

**Date: 20090505**

**Docket: IMM-4819-08**

**Citation: 2009 FC 454**

**Ottawa, Ontario, May 5, 2009**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**TAHIR HASSAN YOUSOUF**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant is a citizen of Chad, who sought refugee protection in Canada. He claimed to have a well-founded fear of persecution based upon his Gorane ethnicity and the political activities of his father. The Refugee Protection Division of the Immigration and Refugee Board dismissed the claim, finding that much of the applicant's testimony was not credible.

[2] Notwithstanding the considerable degree of deference owed to the Board's credibility findings, I am satisfied that several of the Board's key findings were simply not reasonable. As a consequence, the application for judicial review will be allowed.

## **Background**

[3] The applicant alleged that his life was at risk in Chad as a result of his father, a career military officer, having joined the anti-government “Union des forces pour la démocratie et le développement” movement (the “UFDD”). According to the applicant, his father informed him of his involvement with the UFDD on September 2, 2006, cautioning the applicant that as the oldest son in the family, the applicant could himself be in danger as a result of his father’s activities. The applicant says that his father advised him that he should leave Chad and to go to stay with his uncles in Niger.

[4] Before he was able to leave the country, the applicant says his family home came under attack by government forces. On September 6, 2006, a group of soldiers descended on the home, searching the premises, and brutalizing the applicant’s mother and younger brothers. The applicant was not at home at the time. The soldiers wanted to know which members of the family had gone with the father, and specifically asked about the applicant. A neighbour told the applicant what had happened, and he then went into hiding.

[5] Two days later, the applicant left Chad and went to stay with his maternal uncles in Niger. The uncles advised the applicant that he would be safer if he were to clandestinely return to Chad, where he could get the assistance of Bechir Ahmed, a close friend of one of the uncles. The Applicant says that he re-entered Chad on September 25, 2006, staying in hiding with Mr. Ahmed. Mr. Ahmed organized the applicant’s escape, and he left Chad on February 7, 2007, ultimately arriving in Canada.

### **The Board's Decision**

[6] The Board identified what it said were numerous inconsistencies in the applicant's story, leading it to a general finding of lack of credibility on the part of the applicant.

[7] Not only did the Board not believe the applicant's story of the attack on his home by government agents, the Board also rejected the story of the applicant's father having left the military to join the UFDD. Indeed, the Board did not even believe that the applicant was of Gorane ethnicity.

[8] Given the Board's generalized finding as to the applicant's lack of credibility, it decided to give no weight to documentary evidence purportedly from the UFDD attesting to the veracity of the applicant's story.

### **Was the Board's Decision Unreasonable?**

[9] While it is clear that there were inconsistencies in the stories told by the applicant at the port of entry, in his Personal Information Form (or "PIF"), in his PIF update, and at his refugee hearing, a number of the Board's central credibility findings simply do not stand up to scrutiny, even on the deferential standard of reasonableness.

[10] For example, the Board took issue with the fact that the applicant's original PIF made no mention of the fact that his mother and brothers had been forced to flee Chad for Sudan. The first time that this was mentioned was in the applicant's PIF update filed approximately one year later.

[11] The difficulty with this finding is that it appears from the applicant's PIF update that the flight of the applicant's family to Sudan took place well after the applicant had filed his original PIF. As such, the applicant can hardly be faulted for having failed to mention an event in his PIF that had not yet occurred.

[12] It appears that the Board may have confused the forced departure of the family from their home, in September of 2006, with the flight of the family from Chad in early 2008. It is clear from the transcript, however, that after the family left their home in 2006, they did not flee to Sudan, but simply went to stay with friends.

[13] The Board identified this purported inconsistency in the applicant's evidence variously as "une incohérence majeure", "[une] omission importante qui a grandement nui à sa crédibilité", and "[une] omission cruciale". As such, the Board's finding in this regard was clearly material to the outcome of the applicant's case.

[14] The Board also identified inconsistencies where none really existed. An example of this was the Board's finding of an inconsistency with respect to whether or not the applicant had been personally threatened. At the port of entry, the applicant was asked "Avez-vous eu des menaces personnellement?" to which the applicant responded "Non, j'ai seulement écouté mon père".

[15] At his refugee hearing, the applicant gave similar evidence as to whether he had personally been threatened. He also noted that he had not been present at his home when the military

authorities were searching for him. Further on in his testimony, however, when discussing the visit of the soldiers to his family home, the applicant was asked “Est-ce que vous considérez, ce que vous venez de me dire, comme étant une menace personnelle? On vous cherchait vous?”, to which the applicant answered in the affirmative.

[16] A fair reading of the exchange leading up to this response reveals that there was no inconsistency in the applicant’s evidence in this regard. It is clear from the record that the applicant understood the questions posed to him, both at the port of entry and at his hearing, with respect to “des menaces personnelles” as relating to whether any threats had been made directly to his face. He consistently denied that this had ever occurred. The applicant’s subsequent agreement that having military authorities coming to his home searching for him amounted to a personalized threat was not inconsistent with his earlier testimony that no threats had been made directly to his face.

[17] Other inconsistencies in the applicant’s evidence identified by the Board can only be described as microscopic. By way of example, the Board took issue with the fact that, at one point, the applicant testified that his father had told him that “il avait l’intention de joindre la rébellion”, whereas the applicant later stated that his father had told him that “il avait pris la décision de joindre la rébellion”. According to the Board, this was “une incohérence importante”. With respect, it was a distinction without a difference.

[18] While I acknowledge that the Board had several other reasons for finding that the applicant’s evidence was generally not credible, the errors identified above relating to what the

Board itself identified as major, important or crucial inconsistencies in the applicant's evidence are sufficient to render it unsafe to allow the Board's decision to stand.

[19] The Board elected to assign no weight to a letter purportedly from the UFDD, attesting to the applicant's father's past military career, his involvement with the UFDD movement, and the resulting persecution of his family by governmental authorities, because of its finding that the applicant's story was generally not credible. To the extent that the Board's credibility findings were unreasonable, it follows that this finding also cannot stand.

[20] Finally, the Board stated that because of the complete absence of credibility on the part of the applicant, it did not believe that the applicant was even Gorane. It should be noted that the applicant's ethnicity was never questioned at his hearing, raising concerns with respect to the fairness of the process followed in arriving at this conclusion. Moreover, as with the finding regarding the UFDD letter, given that the Board's finding with respect to the applicant's ethnicity was based solely on his general lack of credibility, it is also unreasonable.

### **Conclusion**

[21] For these reasons, the application for judicial review is allowed.

### **Certification**

[22] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4819-08

**STYLE OF CAUSE:** TAHIR HASSAN YOUSOUF v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 30, 2009

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

**DATED:** May 5, 2009

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