

Federal Court



Cour fédérale

**Date: 20090217**

**Docket: IMM-1251-08**

**Citation: 2009 FC 166**

**Vancouver, British Columbia, February 17, 2009**

**PRESENT: The Honourable Mr. Justice Blanchard**

**BETWEEN:**

**MOHMED ABDASALM ABOSSA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mohmed Abdasalm Abossa (the Applicant), a citizen of Libya, seeks judicial review of the February 25, 2008 decision rendered by the Immigration and Refugee Board (the Board), which rejected his refugee claim.

[2] The Applicant left Libya on October 18, 2004, and claimed refugee protection on June 15, 2006. His claim is based on the grounds of his political opinion. The central element of his claim is an off-line message which he claims he received from his brother in Libya. The Applicant alleges

the message advised him that internal security was waiting for his return to Libya and would be taking action against him due to a message he had written on the rock-face of a mountain in January 2004.

## II. Facts

[3] The Applicant was employed with the Waha Oil Company in Tripoli as a computer programmer. In January 2004, during a visit to his parents in Azentan, Libya, the Applicant and his friend, Othman Al Alazhary, went for a drive and parked near a mountain. The Applicant was frustrated with the Libyan regime and wrote derogatory comments directed at the Libyan government on a rock with burnt wood ash.

[4] In October 2004, the Applicant was sent to Canada on a one-year study permit for computer training at the Southern Alberta Institute of Technology. Before the expiry of his study permit, in October 2005, the Applicant requested that his company extend his study permit by a month in order for him to complete his exams. While the evidence is unclear as to whether the extension is related to the Applicant's visa, and if so how his employer would obtain this extension, it nevertheless refused his request. The Applicant was, however, permitted to use his vacation days and apply to remain in Canada until March 2006.

[5] The Applicant proceeded to enroll in an English course in Calgary in order to secure a new student permit. Such permit was granted and was valid from November 2005 until June 30, 2006. The Applicant only attended the first two (2) days of the course and never paid the full tuition.

[6] After completing the examinations in November or December of 2005, the Applicant made inquiries regarding the possibility of enrolling in a Masters Program in Canada. The Applicant claims to have applied, with the help of his father, for a scholarship in Libya and that preliminary approval was granted.

[7] In the beginning of 2006, the Applicant applied to the Canadian Consulate in Seattle for a multiple entry visa as he wanted to be able to return to Libya for Eid, a religious holiday, since the study permit did not allow for such travel.

[8] In March 2006, the Applicant requested more vacation time from his company and this was granted until May 2006, two months prior to the expiry of his second visa.

[9] In April 2006, the Applicant was informed that his scholarship application was denied by the internal security department in Libya. The Applicant claims to have immediately begun his preparations to return home as he could not afford to continue to study in Canada without financial assistance. He also stated other reasons why he decided to return; his sister was getting married and his grandmother was ill.

[10] On or around May 6, 2006, the Applicant allegedly received an off-line message on his Yahoo Messenger account from his brother informing him that a friend of their father's who works at the internal security department had informed their father that internal security had arrested Othman Alazhary, the Applicant's friend, and that he had revealed that the Applicant was the author of the derogatory comments written on the mountain two years prior. According to the Applicant,

his father's friend had also related that internal security was waiting for the Applicant to return at which point they would take actions against him.

[11] The Applicant sought legal advice and filed his refugee claim in either May or June of 2006. A hearing was held in Edmonton on August 20, 2007, and resumed in Calgary on November 27, 2007.

[12] On February 25, 2008, the Board denied the Applicant's refugee claim finding that the Applicant is not a Convention refugee and is not a person in need of protection.

### III. Impugned Decision

[13] The Board found that the Applicant failed to provide sufficient credible and trustworthy evidence to establish his claim, and consequently denied his application for refugee status based on political opinion. The Board concluded that the Applicant was neither a refugee nor a person in need of protection.

[14] I summarize below the findings upon which the Board based its decision:

- The Applicant provided no credible information regarding his friend's arrest.
- The Applicant's family has not been approached by authorities.
- While the Applicant testified that he did not know whether security was looking for him at the time he left and that there had been no rumours circulating about the derogatory message he wrote, the notes taken by the immigration officer during the first

interview reveal the opposite version of this story. The Board did not accept the Applicant's explanation for the discrepancy that perhaps there were problems with the Arabic interpretation.

- The central issue of the Applicant's claim is the alleged off-line message sent to him from his brother in Libya, and yet there is no evidence to corroborate either the fact that it was actually sent, or the content of the message.
- The Board rejected the Applicant's reasons for not requesting corroborating documentation from his brother, noting that the Applicant had otherwise communicated with his father on other issues such as obtaining education transcripts from Libya and applying for a scholarship to study in Canada.
- The Applicant was prepared to manipulate the immigration procedures by enrolling in an English course to obtain an extension to his study permit; and his efforts to obtain a multi-entrance visa prior to initiating his refugee claim indicate a strong desire to remain in Canada and a behaviour consistent with a person wanting to get legal status. The Board found that the Applicant had fabricated his allegations in order to create the basis for his *sur place* claim.
- The Applicant had not provided significant evidence of his own personal situation or any evidence of any difficulties he may have had with government authorities prior to leaving Libya.

- The above elements are sufficient to rebut the presumption of truthfulness; consequently, there is insufficient credible evidence to support the central element of the Applicant's claim.

