

Federal Court



Cour fédérale

**Date: 20141216**

**Docket: IMM-1203-14**

**Citation: 2014 FC 1223**

**Ottawa, Ontario, December 16, 2014**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ABBAS GHOLAMI,  
FATEMEH NASERIAN MOCHADAM,  
ALI GHOLAMI, BATOUL GHOLAMI,  
HOURA GHOLAMI, MOHAMAD GHOLAMI  
AND HOSSEIN GHOLAMI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
IMMIGRATION AND MULTICULTURALISM**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicants seek refugee protection in Canada and rely principally on Mr Abbas Gholami's application. They are citizens of Iran, but held permanent resident permits for Kuwait. In fact, they have never been to Iran. Their residency permits for Kuwait have now expired.

[2] While in Kuwait, the applicants say they received threatening messages that caused them to fear persecution in Iran. In particular, they fear Mr Gholami's wife's Arabic family in Iran, who object to their daughter's marriage to Mr Gholami, who is Persian. They also fear that they would be perceived as Arabs in Iran, given that they have spent their entire lives in the Arabic state of Kuwait, and suffer persecution as a result.

[3] A panel of the Immigration and Refugee Board rejected the family's claim for refugee protection in Canada. The Board found that there was no credible evidence that the applicants would experience persecution in Iran. While certain family members may have objected to the marriage, that event took place in 1995 and it is unlikely, according to the Board, that the threat continues today. In addition, while Arabs experience discrimination in Iran, the Board concluded that the applicants are likely to be regarded as Persian, given that the head of the family, Mr Gholami, is Persian. Further, the family will not experience religious persecution because they are Shiites, and Shiites comprise the vast majority of the population in Iran. Finally, the Board found that, as failed asylum seekers, the applicants may be questioned on their removal to Iran, but they are unlikely to face persecution on that basis.

[4] The applicants dispute several of the Board's conclusions but their main argument is that the Board's decision was unreasonable because it failed to appreciate that they self-identify as being Arab even though Mr Gholami, technically, through his father, is ethnically Persian. In Kuwait, they spoke, worked and attended school in Arabic. They have always lived in an Arabic society. They maintain that if they are forced to live in Iran, they will be persecuted there because they will be regarded as Arabs.

[5] The applicants ask me to overturn the Board's decision and order another panel to reconsider their claims.

[6] I agree with the applicants that the Board's decision was unreasonable. In my view, the Board failed to give adequate attention to the essence of the applicants' refugee claim – their fear of persecution in Iran on the basis of their Arab ethnicity. I must, therefore, allow this application for judicial review and order a reconsideration of the applicants' claims.

[7] The sole issue is whether the Board's decision was unreasonable.

A. *Was the Board's decision unreasonable?*

[8] The applicants' main argument is that the Board failed to recognize an essential aspect of their claim, namely, that they would likely experience persecution in Iran based on a perception that they are Arabs. That failure, they say, rendered the Board's decision unreasonable.

[9] I agree.

[10] The Board clearly recognized that Arabs face widespread discrimination in Iran. That finding is well supported in the documentary evidence.

[11] However, the Board determined that the applicants are not Arabs, based solely on the fact that Mr Gholami's father is Persian. Therefore, in the Board's opinion, Mr Gholami is Persian, and the rest of the family would be perceived as Persian, as well.

[12] In my view, the Board failed to recognize that in Iran the applicants would likely be regarded as Arabs, given their language, upbringing, and family history in Kuwait. As a result, the Board neglected to consider an important element in the applicants' claims for refugee protection.

[13] Accordingly, I find that the Board's conclusion does not represent a defensible outcome based on the facts and the law.

## II. Conclusion and Disposition

[14] The Board overlooked an essential aspect of the applicants' claims for refugee status. Therefore, its conclusion that the applicants' claims should be dismissed was unreasonable. Accordingly, I must allow this application for judicial review and order another panel of the Board to consider the applicants' claims. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1203-14

**STYLE OF CAUSE:** ABBAS GHOLAMI, FATEMEH NASERIAN  
MOCHADAM, ALI GHOLAMI, BATOUL GHOLAMI,  
HOURA GHOLAMI, MOHAMAD GHOLAMI AND  
HOSSEIN GHOLAMI v MINISTER OF CITIZENSHIP,  
IMMIGRATION AND MULTICULTURALISM

**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

**DATE OF HEARING:** SEPTEMBER 10, 2014

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** DECEMBER 15, 2014

**APPEARANCES:**

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