

Haoua v. Canada (Minister of Citizenship and Immigration)

Between
Mehdi Haoua, applicant, and
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 224
Court File No. IMM-698-99

Federal Court of Canada - Trial Division
Vancouver, British Columbia
Nadon J.

Heard: November 15, 1999.
Judgment: February 21, 2000.
(17 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Credible basis for claim — Appeals or judicial review, whether claim reasonable.

Application by Haoua for judicial review of a decision by the Convention Refugee Determination Division that he was not a Convention refugee. Haoua was an Algerian citizen who claimed refugee status on the basis of his political opinion. He claimed that he had evaded military service in Algeria and worked for an American company targeted by extremists. Haoua argued that he had completed some military service but was recalled for additional service. He argued that his failure to report for recall would have resulted in punishments in Algeria. Haoua fled Algeria to several countries using a false passport prior to arriving in Canada. The Board found that there was no evidence that recall notices were sent to previous conscripts who had completed the military service otherwise required. It held that the fear of persecution was speculative and that Haoua was not at risk in the large company for which he worked. The Board found that the route that Haoua took prior to arriving in Canada was expensive and convoluted for an individual fleeing immediate persecution. Haoua had not fled Algeria until two months after leaving his employment.

HELD: Application dismissed. The Division erred in overlooking available evidence corroborating Haoua's story of recall notices being sent for additional military service. However, this evidence did not have any material effect on the decision because Haoua did not provide proof that he was ever recalled. Military service did not in itself constitute persecution. There was no evidence that Haoua would have to commit atrocities if he was recalled to military service. There was insufficient evidence of persecution.

Statutes, Regulations and Rules Cited:

Immigration Act, s. 69.1(11)(a).

Counsel:

Martin D. Jones, for the applicant.

Garth Smith, for the respondent.

1 **NADON J.**— This is an application for judicial review of a decision rendered on January 29, 1999 (oral reasons) and February 22, 1999 (written version of oral reasons) by the Convention Refugee Determination Division of the Immigration Refugee Board ("the Board"), which found that the Applicant was not a Convention refugee.

Background

2 The Applicant is an Algerian citizen who claims refugee status on the basis of political opinion. The crux of his claim is that he evaded military service and that he worked for an American company in Algeria targeted by extremists.

3 Regarding his military evasion, the Applicant states that he completed the 18-month military service required at the time, but that the length of service was subsequently increased to 24 months. As a result, he claims that those who had served only 18 months were recalled. He states that a recall notice was sent to his parent's residence in 1996 and that his brother returned the notice claiming he did not know the Applicant's whereabouts. The Applicant affirms that he did not want to report for service because he feared his family would be targeted for persecution by the Islamic extremists. He also worried that if he became a member of the military, he would be required to commit acts against his conscience such as killing unarmed civilians. Moreover, he feared that he would be persecuted or executed if he refused to commit such acts. He states in his Personal Information Form ("PIF") that his "fears were based upon public declarations of former members of the government and personal (direct and indirect) experience". Finally, he claimed that failure to report for recall service might result in arrests and punishments, although he testified at the hearing that he did not know what the penalty for draft evasion was.

4 The other basis for the Applicant's refugee claim relates to his employment at an American multinational company, Bechtel Petroleum, which the Applicant claims was constantly targeted by Islamic extremists who perceived it as supporting the Algerian government. The Applicant claims, for example, that some of his colleagues were threatened by Islamic extremists, that five foreign employees were killed at work and that two other fellow employees were kidnapped separately and tortured by these extremists. In his testimony, he stated that these armed groups who targeted Bechtel might be looking for him and might take him as a hostage if he returned to Algeria. In 1996, the Applicant left the Company and made arrangements to leave Algeria.

5 On September 11, 1996, the Applicant flew from Algeria to Malaysia. After spending approximately 10 days in Malaysia, he flew to South Korea where he stayed and worked for one year. He left South Korea on September 11, 1997 and went to Thailand using his Algerian passport. From Thailand, he travelled to Laos, then to China and finally, to Vancouver where he claimed refugee status; all these journeys were made with a false French passport he had acquired from a smuggling agent. The Applicant destroyed this false passport en route to Canada because he feared that he would be returned to Algeria if he did not destroy it¹. His testimony on this point is as follows:

Q: Now, just one final area I wanted to cover. You traveled [sic] to Canada on what type of document?

A: With a French passport.

Q: And what happened to that document?

A: I destroyed it or tore it apart on the plane.

