

4-18-2008

Letter from Sean Robertson, Director of the Consular Case Management Division dated 18 April 2008

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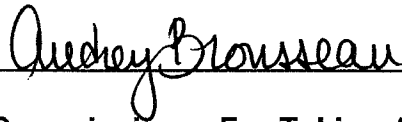
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THIS IS EXHIBIT G TO THE
AFFIDAVIT OF YAVAR HAMEED
AFFIRMED ON JUNE 17, 2008

A handwritten signature in cursive script, reading "Audrey Brousseau", is written over a horizontal line.

A Commissioner For Taking Affidavits



April 18, 2008

125 Sussex Drive
Ottawa, ON K1A 0G2

Mr. Yavar Hameed
Hameed Farrokhazd St-Pierre
43 Florence Street
Ottawa ON K2P 0W5

WITHOUT PREJUDICE

Dear Mr. Hameed:

Thank you for your letter of April 11, 2008. I would like to reassure you that the Consular Services Branch continues to be fully engaged in providing consular assistance and support to Mr. Abdelrazik within the boundaries of Canadian and international law. I hope that we will continue to work towards this mutual goal in the spirit of cooperation expressed in our meeting of February 27, 2008.

For that reason, and before addressing the substantive issues contained in your letter, I believe it is necessary to set the record straight with respect to the allegations, assumptions and inaccuracies contained in your letter of April 11, 2008.

Since October 2003, the Government of Canada has provided a high level of consular assistance and support to Mr. Abdelrazik. His case has been given careful and considered attention by the Department of Foreign Affairs and International Trade (DFAIT), and he has always been received and treated with the utmost respect and compassion by the staff of the Canadian Embassy in Khartoum. Mr. Abdelrazik has been provided with financial assistance to cover his basic needs and to obtain medical assistance. He has also been permitted to use the Embassy's telephone to contact his family and your office at no expense.

The unfortunate circumstances in which Mr. Abdelrazik has found himself are the result of events beyond Canada's control. His listing under Security Council Resolution 1267 creates legally binding obligations on Canada pursuant to Article 25 of the Charter of the United Nations. These obligations preclude the provision of financial and in-kind assistance, unless an exemption has been granted by the responsible Committee of the Security Council and accompanied by a certificate from the Minister of Foreign Affairs. Mr. Abdelrazik's listing on a "no-fly" list outside of Canadian jurisdiction and the travel ban resulting from his inclusion in the 1267 list effectively precludes his return to Canada on commercial air transport.

These circumstances are not in the power of the Government of Canada to resolve. As for your allegation that Mr Abdelrazik is suffering "extra-judicial exile" - a term the factual or legal basis of which is questionable - in Sudan without the comfort of his family, it is worth recalling that while he has indicated his desire to return to Canada, he in fact resides in his

Canada

other country of nationality where he has extended family.

Canada has taken the necessary steps to request an exemption to provide regular humanitarian assistance to Mr. Abdelrazik. This assistance is provided, as an extraordinary measure, from the Distressed Canadian Fund as Mr. Abdelrazik has no funds and his family is not in a financial position to assist him. We have also transmitted our support for Mr. Abdelrazik's de-listing request to the 1267 Committee.

As for Mr. Abdelrazik's repatriation, we will consider options with due regard to the practical and logistical obstacles caused by existing "no-fly" directives, the 1267 travel ban, and foreign visa/transit restrictions. Consular officials undertook extensive efforts to organize his repatriation to Canada in 2004; however, these efforts were derailed by the refusal of the airline to accept him as a passenger due to his inclusion on a "no-fly" list. With respect to your assertion that "Canada's delay and extreme negligence" caused us to miss out on an offer made by the Government of Sudan to provide an aircraft to return Mr. Abdelrazik to Canada, I would like to confirm that no such offer was ever made to Departmental officials by the Sudanese government.

On the issue of the basic needs allowance, I am disappointed by your apparent unwillingness to provide us with the necessary details to assess your demand for a significant increase in Mr. Abdelrazik's monthly stipend. The request for documentation was not prompted by a "total lack of compassion" or understanding of Mr. Abdelrazik's situation, but by your unexpected demand that the amount be increased six-fold to \$600 per month. I regret if my previous letter did not make the reasons for our request for supporting information sufficiently clear. The following points may assist you in this regard:

(1) We are fully aware that Mr. Abdelrazik's living conditions are poor; although they are comparable with those of the majority of the Sudanese population, where according to the World Bank the average annual income in 2007 was approximately \$800 US.

(2) Mr. Abdelrazik's own request, made to Embassy staff on February 6, was for an increase to approximately US\$250-300/month (500 to 600 SDG). This increase could likely be justified to the Sanctions Committee without further documentation, given his medical needs. If you confirm that this is Mr. Abdelrazik's request, we will forward it to the Committee for consideration.

