

Marma v. Canada (Citizenship and Immigration), 2012 FC 777 (CanLII)

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Docket: IMM-8249-11

Citation: 2012 FC 777

Toronto, Ontario, June 19, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**GEORG MARMA
JIMS MARMA
(A.K.A. JIMS DAVID MARMA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board determined that the applicants were not credible and were not Convention refugees or persons in need of protection.

Background

[2] Georg Marma and his brother Jims Marma are citizens of Syria. The Board accepted their father as a refugee in 2006. They entered Canada in 2010 and claimed refugee status: Georg on the basis of political affiliation and Jims on the basis of religious persecution. Their separate claims were heard together and a decision rendered on each.

Georg Marma

[3] Georg alleged that he was an active member of the Zawa Party. He would attend meetings, distribute pamphlets and advocate for the Party.

[4] Georg alleges that on April 8, 2009, he was interrogated for three hours because pamphlets had been distributed the previous day in the city of Hasaka. On June 25, 2009, he was seen distributing pamphlets by a Syrian security guard. Shortly after, he was taken by undercover agents and interrogated for seven hours. Before being released, he was questioned, including questions about his family, slapped, and told to stay away from politics. When he told this to his Party, they told him to be careful.

[5] On August 27, 2009, Georg was arrested. He says this is because his best friend was shot and killed when trying to illegally enter Iraq through the Syrian border. Georg was again questioned for seven hours and told to work as an informer for the Syrian government. The authorities wanted him to write reports on a number of known Assyrian activists.

[6] On the night of December 1, 2009, Georg was blindfolded and taken to a security office. He was asked if he had collected any information. When he told them he had not, they threatened his life. He promised the officer that he would work harder. At that point, Georg says that he knew he had to leave Syria. He obtained a Canadian visitor's visa and arrived in Canada on January 22, 2010. On February 5, 2010, he claimed refugee status.

Jims Marma

[7] Jims was not involved in politics. His claim is based on his Christian beliefs and the fact that he converted one of his friends, Rashid, to Christianity. Rashid is the son of a Major in the Syrian security forces.

[8] On August 1 and 15, 2010, Rashid's father summoned Jims to the security headquarters in Hasaka for interrogation. After the second interrogation, Jims ceased all religious activities. Instead, he focused his energy on being reunited with the woman he loved. She lives in and is a citizen of the United States. She initiated a sponsorship for Jims and on November 2, 2010, Jims went for an interview at the American Embassy. His sponsorship was approved, but he could not leave Syria because he and his family were on a list. By bribing a Syrian officer, Jims was able to be temporarily taken off that list. On February 18, 2011, he was on a flight to America.

[9] When Jims arrived at his destination, he was greeted by his fiancé. To his surprise, she was accompanied by her boyfriend. She told Jims that she could not marry him because she was going to marry her new boyfriend. Jims, in a state of shock and disbelief, called his relatives in Canada who told him to come and claim refugee protection.

[10] On February 25, 2011, Jims came to Canada and claimed protection at the border.

The Decision

[11] The Board did not believe the applicants and did not believe they would be persecuted or suffer harm in Syria.

[12] When the Board asked Georg why he was arrested in 2009, Georg responded that it was because he was with the Zawa Party and had been spied upon. The Board noted that Georg, in his Personal Information Form (PIF), stated that he was arrested because pamphlets were distributed in Hasaka. When the Board asked him if he had delivered pamphlets, he said he had not. Then, when the Board asked why he did not recall that this was the reason he had given for his arrest, he answered that he was not good with dates.

[13] Additionally, the Board noted that although Georg mentioned a number of people he believed were spies for the government, he did not mention Albert Zaya, an alleged spy mentioned in his PIF. When this was put to Georg, he explained that Albert was not a member of the Zawa Party and that is why he did not list him.

[14] The Board noted that at the hearing Georg said he was arrested on two occasions. When he was asked why his PIF narrative indicated that he was arrested on four occasions, his only explanation was that he was confused with the dates. The Board did not accept this, noting that Georg was not being asked for the dates, only the number of arrests in the year before he came to Canada. Also, counsel's submission that Georg made this inconsistent statement because he was not well educated, was not accepted.

[15] At question 9 of his PIF, Georg indicated that he had never been arrested. When this was put to him, Georg's consultant claimed responsibility for the mistake. The Board did not accept this, stating that it was Georg's document and he had reviewed it and accepted that everything was true.

[16] Finally, the Board noted that there was no independent evidence corroborating Georg's non-credible allegations. As a result, Georg's claim was rejected.

[17] As for Jims, the Board stated that there was confusion as to the name of the church he attended in Syria. Before the hearing, Jims' counsel wrote to amend the name of the church appearing in his PIF from St. George to Lady Virgin. At the hearing, when Jims was questioned by his counsel he, through the interpreter, called his church St. Mary. Later, he called it Lady Virgin. Jims further explained that there were two churches: Lady Virgin and St. George and that Lady Virgin and St. Mary were two names for the same church. The Board did not accept these inconsistencies and found it was implausible that a converting Muslim would not know the name of his church.

[18] Also, the Board noted that a letter filed in evidence from Jims' Diocese did not make any mention of his role in converting a friend. This letter was said to be insufficient evidence on its own to advance his claim.

[19] The Board continued its reasoning by noting that Jims stated his friend converted by attending church and going to class. Although Jims could not initially recall anything else his friend had done, when he was asked about a ceremony mentioned in his PIF, he remembered that his friend was baptized. This baptism was found to be the event announcing his friend's conversion and was at the core of his alleged problems. As a result, the Board did not accept that Jims would have forgotten such a fact.

[20] For those reasons, Jims' claim was refused.

Issues

[21] The applicants raised several issues, including the Board's alleged failures to deal with the risk associated with the fact that the applicants' father has been granted refugee status in Canada some years earlier, and the changing conditions in Syria. Neither has merit. I agree with the Minister that the fact that the applicants lived without incident in Syria for four years after their father was admitted to Canada as a refugee belies any suggestion of risk or persecution. The changing conditions in Syria were not an issue placed squarely before the Board nor were they argued in any detail in the written memorandum filed. The Board cannot be faulted for not focusing its attention on it.

[22] In my view, there are only two issues that require some examination: The alleged incompetence of the translation and the alleged mix up in the name of the church that Jims attended in Syria.

Translation

[23] The applicants speak Assyrian and the proceeding was translated as neither speaks English. They submit that errors in the translation led to their negative credibility finding.

[24] First, they note that many Arabic terms were used by the interpreter. A list of these terms is provided at pages 5-8 of their memorandum. It is their counsel's submission that although these terms might have been understood by the applicants, some may not have. It is submitted that the interpreter should have strictly used Assyrian only.

[25] Second, the applicants submit that the quality of the interpretation failed to meet the standard required and was incompetent. They have provided an affidavit from a person skilled in Assyrian who reviewed the tape of the oral hearing and has provided many instances where the translation was not word-for-word or where the statement was not translated at all.

[26] In support of the above arguments, the applicants state that their right to an interpreter covered by section 14 of the *Charter* was violated. They cite *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 (CanLII) at para 4 [*Mohammadian*], to argue that a violation of section 14 does not depend on actual prejudice. Acknowledging that a complaint regarding the interpretation should arise at the first possible moment, the applicants argue that they were not aware of the errors until they received the audio recording of the hearing.

[27] Furthermore, the applicants cite *Neheid v Canada (Minister of Citizenship and Immigration)*, 2011 FC 846 (CanLII), which found that "there was a breach of fairness by reason of unreasonable translation which was material to the Board's decision." In that decision, the Court cited *Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1161 (CanLII) at para 3, that stated:

Both counsel agree the question of the quality of the interpretation is governed by the Federal Court of Appeal's decision in *Mohammadian v. Canada (MCI)*, 2001 FCA 191 (CanLII), [2001] F.C.J. No. 916, applying the Supreme Court of Canada's decision in *R. v. Tran*, 1994 CanLII 56 (SCC), [1994] 2 S.C.R. 951. In my view, the principles enunciated in *Mohammadian* may be briefly summarized as follows:

- a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
- b. No proof of actual prejudice is required as a condition of obtaining relief.
- c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
- d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
- e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.

f. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.

[28] I agree with the respondent that, although far from perfect, there were no material errors in the interpretation that impacted the decision. In any event, any breach was waived by the applicants' failure to object at the first opportunity.

[29] In *R v Tran*, 1994 CanLII 56 (SCC), [1994] 2 SCR 951 [*Tran*], the Supreme Court held that interpretations are never perfect. At paragraph 60, our Highest Court wrote:

[I]t is important to keep in mind that interpretation is an inherently human endeavour which often takes place in less than ideal circumstances. Therefore, it would not be realistic or sensible to require even a constitutionally guaranteed standard of interpretation to be one of perfection. As Steele explains, at p. 242:

Even the best interpretation is not "perfect", in that the interpreter can never convey the evidence with a sense and nuance identical to the original speech. For that reason, the courts have cautioned that interpreted evidence should not be examined microscopically for inconsistencies. The benefit of a doubt should be given to the witness.

[30] I have reviewed each of the alleged errors and failures in translation and am of the view that none impacted the Board's understanding of the testimonies or the basis for its specific credibility findings. Since the errors were not material to the ultimate finding, this Court should not intervene: *Fu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 155 (CanLII) at para 10.

[31] In addition, even if the translation had been found to have reached the level of incompetence required, I would have found that the applicants had waived their right to raise this issue, not having raised it at the hearing. First, the record indicates that both applicants spoke Arabic. They both listed Arabic as a language they spoke in their PIF and thus the use of a few Arabic words cannot be objected to now, when it could have been at the hearing. Further, as it was a language known to the applicants, they understood what the interpreter was saying.

[32] Second, although the applicants did not speak English, their representative did. At a few places in the transcript the representative corrects the interpreter. This is evidence that he understood, to some degree, the languages being used. Yet he did not raise with the Board the issue of the adequacy of the translation. Further, if as was noted by applicants' counsel, there are occasions when the responses and questions failed to properly reflect each other, thus leading to any informed listener forming the view that the translation was inadequate, then that situation would have been obvious as well to the representative; yet no question was raised as to the adequacy of the translation at the hearing.

[33] For these reasons I reject the submission that the applicants' rights were breached as a result of the incompetent translation.

Church Membership

[34] In the following portion of the Board's decision, a negative inference was drawn because Jims was found to not recall the name of his church. The main reasoning behind this finding was because the Board believed there was a difference between St. Mary and Lady Virgin. The Board wrote:

Again I am satisfied this claimant was also not a credible witness. Prior to the beginning of the hearing counsel asked that the narrative be amended by

changing the name of the church in paragraph 2 [from St. George] to Lady Virgin.

Counsel asked the older claimant for the name of the church in Syria that sent the letter in C-4. The claimant recalled the name as St. Mary. When asked how the claimant did not know the name of the church he recalled it was Lady Virgin. He explained there were two churches he attended St. George and Lady Virgin and the friends studied at St. George but he attended Lady Virgin. This does not explain why he thought his church was St. Mary. Further, at the Port of Entry (POE) in R/A-2, he used St. George.

I find it implausible that any practicing Christian who fled Syria due to his role in converting a Muslim would not know the name of the church [emphasis added].

[35] In Jims' affidavit filed before the Court, he writes that: "St. Mary is simply the Mother of Jesus and is also known as Lady Virgin. Another way of referring to the same person is Virgin Mother, Mother of Christ, and the Mother of Jesus. These names are interchangeable as they refer to the same person, Mary the Mother of Jesus."

[36] At the hearing, this was explained to the Board. At page 281 of the Certified Tribunal Record the following exchange occurred:

COUSEL FOR THE CLAIMANTS: Okay

Q. What about the first letter from Syria, that is from what church?

A. St. Mary.

Q. The letter from the church, this one, this letter, it's from what church?

A. Catholic church.

Q. Yeah.

A. St. Mary.

Q. It's not St. Mary. That's of a Syrian church of the east.

A. Yes.

Q. Yeah, but it's not St. Mary.

A. That's catholic of St. March church

MEMBER: Sir, how is it you don't know the name of the church you attended in Syria?

CLAIMANT: Lady Mary.

MEMBER: How about Lady Virgin.

How is it you don't know the name of the church?

CLAIMANT: Yes.

MEMBER: How is it you didn't know that?

CLAIMANT: Just -- they just said we have two names, we can say Lady Virgin and we can say St. Mary. They are the same [emphasis added].

[37] This exchange shows that Jims clearly gave an explanation which should have been considered by the Board, namely that the two names are interchangeable. Even the interpreter at the hearing used St. Mary and Lady Virgin interchangeably. Talking about the difference between the Lady Virgin church and the St. George church, the interpreter translated as follows (see tab 17 page 73 of the applicant's record):

Counsel: What is the difference between these two churches?

[Interpreter]: What is the difference between those two?

Jims: We used to go on Sundays to St. Mary.

[Interpreter]: Ok we used to go the church to the seminars at Lady Virgin.

Jims: At St. George we used to go and work in their Youth Groups.

[Interpreter]: At St. George we used to do other activities work for them and help the poor people at the church.

Counsel: You were a member of St. George am I correct?

[Interpreter]: Were you a member of St. George?

Jims: Yes, there there is no difference we are Christians you can go to any of them.

[Interpreter]: There is no difference between any churches to attend them in terms of attending.

Jims: But I was a member of St. Mary.

[Interpreter]: But I used to belong to Lady Virgin [emphasis added].

[38] Other similar examples of St. Mary being interchanged with Lady Virgin by the interpreter can be found in the Applicant's record tab 17 pages 76-77 and 79.

[39] The fact that the Board failed to appreciate Jims' explanation that Lady Virgin and St. Mary can be used interchangeably is a serious error because it was a major reason for its finding that Jims was not credible. Although there were other reasons given for the credibility finding, it is not the Court's role to reassess credibility; that is the role of the Board. For this reason alone, Jims claim for protection must be re-examined.

[40] I note that the record reveals a further reason why the Board may have confused the names of the churches. The record reveals that Jims was baptized at St. George's church in Syria; that he attended Lady Virgin or St. Mary's church in Syria, and that he attended St. Mary's church in Toronto.

[41] Neither party proposed a question for certification

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dismissing the claim for protection filed by Georg Marma is dismissed;
2. The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dismissing the claim for protection filed by Jims Marma is allowed;
3. The claim of Jims Marma for protection is remitted back to the Refugee Protection Division of the Immigration and Refugee Board for determination by a different Member; and
4. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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