Q: And why did you do that?

A: Because the person from whom I had bought the passport told me, he said if they catch you with this passport on you, which was issued by the French government, not by your own government, they would send you or give you to the authorities of your country and tell them that you had used fake or false documents.

Q: And what would happen in that case? [...]

A: I am wanted by the military, also would be charged with using false passport, the minimum thing that would happen to me is to be incarcerated or imprisoned².

The Board's Decision

6 The Board addressed three issues in its decision: destruction of documents, military evasion and credibility. On the first issue, the Applicant said he destroyed the false French passport because he feared he would be sent to France and then deported to Algeria. However, in the Board's view, the same consequence (deportation) would have resulted since the Applicant held an Algerian passport. For this reason, the Board found it implausible that the Applicant would destroy the French passport while retaining his Algerian passport.

¹ In his Refugee Claimant Record of Examination dated April 22, 1998 (four days upon arrival to Canada), the Applicant indicated that he used a false French passport which was "[D]estroyed on plane (flushed down toilet)". However, during his hearing, he testified that he "destroyed it or tore it apart on the plane". The Board did not pursue this discrepancy further either during the proceedings or in its reasons. I will therefore not address this point, apart from noting it.

² Applicant's Record, p.29.

7 Regarding military evasion, the Board noted that there was no documentary evidence suggesting that recall notices were issued on a national basis in 1996 and that they were directed to all previous conscripts who had completed 18 rather than 24 months of service. Further, the Board characterized the Applicant's fear that he would be forced to commit atrocities as "pure speculation". According to the Board, "[t]here is no indication that he would be relegated to a position in the line of fire, so to speak. It can be assumed that he could equally be placed in another position in the military far from any situations of prospective human abuses."

8 On the credibility issue, the Board observed that the Applicant's claim hinged on military service evasion and perceived political opinion. The Board once again noted that the Applicant's claim about recall service was uncorroborated. Moreover, the Board did not find the Applicant's claim that he feared Islamic reprisals credible. In particular, the Board found it implausible that the Applicant would be specifically targeted or at risk given that he worked in a company of 500-700 employees.

9 In addition, the Board did not find the Applicant's impending flight credible. On this issue, the Board noted in its oral reasons that the Applicant remained in Algeria two years following the termination of his employment contract and that this did not demonstrate a true concern for his safety. In its written reasons, the Board noted that the Applicant remained in Algeria two months, as opposed to two years, but similarly concluded that this did not coincide with a fear of safety.

10 Further, the Board considered the route the Applicant took to arrive in Canada and found that this was an expensive and convoluted route for an individual fleeing the risk of immediate persecution.

Analysis

11 With respect to the discrepancy between the two decisions, the Applicant submits that the oral decision takes precedence over the written decision. I note that these decisions are essentially the same, with one substantial difference: the oral decision indicates that the Applicant remained in Algeria two years after the termination of his employment contract in July 1996, whereas the written decision states that the Applicant remained in Algeria only two months after July 1996. According to the Applicant, the Board had no jurisdiction to make such an alteration as it had already issued its decision orally³. Further, the Applicant submits that this error of fact led to the Board's conclusion that the Applicant's story about impending flight lacked credibility.

12 The Board was clearly wrong in its oral delivery, but this error was subsequently corrected in its written reasons. In my view, this mistake was clearly inadvertent given that earlier in the same decision, the Board noted that the Applicant left Algeria in September 1996, worked in South Korea for over one year, and arrived in Canada in

³ The Applicant has provided no case-law to support his argument that the oral reasons take precedence over the written decision and that the Board had no jurisdiction to make the said corrections. In any case, the Board was obliged to issue written reasons by virtue of paragraph 69.1(11)(a) of the Immigration Act.

April 1998. Therefore, it is evident that the Board meant to say two months. More importantly, but for the two-month correction, the passages are exactly the same:

The explanation concerning his impending flight also raises concerns of credibility. For example, documentary evidence indicates that the last three-month contract ended with Bectel, I believe, on or about July 7, 1996, and that the Claimant remained in Algeria for another two years prior to leaving. If he was truly concerned about his safety, he would have left immediately, as he had acquired his Algerian passport in 1993, which, under testimony, he said had been acquired for travel (Oral Reasons, emphasis added).

