

Federal Court		Cour fédérale
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Date: 20100511

Docket: IMM-4826-09

Citation: 2010 FC 516

Toronto, Ontario, May 11, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ROBERT HACHEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present application concerns a Christian citizen who claims refugee protection under s.96 and s.97 of the *IRPA* for fear of more than a possibility of persecution and risk to his life at the hands of the terrorist organization Hezbollah should he be required to return to Lebanon. The Applicant's claim for protection was rejected by the Refugee Protection Division ("RPD") on a

finding of negative credibility. In my opinion, the negative credibility finding is unreasonable, and for the reasons which follow, I find that the decision under review is made in reviewable error.

[2] The negative credibility finding is based on a principle feature of difference between the Port of Entry Notes and the Applicant's PIF. The essence of the Applicant's application relates to his involvement with "The March 14th Movement" which is an opposition political group to Hezbollah. With respect to his affiliation, in the Port of Entry Notes in answer to the question whether he was a member, an associate or had supported a political, social, youth, student or vocational organization the Applicant stated, "I don't belong to any organization." (Tribunal Record, p. 89). The interview record produced at the time of his entry provided the following answer to this question: "Are you, or have you been, a member of any political or other organizations?":

No – however, subject was a supporter of the "14th March Movement" which asks for full independence of Lebanon. Subject took part in rallies and demonstrations. No violence.
(Tribunal Record, p. 95).

In answer to the request that the Applicant "explain why you are seeking refugee status and/or why you cannot return to your home country" the Applicant is recorded as providing the following answer:

I am afraid from Hezbollah group. I am afraid of torturing and killing. They have threatened and beat me because of my involvement with the "14th March Movement".
(Tribunal Record, p. 99).

[3] In his PIF the Applicant checked off the boxes with respect to being a member in a particular social group and claiming on grounds of political opinion (Tribunal Record, p. 18). In the PIF narrative he made the following statement:

I was never a member of a political party, until the day President Rafik al-Hariri was assassinated on February 14, 2005, along with his friends, the crime which happened on this date was against humanity and was the main reason for me to join the March 14th group. The largest demonstration in Lebanon history occurred on this day, demanding freedom, peace and independence.

After the 14th of March, I participated in every demonstration.

In his PIF the Applicant explains that as a result of his activity with the March 14th Group on February 17, 2007 he was beaten and that “they then told me that, this was a small lesson for the next time would be the end of me, if I continued to support the 14th of March group” (Tribunal Record, p. 19).

[4] In its analysis the RPD makes the following statements at paragraphs 6 and 7 of the decision rendered:

[6] In assessing this claim, the determinative issue is the credibility of the claimant’s story. The claimant was asked, since he stated he was a member of a political party, if he had proof of membership. The claimant responded that he had none as he did not register officially, and that he is a supporter of the March 14th party which represents the majority in the parliament, with over 64 seats according to the claimant. The Panel finds that the claimant embellished his association with the March 14th political group in his Personal Information Form (PIF) narrative, and then when confronted with questions about the said party, the claimant states that he was not a member, but rather a supporter of the party. The claimant provided insufficient evidence he was a supporter of the March 14th political party which allegedly was the basis for his problems from Hezbollah, which in part caused him to leave Lebanon.

[...]

The Panel notes the claimant did not indicate in his PIF that he is afraid of Hezbollah as a result of the beating received on February 17, 2007 or that he believed Hezbollah was responsible for the beating.

[5] In my opinion, there is no substantiation for the conclusion that the Applicant “embellished his association with the March 14th political group in his PIF narrative”. While there are differences the differences were extensively explained during the testimony the Applicant gave at the hearing before the RPD under stringent questioning by the Hearings Officer and the Member concerned. It is apparent that the differences grounded the negative credibility finding without including the explanations given by the Applicant for the differences. A key element in the evidence is as follows:

REFUGEE PROTECTION OFFICER: Are you a member now of a political party?

CLAIMANT: Yes.

REFUGEE PROTECTION OFFICER: What party is that?

CLAIMANT: It's – they call them 14 of March Group. This party happen after the assassination of the President Rafik al-Hariri, which is happen on 14 of February 2005.

REFUGEE PROTECTION OFFICER: M'hm. All right. You're a member, and unless I'm mistaken, I didn't see any cards or any other document in this ---

CLAIMANT: Yes.

REFUGEE PROTECTION OFFICER: --- thing.

CLAIMANT: I didn't register officiously [*sic*] yet, but ---

REFUGEE PROTECTION OFFICER: To show.

CLAIMANT: --- I was an effective supporter.

REFUGEE PROTECTION OFFICER: Yeah. When did you begin to support this March 14th Group?

CLAIMANT: I start supporting after they assassinate President Rafik al-Hariri, 14 of February 2005.

REFUGEE PROTECTION OFFICER: Yeah. And you have been a member until you came to Canada?

CLAIMANT: Yes.

REFUGEE PROTECTION OFFICER: Are you still a Member?

CLAIMANT: In my soul, yes.

MEMBER: Mr. Martin, sorry to interrupt.

REFUGEE PROTECTION OFFICER: M'hm.

MEMBER: I just want to clarify that the Claimant did change his statement to say that he didn't have proof of membership but he's just a supporter So it looks like ---.

REFUGEE PROTECTION OFFICER: All right

MEMBER: --- according to the evidence, he's just a supporter of the group.

REFUGEE PROTECTION OFFICER: So you are not a member?

CLAIMANT: I understand the question wrong in the beginning.

MEMBER: Okay.

REFUGEE PROTECTION OFFICER: It's all right. I just missed that answer. Thank you, Mr. Member. Okay.

So tell me why you're in Canada today.

CLAIMANT: I'm seeking refugee here in Canada because I've been threatened. My life is in danger over there. That's why I came to Canada to claim as a refugee.

REFUGEE PROTECTION OFFICER: It's in danger because you're – you are a supporter of the March 14 Group? Is that correct?

CLAIMANT: Absolutely.
(Tribunal Record, pp. 237-238)

[6] In my opinion, the unwillingness of the RPD to accept the Applicant's statement for the differences in the evidence with respect to the Applicant's affiliation with the March 14th Group reflects a mind unwilling to learn. Throughout his evidence the Applicant maintained he was a supporter and, clearly, variously described his support as membership. In my opinion, the RPD's finding that the "claimant provided insufficient evidence he was a supporter of the March 14th political party" is groundless.

[7] As a result, I find that the decision under review is made in reviewable error.

ORDER

THIS COURT ORDERS that:

I set aside the decision and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: ROBERT HACHEM v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR ORDER
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DATED: MAY 11, 2010

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