(3) In the course of our February 27 meeting, you asked that Mr. Abdelrazik's stipend be increased to \$400/month, without any explanation for the divergence between your client's own assessment of his needs and your demand.

(4) In your letter of March 25, your demand had increased to \$600/month, again without any explanation for the additional amount except general reference to \$250 for rent, \$150 for food, and \$200 for medical expenses.

(5) Before consideration can be given by Canada to provide any monies to Mr. Abdelrazik in

excess of the \$100 for which an exemption has already been obtained from the Sanctions Committee, a further exemption will have to be obtained from the same Committee. As a lawyer, you will appreciate that the Committee cannot be expected to consent to a six-fold increase of funding for "basic necessities" without supporting documentation. Without such justification we will be unlikely to obtain the desired result from the Committee and as such, will not be able to advance Mr. Abdelrazik's interests.

If the Security Council Committee grants an increase to the exemption, I must remind you that this does not create a legal entitlement to draw on the Distressed Canadian Fund (DCF). The DCF is intended to provide emergency financial assistance to Canadian citizens in crisis situations abroad. The decisive factor is the risk to the well being of the applicant. All financial assistance is provided on a recoverable basis. The suggestion in your letter that "Mr Abdelrazik reserves his right to contest any repayment which Canada may seek" expressly undermines the validity of any undertakings given or to be given by him in this regard.

As for your demand for reimbursement of your own fees, you may wish to note that the reference to legal fees as being a basic necessity by the 1267 Committee is based on an unfreezing of assets of the listed individual for this purpose, and in no way implies an obligation for states to pay for the listed persons legal fees. His fees could be paid by third parties if the 1267 Committee approves and the Minister of Foreign Affairs issues a certificate. There is no federal fund in place pertaining to legal fees incurred by Canadians abroad. The provision of legal aid in Canada is a matter for provincial authorities. Consular publications, available on the Department's internet site (www.voyage.gc.ca), specifically note that consular officials cannot pay lawyer's fees.

To conclude the issue of the basic needs allowance, your letter of April 11 does not provide us with the information required to approach the Security Council for a further exemption with any hope of success, nor does it provide appropriate justification to increase the draw on the Distressed Canadian Fund six fold.

With respect to Mr. Abdelrazik's passport application, I would like to remind you of our commitment, expressed in our meeting of February 27, to ensure that he has an emergency travel document to facilitate his return to Canada. We stand by the commitment. As passport entitlement decisions fall within the purview of Passport Canada, they will respond separately to the passport related questions raised in your letter of April 3, 2008

On another issue, I am puzzled by your attempt to set "conditions" for future interactions between Mr. Abdelrazik and Government officials, including consular officials. I am unclear on what legal basis these comments are made, and note that such a course of action would significantly undermine our ability to provide consular service and assistance to Mr Abdelrazik.

Mr Abdelrazik is a Canadian Citizen. International law creates, through consular officials, a special framework whereby the Government of Canada can exercise its right to maintain contact

with, and provide assistance to, Canadian citizens abroad. Even in circumstances where the receiving state does not acknowledge Canada's right to consular access based on issues of dual nationality, Canadian consular officials will push to gain equal access to all Canadian citizens. In this context, you will understand that it is difficult to accept restrictions on our capacity to contact and assist Canadian citizens abroad. Of course, save for exceptional circumstances (for example, in the case of minors or the mentally ill), consular officials will respect the clearly expressed desire of a Canadian citizen not to be provided with consular services. We will show Mr. Abdelrazik your letter and instructions concerning restrictions on contact to ensure that he is aware of the potential impact of your instructions on the Embassy's relationship with him.

I would also note that there are no video conferencing facilities in our Embassy in Khartoum and telephone services are unreliable and not secure. More importantly, I would note that meetings between consular officials and a Canadian citizen, should he or she agree to such a meeting, are not of such a nature as to give rise to a right to the presence of counsel. I would therefore be grateful for an indication from you on what legal basis or other authority you are making these demands, which will significantly impede our ability to provide consular services to Mr. Abdelrazik.

Finally, since virtually all contact between consular officials and the Canadian citizens with whom they work are based on needs - which in Mr. Abdelrazik's case are considerable - it would be helpful to receive a clearer indication of what your interpretation of "emergency" is, so that we can assess the extent to which we can continue to maintain contact with him.

In closing, I would like to reiterate that consular officials have and will continue to work in Mr. Abdelrazik's best interests. We are following up separately on the torture allegations mentioned in your letter of April 3, with due regard for your client's safety.

I hope that the spirit of cooperation that was present in our meeting of February 27 will continue and that you will provide the necessary information shortly for us to proceed with the required request to the UN Security Council 1267 Committee.

Sincerely,



Sean Robertson
Director, Consular Case Management