The explanation concerning his impending flight also raises concerns of credibility. For example, documentary evidence indicates that the last three-month contract ended with Bechtel, I believe, on or about July 7, 1996, and that the Claimant remained in Algeria for another two months prior to leaving. If he was truly concerned about his safety, he would have left immediately, as he had acquired his Algerian passport in 1993, which, under testimony, he said had been acquired for travel (Written Reasons, emphasis added).

Thus, the error is clearly not determinative and had no material effect on the decision since the Board arrived at the same conclusion. Consequently, I reject the Applicant's submission on this point.

13 The Applicant's second ground for judicial review relates to the Board's finding that the Applicant brought his Algerian passport with him to Canada. The Applicant suggests that he arrived in Canada without a passport and points to the Senior Immigration Officer's notes made upon his arrival to Canada on April 17, 1998 which indicate that the Applicant is a member of an inadmissible class because he was not "in possession of a valid and subsisting passport, identity or travel document issued to that immigrant by the country of which he/she is a national." Accordingly, the Applicant submits that the Board's finding of implausibility on this issue (i.e., that he would destroy a false French passport yet keep his Algerian passport) is based on an error of fact which disregarded the evidence of the officer's notes. In this regard, I note that the Applicant's Refugee Claimant Record of Examination dated upon his arrival to Canada mentions only the French passport which was destroyed on the plane. However, the Applicant stated in his PIF dated May 19, 1998 that he had the Algerian passport in his possession at that time. There is no concrete explanation about how and when he obtained this passport which he ostensibly did not have when he entered Canada⁴. Further, it is undisputed that

⁴ During the hearing, when the Applicant is asked why his personal documents were provided so late in the process, he states that they were sent to him from Algeria in June 1998 and that he only received them in August 1998. It is clear that two affidavits from his family were included in these personal documents, but there is no indication that his Algerian passport was among these documents. In my view, it would not make sense for his family to have sent the passport because the Applicant clearly used this passport until his journey to Thailand. Therefore, unless he mailed the passport to his family while in Asia, I do not see

the Algerian passport was produced at the hearing. In light of these facts, I do not find that the Board committed an error of fact when it stated that the Applicant had retained his Algerian passport. The Applicant may not have shown this passport to the immigration officials when he arrived in Canada, but he clearly had the passport in his possession, at least by May 19, 1998 when he signed his PIF, and certainly, by the time of the hearing. Consequently, I do not accept the Applicant's submission in this regard.

14 Thirdly, the Applicant takes issue with the Board's finding that documentary evidence regarding military recall service existed for 1995, but not for 1996. The Applicant points to documentary evidence which indicates that in March 1996, the Algerian government was prolonging the military service of reservists who had completed their service four to eight years ago. On this point, I agree with the Applicant's submission and find that the Board erred by overlooking available evidence which corroborated the Applicant's story.

15 However, I do not believe this error had a material effect on the Board's ultimate decision because the Applicant did not provide any evidence that he was, in fact, one of the conscripts who had been recalled. As the Applicant admitted during the hearing, he did not have the recall letter to present the Board.

16 Moreover, in this case, the question of military evasion was inextricably linked to the Applicant's unwillingness to commit atrocities. That is, the Applicant claimed that he did not wish to perform military service because he feared he would be forced to kill unarmed civilians or conversely, that he would be persecuted if he refused to commit such acts. He stated in his PIF that his "fears were based upon public declarations of former members of the government and personal (direct and indirect) experience". However, this issue was not pursued at the hearing. He was never asked by his counsel about military members committing atrocities such as killing armed civilians, nor did he indicate in his Affidavit, PIF, or testimony that he committed such crimes or saw fellow military personnel commit such crimes while he performing his 18-month service in the Algerian army. As a result, his statement in his PIF in this regard remains a bald statement. I will therefore not disturb the Board's finding that "[t]he statement by the claimant that he would be forced to commit acts of atrocities if he had undertaken an additional six months is pure speculation." On this point, I also note that military service does not, in itself, constitute persecution. Rather, the Applicant's claim hinged on the fear that he would be forced to commit atrocities if he were drafted. If there is no evidence of atrocities, as there was none in this case, there is no evidence of persecution. Accordingly, the Board's conclusion was reasonable in my view.

17 For the above-noted reasons, this application for judicial review is dismissed.

NADON J.

how the passport could have been amongst the documents sent to him from Algeria. What is more likely is that he simply did not present the officer with the Algerian passport when he entered the country, but had it in his possession. In any case, as I have noted, his PIF dated May 19, 1998, one month after his entry, indicates that he had the Algerian passport in his possession at that time.