honourable Mr. Justice Simon Noël

BETWEEN:

MOHAMMED HATTOU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision by Mr. Michel Venne, dated July 25, 2007, rendered by the Refugee Protection Division (RPD), concluding that Mr. Mohammed Hattou (the applicant) is neither a refugee nor a person in need of protection because there is an internal flight alternative (IFA) available to him in Algiers.

I. Issue

[2] The only issue before the Court is whether the RPD erred in fact or in law by finding that there was an internal flight alternative.

II. Background

[3] The applicant was born in Mostaganem in Algeria on February 1, 1976. He completed all his studies in his hometown and became a professional actor.

[4] Although he worked from October 1999 to May 2005 as an office clerk for the Ouazani Ghali shipping agency in Mostaganem, the applicant was also an actor. From January 2, 1998, to August 31, 2005, he worked as an actor at the Ibn Sina theatre in Oran; that experience caused him to fear the Salafist Group for Call and Combat (GSPC).

[5] The applicant alleges that on April 14, 2005, he was in a play by Medjehri Missoum called *Shams El Hak*, a biting criticism of the devastating effect that armed Islamist groups (AIG) and the GSPC have had on Algerian society. He played the role of Omar, a young boy from a poor family, whose brother was indoctrinated by terrorist groups and who was shot and killed by security forces. In his role, the applicant deplored the fact that his family had been torn apart and severely criticized the terrorists who wreaked havoc on the lives of innocent people throughout the country beginning in the 1990's.

[6] As the applicant was leaving the Palais de la Culture on April 14, 2005, he was stopped by three individuals who accused him of criticizing the GSPC, which, in their eyes, was engaged in a noble struggle against tyranny. They said that the applicant deserved to be killed for his comments. These three individuals beat him and were about to cut his throat when a car passed by. Believing that the police had arrived, his three assailants fled. The driver of the car stopped to help the

applicant and drove him to the police station. The police took his statement and kept him overnight because they feared for his life.

[7] The next day, the applicant returned to his home in Mostaganem. He telephoned the theatre director and told him of the attack the night before so that the director could inform the other actors of the danger. He also asked the director to help him flee the country. The director registered him as part of the delegation of actors attending an international amateur theatre festival in Québec, Canada. Before he left in 2005, the applicant lived in hiding for four months at his aunt's home in Algiers.

[8] The applicant arrived on a Canadian visa with his Algerian actor colleagues on September 9, 2005, in Québec. He took part in the festival and claimed refugee protection on September 14, 2005.

[9] At the first hearing on March 6, 2007, the RPD stated that the GSPC was [TRANSLATION] “dying” and that it only existed in the outlying regions of the country, not in the cities such as the capital, Algiers; the applicant therefore had an IFA. The record indicated that he spent four months with his aunt in that city before coming to Canada.

[10] In a professional manner, counsel for the applicant maintained his objection to the RPD's statement and insisted that he be given the opportunity to file documentation showing that the

GSPC was active in Algerian cities, including the capital. The RPD adjourned to allow the applicant to file supplementary evidence, which he did.

[11] The second hearing took place on June 5, 2007, and dealt with the documents filed by the applicant (documents D1-D22). There were numerous newspaper articles from, *inter alia*, *Le Monde*, *Reporters Without Borders* and the largest Algerian dailies. This new evidence showed indisputably that the GSPC was present in Algiers and was responsible for terrorist attacks in that city and surrounding areas between 2005 and 2007. Following the hearing, the RPD determined that the GSPC activities in Algiers targeted military authorities, police stations and foreigners. The RPD noted that only one civilian had been killed during this period. Accordingly, the applicant would not be at risk if he returned to Algiers. Therefore, there was an internal flight alternative available to him.

III. Analysis

[12] The Federal Courts have repeatedly held that the appropriate standard of review for purely factual issues such as an internal flight alternative is patent unreasonableness (see *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741; *Chorny v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1263; *Kumar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 601, [2004] F.C.J. No. 731 (QL); *Camargo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 472, [2006] F.C.J. No. 601 (QL); *Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, [2006] F.C.J. No. 555 (QL); *Bhandal v.*

Canada (Minister of Citizenship and Immigration), 2006 FC 426, [2006] F.C.J. No. 527 (QL) and *Ako v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 836, 2006 FC 647).

[13] The applicant submits that by agreeing that documents could be filed to refute the statement that the GSPC movement was limited to a marginal presence in the country, the RPD created an expectation that, if the documentation indicated the contrary, there would be no internal flight alternative and accordingly, his application would be accepted.

[14] After reviewing the transcript of the hearing, the Court notes that the RPD invited the applicant to submit new documentation and said that it would be discussed at a subsequent hearing. The hearing was held, and the applicant and his lawyer had the opportunity to make their submissions. At no time did the RPD commit to allowing the application if the evidence indicated that the GSPC was active in the cities including Algiers. The RPD created no expectation that the application would be allowed. The Court notes that, at the second hearing, the RPD addressed the fact that civilians were not targeted, and the applicant gave his opinion on this issue.

[15] Taking into account the entire situation, and in particular, the new documentation that was submitted, did the RPD consider it, and is that reflected in the decision?

[16] Relying on a document (T-1) indicating that the situation in large cities like Algiers and Constantine was calm, the RPD noted, based on the new documentation, that the GSPC was active in a number of places in Algeria and that there had been attacks in a suburb of Algiers. The RPD observed that there had been one attack against a civilian in October 2006.

[17] The RPD added that the GSPC was still launching attacks in Algeria, primarily to the south and east of Algiers, but that these attacks targeted symbols (government buildings, police officers, the military, police stations . . .), not civilians.

[18] This analysis was the basis for the RPD's finding that an internal flight alternative was available.

[19] The Court notes that the RPD recognized the importance of the GSPC's activities, contrary to its initial opinion, but in order to make this finding, the RPD thoroughly analyzed the new documentation. Based on this information, the RPD was of the view that the GSPC was targeting symbols, not civilians.

[20] After reviewing the RPD's decision and the transcript of the two days of hearings, the Court has no reason to intervene.

[21] The Court invited the parties to submit questions for certification, but they did not do so.

JUDGMENT

THE COURT ORDERS THE FOLLOWING:

- The application for judicial review is dismissed;
- There is no question to be certified.

“Simon Noël”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3306-07

STYLE OF CAUSE: MOHAMMED HATTOU v. MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** The Honourable Mr. Justice Simon Noël

DATED: February 21, 2008

APPEARANCES:

Alain Joffe
514-288-2240

FOR THE APPLICANT

Isabelle Brochu
514-283-8772

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alain Joffe
Montréal, Quebec

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT