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Amended Notice of Application filed 6 October 2008

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Court File Number: T- 727 - 08

2008 OCT -6 P 1:40

CAS - SATJ
OTTAWA, ON

FEDERAL COURT

BETWEEN:

ABOUSFIAN ABDELRAZIK

Applicant

-and-

**MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE
and THE ATTORNEY GENERAL OF CANADA**

Respondents

AMENDED NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN

YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 7, 2008

October 6, 2008

Issued by: _____
(Registry Officer)

Federal Court of Canada
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Ottawa, Ontario K1A 0H9
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Solicitors for the Respondents

APPLICATION

This is an application pursuant to sections 18 and 18.1 of the *Federal Courts Act*, for an order compelling the Respondents to repatriate the Applicant, a Canadian citizen trapped in Sudan. The Applicant travelled from Canada to Sudan in 2003 and has been in that country ever since. The Applicant has wanted to return to Canada since 2004, and has stated this desire to the Respondents numerous times. The Respondents have ~~has~~ frustrated the Applicant's efforts to return to Canada, and in fact have ~~has~~ connived to keep the Applicant in *de facto* exile in Sudan through a combination of actions undertaken negligently or in bad faith.

In July 2004, by agreement of Canada and Sudan, the Applicant sought to return to Montreal from Khartoum. The Respondents issued him an emergency passport valid on only that itinerary, but he was unable to travel because he is on a "no-fly list" of all the commercial airlines. The emergency passport lapsed.

Since 2004 the Respondents have ~~has~~ maintained that the Applicant may apply for another emergency passport if he submits an itinerary for travel. However, the Applicant cannot possess a valid itinerary when he remains on the airlines' no-fly list, and the Respondents have ~~has~~ refused to intervene with the airlines to seek his removal from the no-fly list.

The Respondents have ~~has~~ also connived to deny alternative, non-commercial means of travel to the Applicant, with the intention of exiling him in Sudan. On or about October 28, 2004, Sudan offered a private aircraft to repatriate the Applicant to Canada. The Respondents secretly rejected Sudan's offer without notice to the Applicant or his family who were constantly inquiring about available options to repatriate the Applicant. The Respondents also refuses to provide a Canadian private aircraft to facilitate his return. Agents of the Respondents have written, without disclosing to the Applicant at the time, that "*we will take no extraordinary measures, such as sending in a government airplane or a private charter, to effect his departure from Sudan*".

The case worker assigned by the Respondents to the Applicant's file describes his plight as being "*in a 'catch 22' situation*". Additionally the Respondents's agents have acknowledged explicit instructions curtailing the efficacy of their consular assistance to the Applicant, stating that "(...) *the fact that we have been told to back off places our staff in KHRTM [Khartoum] in a difficult situation (...)*".

While in Sudan the Applicant has been sporadically detained without charge by the state security services and denied the consular access necessary for his protection. He is without a fixed address in Khartoum and is impecunious. He has medical problems, including asthma, eye problems, cardiac problems, ulcers and sequelae relating to previous bouts of malaria, for which he cannot afford treatment. When he presented a medical prescription to the Canadian embassy in Khartoum and sought financial assistance, the Respondent's agents declined any assistance.

The Applicant's situation is very precarious. He lives in poverty, at risk of abduction or unlawful detention at any moment, and without care for his medical needs. The prolonged exile has isolated him from his three children in Canada, and he has suffered a divorce as a result.

Through bad faith the Respondents have has violated the Applicant's right as a Canadian citizen to enter Canada. This ongoing breach has imperilled the Applicant's life, liberty and security of the person by exiling him in Sudan. These rights are protected by the *Canadian Charter of Rights and Freedoms* and are the subject of this Application.

The Applicant makes application for:

- (a) A mandatory Order directing the Respondents to repatriate the Applicant immediately to Canada by any safe means at his disposal;

- (b) A declaration that the Respondents violated the Applicant's right to enter Canada under section 6(1) of the *Canadian Charter of Rights and Freedoms*;
- (c) The costs of this application, on a solicitor-and-client basis; and
- (d) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) As a Canadian citizen, the Applicant has the right to enter Canada in accordance with section 6 of the *Canadian Charter of Rights and Freedoms*;
- (b) The Respondents have has breached the Applicant's legitimate expectation that he will be afforded appropriate consular assistance as a Canadian citizen;
- (c) The Respondents frustrated the Applicant's efforts to return to Canada, and secretly refused an offer by Sudan to fly the Applicant to Canada, without notice to him, thereby violating the Applicant's right to enter Canada;
- (d) The Respondents have has abandoned the Applicant in a precarious position by not reasonably accommodating the Applicant's unique situation wherein he cannot self-repatriate;
- (e) The Respondents have has impaired the Applicant's freedom to communicate with his counsel while in the "Temporary Safe Haven" of the Canadian embassy in Khartoum, in violation of the common law rule of solicitor-client privilege.

- (f) The Respondents have ~~has~~ failed to make timely and full disclosure to the Applicant of information relevant to his stated desire return to Canada and have ~~has~~ provided information calculated to deceive the Applicant in a manner, inconsistent with the administrative law principles of fundamental justice;
- (g) Sections 6(1) and 24(1) of the Canadian Charter of Rights and Freedoms and;
- (h) Sections 18(1) and 18.1(1) of the Federal Courts Act.

The application will be supported by the following material:

- (a) The Affidavit of Abousfian Abdelrazik, or some such other material or affidavit; and
- (b) Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: May 7, 2008
October 6, 2008


for
HAMEED FARROKHZAD ST-PIERRE
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