

Federal Court



Cour fédérale

Date: 20101215

Docket: IMM-3239-09

Citation: 2010 FC 431

Ottawa, Ontario, December 15, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

KAMAL GUIRGUIS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

AMENDED REASONS FOR JUDGMENT AND JUDGMENT

I. OVERVIEW

[1] The Applicant, a citizen of Egypt, seeks judicial review of an Immigration and Refugee Board (IRB) decision denying his refugee claim and his protection claim because of credibility concerns, the existence of an internal flight alternative (IFA) and of adequate state protection.

[2] The essential problem with the Applicant's position is that he is trying to ride two horses at the same time while travelling in different directions. First, he said that he feared his brothers but

that claim is weak so he claims that he fears some unidentified person or persons because of his conversion of convenience from the Muslim faith to Christianity. The Applicant's inconsistent tale affects all parts of his claim including that of the absence of state protection and of an IFA.

II. FACTS

[3] The Applicant is from a large family of Coptic Christians. Guirguis converted to Islam in order to marry his Kurdish Iraqi wife. He also took out Iraqi citizenship. He claimed that his brothers disowned him because of his conversion and considered him dead.

[4] As a result of the Iraq-Kurdish war, the Applicant, his wife and two daughters moved to Egypt. He claimed that his wife and children were harassed by his family. He lived apart from them and they sought asylum in the Canadian Embassy from where they were accepted as refugees.

[5] The Applicant eventually secured a temporary resident permit based on his wife's pending sponsorship. This plan fell apart when their marriage did likewise and faced with the non-renewal of his TRP, he claimed refugee protection.

[6] The Applicant claimed that he had returned to his Christian roots and that his problems with his Egyptian family began to dissipate. He claimed that he returned to visit his terminally ill brother and attend his funeral but also claimed that he stayed anonymous during his visit.

[7] Guirguis' refugee claim was based on his conversion back to Christianity and his fear that Islamic extremists would target him as an apostate. In testimony he suggested that his primary fear was of his family, who had apparently originally been unhappy with his conversion to Islam. In his refugee intake interview he claimed fear of family due to his marriage, some fear of being an apostate and that an individual would kill him. His PIF was centred on fear of his family and their retribution.

[8] There were numerous inconsistencies, contradictions and obfuscations in his IRB evidence. However, the central feature of his evidence related to his relationship with and fear of his family.

[9] Not surprisingly, the first basis of rejection of the Applicant's claim was credibility. The Member outlined a number of the inconsistencies and contradictions which went to the root of his claim.

[10] The Member also found state protection, although spotty, existed for Christians in Egypt. The Applicant had not sought protection because of some ill defined fear of police fanatics.

[11] The Member also found an IFA in Alexandria where no one would know about his marriage and conversion more than 14 years previous.

III. ANALYSIS

[12] The standard of review for credibility findings is reasonableness, as it is for state protection and IFA.

[13] Even if the Member committed the legal errors alleged, including failure to consider whether the Applicant was a member of the Christian faith and whether he would be persecuted as such, the findings of state protection and IFA address his refugee protection claim completely.

[14] The problem with the Applicant's claim of legal error is that he was unclear about the nature of his real fear. The Member was not required to fathom out a case for the Applicant. The Member in fact considered both aspects of his claim - fear of his family and fear of extremists due to his apostate status.

[15] The Member found that the Applicant was not likely to be identified as a convert; therefore, he did not fall within the member of the class – apostate – whose risk had to be considered. This was a finding which was open to the Member, particularly in light of the Applicant's contradictory positions.

[16] The Member did address fear of Islamic extremists and the status of apostates in the consideration of state protection and IFA. The finding on both issues was reasonable. The Member recognized the spotty record of police in regard to Christians but also noted evidence of positive response by authorities. The state protection analysis is balanced and cogent.

[17] The IFA finding addressed the Applicant's attempt to rebut the suggestion of an IFA – a rebuttal clearly informed by the Applicant's credibility (or lack thereof).

IV. CONCLUSION

[18] Therefore, this judicial review is dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3239-09

STYLE OF CAUSE: KAMAL GUIRGUIS

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 2, 2010

**AMENDED REASONS FOR
JUDGMENT AND JUDGMENT:** Phelan J.

DATED: December 15, 2010

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