

Date: 20091110

Docket: IMM-271-09

Citation: 2009 FC 1147

Ottawa, Ontario, November 10, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SLIMANE GUERGOUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Slimane Guergour arrived in Canada in 2005. He claimed refugee protection based on his fear of retribution by authorities in his native Algeria for having deserted the army. He also fears that he will be targeted by terrorists because of his past involvement in the military.

[2] A panel of the Immigration and Refugee Board (IRB) found that Mr. Guergour's application was unsupported by sufficient credible and trustworthy evidence. This Court subsequently denied his request for leave to seek judicial review.

[3] Mr. Guergour also made an application for a pre-removal risk assessment (PRRA). At the time, he was unrepresented by counsel. His PRRA application did not set out any evidence or allegations in support of it. A PRRA officer rejected Mr. Guergour's application. Mr. Guergour asks me to overturn that decision and order a new PRRA on the grounds that the officer had a duty to conduct research into the risk that Mr. Guergour might face on his return to Algeria. Further, he submits that the officer's decision was unreasonable.

[4] I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review. The issues are:

1. Did the officer treat Mr. Guergour unfairly by failing to conduct research into the potential risk he might face in Algeria?
2. Was the officer's decision unreasonable?

II. Analysis

1. *Did the officer treat Mr. Guergour unfairly by failing to conduct research into the potential risk he might face in Algeria?*

[5] Mr. Guergour argues that a PRRA officer cannot simply rely on the submissions put forward by an applicant. The officer has a responsibility to possess current information about the conditions in the particular country in question. Therefore, even if the applicant has put forward little or no evidence, the officer must make a reasonable effort, he says, to ensure that an applicant is not returned to a situation of danger. This duty is particularly acute, he maintains, where the applicant is unrepresented.

[6] In my view, Mr. Guergour overstates the officer's duty. It is true that an officer has a "duty to examine the most recent sources of information in conducting the risk assessment; the PRRA officer cannot be limited to the material filed by the applicant" (*Hassaballa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, at para. 33). But the burden of proof is always on the applicant to identify the nature of the risk and to present evidence, indeed, usually new evidence, to support a claim to be at personal risk if returned to his or her country of origin (*Bayavuge v. Canada (Citizenship and Immigration)*, 2007 FC 65, para. 43). Here, Mr. Guergour did not cite any basis for his claim to be at risk and referred to no evidence. These circumstances cannot give rise, in my view, to an obligation on the officer to conduct research into potential, unidentified areas of risk that the applicant might face.

[7] Mr. Guergour argues that the officer had actually been made aware of his personal circumstances and the factual foundation of his application by virtue of the earlier decision of the IRB. Accordingly, the officer could have conducted research into whether he would be at risk because of his prior association with (and later dissociation from) the military, as he had claimed

before the IRB. However, this would have amounted to a reconsideration of the evidence put before, and the conclusion arrived at by, the IRB. That is clearly not the purpose of the PRRA process.

[8] Mr. Guergour also suggests that the officer could have conducted research into Algeria's treatment of failed asylum seekers on their return. This would have been, he submits, an obvious risk factor that the officer should have evaluated.

[9] Again, I find that this submission exaggerates the officer's duty to the applicant. If accepted, it would require officers to evaluate grounds of potential risk identified by applicants, as well as any others that might arise from the applicant's circumstances but which have not been brought to the officer's attention. In my view, this proposition is out of keeping with the burden of proof on PRRA applicants to provide a basis for their claim to be at risk.

[10] While Mr. Guergour was unrepresented, I do not believe this, in itself, either impaired his ability to identify the basis for his application or created a corresponding duty on the officer to research potential grounds for it. I cannot conclude that Mr. Guergour was treated unfairly.

2. *Was the officer's decision unreasonable?*

[11] Mr. Guergour argues that the officer's decision was unreasonable because the officer referred only to one document, the 2007 U.S. Department of State Report on Algeria, and merely cited an introductory paragraph from that report. The officer did not go on to note the various

human rights issues that are catalogued in the report. Further, the officer relied on the report to support his conclusion that the situation in Algeria had not deteriorated in the period since the IRB's decision yet the report dealt with the circumstances in the year prior to the IRB's decision.

[12] The DOS Report cited by the officer was published after the IRB's decision. True, it dealt with the situation during the previous year, but it was more recent evidence of the situation in Algeria than had been available to the IRB. I cannot fault the officer's reliance on it. Nor, given Mr. Guergour's failure to identify a basis for his application, can I question the officer's decision to conduct a limited amount of research.

[13] I cannot conclude that the officer's decision was unreasonable.

III. Conclusion and Disposition

[14] Given that Mr. Guergour did not identify a source of risk or point to any evidence supporting his PRRA application, the officer did not have a duty to conduct research into potential areas of risk. Mr. Guergour was not treated unfairly. In the circumstances, the fact that the officer referred only to a single report on conditions in Algeria did not render his conclusion unreasonable.

[15] Counsel asked for an opportunity to present submissions on a question for certification. I will consider any submissions received within ten days of this judgment.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The Court will consider any submissions regarding a certified question that are filed within ten (10) days of the issuance of these reasons.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-271-09

STYLE OF CAUSE: SLIMANE GUERGOUR v. MCI & MPSEP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 27, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 10, 2009

APPEARANCES:

Andrew J. Brouwer

FOR THE APPLICANT

Sharon Stewart-Guthrie

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

JACKMAN & ASSOCIATES
Barristers & Solicitor
Toronto, Ontario

FOR THE APPLICANT

JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENTS