

1-6-2009

## Written Examination of Abousfian Abdelrazik dated 6 January 2009

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**FEDERAL COURT**

BETWEEN:

**ABOUSFIAN ABDELRAZIK**

Applicant

and

**MINISTER OF FOREIGN AFFAIRS and  
ATTORNEY GENERAL OF CANADA**

Respondents

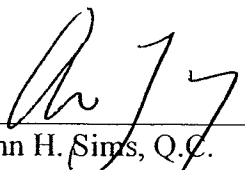
**WRITTEN EXAMINATION OF THE APPLICANT**(Pursuant to *Rule 99*)TO: **ABOUSFIAN ABDELRAZIK**

The Respondents have chosen to examine the Applicant on his affidavit sworn December 16, 2008.

You are required to answer the questions in the attached schedule by affidavit in Form 99B prescribed by the *Federal Courts Rules*.

The affidavit containing the answers is to be served on all other parties within 30 days from the date on which these questions are served on you.

Date: January 6, 2009

  
\_\_\_\_\_  
John H. Sims, Q.C.  
Deputy Attorney General of Canada

**Per: Anne M. Turley**  
**Elizabeth Richards**  
Department of Justice  
Room 1148, East Tower  
234 Wellington Street  
Ottawa, ON K1A 0H8

Tel: (613) 941-2347

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Counsel for the Respondents

**SCHEDULE**

1. Your lawyer sent the attached letter dated August 8, 2008 to Etihad Airways?
2. The booking with Etihad Airways attached as Exhibit "A" to your affidavit was not paid for?
3. The booking with Etihad Airways has since expired?
4. You have not tried to re-book another flight since it expired?
5. If you have tried to book another flight, you have been unable to do so?
6. When you requested that the Government of Canada issue a travel document for your booking with Etihad Airways that was part of a settlement offer made in this litigation?

SOR/2004-283, s. 35



HAMEED  
FARROKHZAD  
ST-PIERRE

Audrey Brousseau

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FAXED

VIA FACSIMILE (416-730-8161)

August 8, 2008

Etihad Airways  
5000 Young Street Suite 1706  
Toronto, Ontario M2N 7E9

Dear Sir or Madam:

Re: Mr. Abousfian Abdelrazik; Our File No. 2334

I am legal counsel for Abousfian Abdelrazik. Mr. Abdelrazik is a Canadian citizen who is currently exiled in Sudan, and who is experiencing difficulty returning to Canada because he has been wrongly included on the 1267 Committee of the United Nations Security Council as a person affiliated with Al-Qaeda.

Mr. Abdelrazik is not a security threat, and has never been affiliated with Al-Qaeda. His inclusion on the 1267 Committee's list, and possibly national no-fly lists, is explained by a case of mistaken identity. For example, the birth date that the 1267 Committee ascribes to him in its listing (August 6, 1962) does not match the birth date in his former Canadian passport (January 1, 1962).

The Government of Canada is willing to issue Mr. Abdelrazik a temporary passport for travel from Khartoum to Canada, on condition that he first secure an itinerary for air travel. Notwithstanding his incorrect listing as a person affiliated with Al-Qaeda by the 1267 Committee, he is permitted to undertake a journey to Canada. The U.N. Security Council has decided in Resolution 1390, at paragraph 2(b), that listed persons may travel to their country of nationality:

*"nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals"*

As such there is no probation on Mr. Abdelrazik entering Canada, and your airline does not offend the 1267 Committee's restrictions by transporting him to Canada.

Yavar Hameed  
B.A., M.A., LL.B.

Kourosh Farrokhzad  
B.A., M.A., LL.B.

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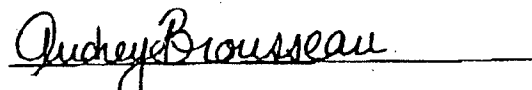
My client wishes to travel on Etihad Airways from Khartoum to Canada (Montreal, Ottawa or Toronto). In entertaining this request Etihad Airways's attention is drawn to the following:

1. Mr. Abdelrazik is a peaceful man who poses no threat to civil aviation. He is not violent; he has never been charged or convicted in relation to any criminal offence; and has never been determined in any judicial proceeding to be affiliated with Al-Qaeda or any other terrorist organization. Perhaps the clearest evidence of Mr. Abdelrazik's peaceful disposition is that, since April 2008, the Government of Canada has accorded him "temporary safe haven" to live in the premises of the Canadian Embassy in Khartoum, where he has been present 24 hours a day without incident. Although his living conditions in the Canadian Embassy are very stressful, Mr. Abdelrazik has not turned violent, and is free to make use of the Embassy premises, even though most of the time he is not under guard.
2. Etihad Airways no doubt transports on a daily basis persons with criminal convictions, including some who are convicted of violent offences. Etihad Airways also has transported at various times persons found in judicial proceedings to have terrorist affiliations (e.g. in immigration deportation cases). Mr. Abdelrazik must be assessed as presenting less of a threat to Etihad Airways's operations than these existing customers who are known to be violent or terrorists.
3. There is a legal duty in Canada for airlines, including foreign airlines licensed to operate in Canada, not to discriminate against persons in the provision of services: see s. 5 of the *Canadian Human Rights Act*.
4. It would be discriminatory were Etihad Airways not to transport Mr. Abdelrazik, where it currently transports known violent offenders and persons judicially known to have terrorist affiliations under appropriate guard, simply because Mr. Abdelrazik is an identifiable minority (i.e. a Muslim male of visibly foreign origin) and is incorrectly thought to affiliate with extremists among in minority community.

My client is willing to pay an ordinary fare for himself and a security escort and to submit to reasonable security measures to travel on Etihad Airways. I request to receive **within 45 days** the terms under which Etihad Airways will agree to transport my client, or alternatively, the reasons why Etihad Airways cannot transport my client. I am available to negotiate the terms of transportation on behalf of my client, but if an offer of transportation is not forthcoming, I am instructed to commence without further notice to Etihad Airways any legal proceedings as may be necessary to procure my client's transportation.

Yours very truly,

HAMEED FARROKHZAD ST-PIERRE

  
Audrey Brousseau