

Federal Court



Cour fédérale

Date: 20181121

Docket: IMM-2484-18

Citation: 2018 FC 1177

Vancouver, British Columbia, November 21, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

OTHMAN AYED HAMDAN

Respondent

JUDGMENT AND REASONS

[1] Mr. Hamdan is an unmitigated liar. One must wonder if he has uttered one truthful word since he came to Canada in 2002. His refugee claim was accepted in 2004. The basis thereof was that he had converted to Christianity from Islam and faced a serious risk of persecution should he be returned to Jordan.

[2] The Minister has taken, or is taking, various measures to remove Mr. Hamdan from Canada. This judicial review is limited to the Immigration and Refugee Board's [IRB] dismissal of the Minister's application that the decision granting him refugee status be vacated in accordance with section 109 of the *Immigration and Refugee Protection Act* [IRPA] on the basis that that decision to was obtained both as a result of directly and indirectly misrepresenting or withholding material facts relating to his claim.

[3] More specifically the Minister submits that Mr. Hamdan's alleged conversion to Christianity was bogus and that he had failed to disclose that he was an international drug smuggler. As such he was excluded from claiming refugee status because he had committed a serious non-political crime as set out in section F(1)(b) of the *United Nations Convention Relating to the Status of Refugees*, appended to IRPA.

[4] The Board was of the view that the Minister did not meet the burden of proof. For the reasons that follow, I find that the decision of the IRB was unreasonable on both points and therefore am granting this application for judicial review.

I. The IRB's Decision

[5] On the religion point, the Member found that Mr. Hamdan was always searching. Although his subsequent conduct, including social media posts in support of ISIS and lone wolf attackers was outrageous and was inconsistent with Christian belief, it did not necessarily follow that he was not a Christian at the time he applied for refugee protection.

[6] On the drug smuggling point, Mr. Hamdan has over the years told outlandish stories to his “stoner” friends, and while he was incarcerated to an undercover police officer. The story has changed over the years. He smuggled hashish or was it marijuana? Was he shot at by Canadian snipers near the Israeli border, which is ridiculous; was he jailed in many jurisdictions? The Canadian authorities were unable to verify this latter allegation, perhaps because he used so many aliases. As one of his many friends says, “We’ve always thought he was just kind of full of s**t”.

[7] Mr. Hamdan’s counsel asserts that while he was lying through his teeth to his friends, he always told the truth in a more formal setting such as when as he testified with respect to criminal charges against him in the British Columbia Courts, to a uniformed RCMP officer, and to the Immigration authorities.

II. Analysis

[8] It was incumbent upon the Minister to provide evidence that Mr. Hamdan was lying when he claimed to be a Christian and to provide evidence that Mr. Hamdan was actually engaged in international drug smuggling. As Mr. Justice Rothstein speaking for the Supreme Court stated in *FH v McDougall*, 2008 SCC 53, 2008 3 SCR 41, at paragraph 48, it is up to a trial judge to assess whether the evidence established that it is more likely than not that the event occurred. “However there can be no rule of law imposing such a formula”.

[9] On the religion point, it is difficult to know what was going on in Mr. Hamdan's mind.

However, in *Grant v Australian Knitting Mills Ltd.*, 1935, All ER Rep 209 (JCPC), Lord Wright stated at pages 213 and 214:

Mathematical, or strict logical, demonstration is generally impossible: juries are in practice told that they must act on such reasonable balance of probabilities as would suffice to determine a reasonable man to take a decision in the grave affairs of life. Pieces of evidence, each by itself insufficient, may together constitute a sufficient whole, and justify by their combined effect a conclusion.

[10] Mr. Hamdan has testified that he was never baptized, could not remember the addresses of any of the churches he may have allegedly attended in Canada, or the names of anyone who may have seen him at a Christian church. Baptism is at the heart of Christianity. Based on the decision of this Court in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, it was incumbent upon the Member to explain away this inconsistency with Christian belief.

[11] I find it was unreasonable for the Member to find other than that Mr. Hamdan was a Christian of convenience in order to get into Canada.

[12] On both the religion issue, and the drug smuggling issue, subsequent actions matter, and words mean something. In *Saint John Tugboat Co. v Irving Refinery Ltd.*, [1964] SCR 614, subsequent conduct was taken into consideration in determining whether or not a contract had been made.

[13] In my opinion, the heart of the Member's decision on misrepresentation is found at paragraphs 38 and 39 of her decision which read:

[38] In order for me to find that misrepresentation took place, the Minister must establish that the alleged event actually happened. If the smuggling never happened, the Respondent cannot be said to have misrepresented. Therefore, before an analysis on exclusion can be conducted, the Minister must provide sufficient credible evidence to establish that the smuggling event took place. Based on the information before me, I find that the Minister has failed to establish that the respondent engaged in a non-political crime.

[39] The Respondent's story of smuggling hashish can be described as sensational and grandiose. As pointed out by counsel, the Minister has failed to establish that any of the allegations made by the Respondent in this story are credible or could be credible. The Minister did provide evidence of drug smuggling in the Middle East; however, said evidence fails to establish that the Respondent's story is actually true. The fact that drug smuggling by Hamas takes place in the Middle East does not in any way validate the veracity of the Respondent's story.

[14] It was not safe to ignore Mr. Hamdan's bragging. Words mean something. In his application for refugee status, he claimed he feared his uncles who were members of Hamas.

[15] Given the activities of Hamas at the time with respect to drug smuggling, and Mr. Hamdan's consistent statements that he was involved in drug smuggling, it was reasonable to infer he was telling the truth on this point.

[16] Furthermore, when he applied for permanent resident status, he admitted that family members abroad had been convicted of crimes or offences in another country.

[17] Although the evidence in this case may be somewhat scanty, there is some evidence to suggest that a misrepresentation had indeed taken place. In context, scanty evidence can support an inference to find as a fact that an event actually occurred (*Whirlpool Inc. v Camco Inc.*, [2000] 2 SCR 1067. The only evidence from Mr. Hamdan was his denial. The record clearly shows that his word is not to be trusted so that the presumption he is telling the truth is rebutted (*Maldonado v. Canada (M.E.I.)*, [1980] 2 FC 302 (C.A.)).

[18] For these reasons, judicial review is allowed and the matter is referred back to the IRB for redetermination before a new member, both with respect to religion and criminality.

[19] More recently, the Minister has succeeded in having the IRB decide that there has been a cessation of refugee protection under section 108 of IRPA. An application for leave and for judicial review of that decision was recently filed. The record has yet to be perfected. If Mr. Hamdan does not succeed, then this judgment becomes moot. However, I am not about to speculate as to the outcome of that application. As matters now stand, the decision under this judicial review is not moot.

JUDGMENT in IMM-2484-18

For reasons given, THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2484-18

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v OTHMAN AYED HAMDAN

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JUDGMENT AND REASONS HARRINGTON J.

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