#### IV. Issues

[15] The Applicant raises the following issues:

- (1) Did the panel member err in understanding the Applicant's evidence so as to affect her impression and assessment of the Applicant's credibility?
- (2) Was the panel member's finding with respect to the Libyan government's control of communications supported in the evidence before her?
- (3) Did the panel member fail to consider the totality of the evidence before her with respect to her assessment of whether the Applicant would face risk for having claimed refugee protection in Canada?

#### V. Standard of Review

[16] All three issues, as pled by the Applicant, are essentially determinations of fact. It is well established in law that such determinations are reviewed on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, 1 S.C.R. 190 at para. 51). As such, the weighing of the evidence presented must have resulted in a decision which was "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir, supra* para. 47).

VI. Analysis

[17] The Applicant takes issue with what the Board described as a contradiction between the Applicant's testimony and the information he provided to the immigration officers when he initiated his claim.

[18] At paragraph 16 of its reasons, the Board wrote:

The panel does note a significant contradiction between the Applicant's testimony and the information that he provided to immigration officers when he initiated his claim. The Applicant testified that there were no rumours about the message he alleges he wrote before he left Libya. He added that there were no rumours at his place of work about the message on the wall. He testified that he could not say if security was looking for him at the time he left. The Applicant was referred to the notes taken by the immigration officer during the interview when he initiated his refugee claim. The notes taken indicate the Applicant stated that two days after he wrote the message he returned to work and there were rumours that internal security was looking for the people who wrote the graffiti.

[19] A careful review of the transcripts of the hearing indicates that the Applicant was asked whether there were rumours about him writing the graffiti and that he responded in the negative. However, he also testified that people were talking about the message he allegedly wrote. He stated that his father had informed him, two days after the incident, that there was "quite a bit of noise around it". It is equally clear, from the transcripts, that he indicated that people at his work knew about the message about one month after the event.

[20] The Board's finding that the Applicant, "... testified that he could not say if security was looking for him at the time he left" is also questionable. This finding is based on the Applicant's



response to the following question by the presiding member, "... do you think at that time that Internal Security went to the village looking for someone who wrote it?" He responded that:

[i]t could be a case where, because they can't have proof, they can't just go around and catch people, accuse them of writing this. It could be a case where they could take pictures to what was written, they can do their investigation, they try to find out who wrote it before they follow up on it.

The Applicant's response focused on whether or not security went to his village rather than whether or not there was an investigation under way. This is reasonable given the wording of the question put to him and consistent with the Applicant's PIF wherein he states that security was looking for him, but he does not say they went to his hometown to do so.

[21] It is difficult to conclude, from a holistic review of the evidence, that there is a serious contradiction between the Applicant's testimony and the notes taken by the immigration officer. While the evidence may support a contradiction in the technical sense, it is not one that would warrant the rejection of the refugee claim. Indeed, this is acknowledged by the Board in its reasons when it found that the contradiction, although significant, may not be fatal to the claim.

[22] The Board's decision, however, is based also on other findings which I have summarized earlier in these reasons. The Board considered the Applicant's behaviour since his arrival in Canada and found it consistent with a person wanting to obtain status in Canada. The Board noted his knowledge of Canadian immigration procedures and policies and his willingness to manipulate the system to achieve his goals. On the evidence, these findings were reasonably open to the Board.

[23] The Board found the Applicant had not submitted any corroboration for the central issue of his claim that he had received an “off-line” e-mail from his brother in Libya. It rejected the Applicant’s explanation that he did not attempt to obtain evidence because his family was in danger. The Applicant did not establish that his family had any kind of political profile or problems with Libyan authorities. The evidence indicates that his father had friends in government and worked for the post office. The Board also noted that no evidence was adduced with respect to the arrest of the Applicant’s friend. It was open to the Board to find that there was insufficient credible evidence to establish on a balance of probabilities that the Applicant even received a message from his brother.

[24] The Applicant challenges the Board’s treatment of the documentary evidence with respect to the Libyan government’s control of communications. The Board noted that the evidence does not indicate that all telephones are tapped or that all computers are monitored. A review of this evidence, particularly the parts brought to my attention by counsel for the Applicant, do not refute this observation. There is no evidence to suggest that individuals with the Applicant’s profile or that of his family are targeted by Libyan authorities. While the documentary evidence shows the Libyan authorities cannot be taken on their word, the Board’s finding regarding the Libyan government’s control of communications is not at odds with the documentary evidence.

[25] Notwithstanding the Board’s questionable finding relating to the alleged contradiction in the Applicant’s evidence, I am of the view that, on the whole of the evidence, the Board’s above findings of fact and credibility are not unreasonable. It was open to the Board to conclude that the Applicant fabricated the allegations which make up the basis of his claim in order to initiate a *sur place* claim allowing him to stay in Canada. The Board considered all the evidence and properly

exercised its discretion in weighing and assessing the evidence. As a consequence, the Board did not err in finding that the Applicant was not a Convention refugee or a person in need of protection.

## VII. Conclusion

[26] For the above reasons, the application for judicial review will be dismissed.

[27] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review of the February 25, 2008 decision rendered by the Immigration and Refugee Board is dismissed.
2. No question of general importance is certified.

“Edmond P. Blanchard”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1251-08

**STYLE OF CAUSE:** Mohmed Abdasalm ABOSSA v. MCI

**PLACE OF HEARING:** Edmonton, AB

**DATE OF HEARING:** January 21, 2009

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

**DATED:** February 17, 2009

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