

Federal Court



Cour fédérale

Date: 20201120

Docket: IMM-5433-19

Citation: 2020 FC 1079

Ottawa, Ontario, November 20, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

KAMRAN SADEGHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Mr. Kamran Sadeghi, seeks judicial review of the decision of a Senior Immigration Officer [Officer] dated July 3, 2019, rejecting his Pre-Removal Risk Assessment [PRRA] application. The Officer found that there was insufficient corroborating evidence to establish that there is a risk of persecution, torture, cruel or unusual punishment or risk to life, if the Applicant is returned to Iran.

[2] For the reasons that follow, the present application is dismissed.

II. FACTS AND PROCEEDINGS

[3] Mr. Sadeghi is 48 years old and a citizen of Iran. He began his military service in Iran in early 1992.

[4] One evening, after about 6 months of serving in the military, following a series of altercations with his superiors, and while detained under guard, Mr. Sadeghi escaped and fled from the military base.

[5] Mr. Sadeghi is not aware of the military authorities having ever issued a warrant for his arrest, but, about a month after he escaped the military training facility, his parents did receive a visit from the authorities, who were looking for Mr. Sadeghi. He was not home at the time.

[6] Mr. Sadeghi did, however, remain in Iran for about 7 years and was able to continue to work with a falsified military completion card.

[7] From 1992, Mr. Sadeghi became involved with his sister in leaving socialist flyers on park benches and public washrooms on behalf of Fedayeen, outlining events and calling for political change in Iran. Mr. Sadeghi was never a member of Fedayeen, but only a supporter. He remained somewhat active in distributing flyers through to 1998, and was never apprehended by Iranian authorities.

[8] Concerned by the fact that one of the individuals also involved in distributing flyers was arrested by the state police, he fled Iran in 1999 for Turkey on the strength of a falsified Iranian passport. While in Turkey, he arranged to have a falsified German visa inserted into his passport that allowed him to travel to Germany where Mr. Sadeghi made a claim for refugee protection. His claim was rejected within seven months, and his appeal was ultimately dismissed in 2004.

[9] Mr. Sadeghi remained in Germany for 4 years after his failed asylum claim, and continued to participate in demonstrations against the regime in Iran; photographs were taken of him and his sister during one such demonstration in 2001. Although he is not aware whether the Iranian authorities have copies of the photographs showing him involved in demonstrations, Mr. Sadeghi is concerned that the Iranian authorities had spies amongst the demonstrators who might have identified him.

[10] While in Germany, Mr. Sadeghi was convicted of theft in 2000 and 2001; in 2005, he was convicted of aiding and abetting an unlawful confinement, and sentenced to a 1 year suspended sentence.

[11] Threatened with deportation to Iran, Mr. Sadeghi arranged to be smuggled back to Turkey by truck in February 2008. He remained in Turkey without status and was able to make contact with yet another smuggler who would arrange for his travel to Canada; he began to work illegally in Turkey to raise money for the trip.

[12] In October 2009, with the financial assistance of his family, Mr. Sadeghi was able to acquire a false Turkish passport for travel to Sweden. After about a week in Sweden, and on the strength of another falsified German passport, he travelled to Canada.

[13] Upon arrival, Mr. Sadeghi first claimed to be the person in the falsified passport, but later admitted the immigration officer that he was in fact a citizen of Iran and wished to apply for refugee protection. He was detained, questioned further regarding his identity, and eventually released.

[14] During the Refugee Protection Division [RPD] hearing, his counsel submitted that Mr. Sadeghi had been subjected to persecution while in the military in Iran, and his desertion and political activism in Iran now put him at risk of torture and cruel and inhuman prison conditions. However upon arrival in Canada, Mr. Sadeghi had advised the immigration officer that he had served over 2 years and thus completed his military service in Iran. Mr. Sadeghi admitted during the RPD hearing that he had lied to the immigration officer regarding his military service, and that he had, in fact, deserted after only 6 months of service.

[15] The Minister of Public Safety and Emergency Preparedness intervened in the RPD proceeding to argue that Mr. Sadeghi should be excluded from protection due to his criminal record in Germany, pursuant to section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Article 1F(b) of the Convention Relating to the Status of Refugees, Can TS 1969 No 6 [Refugee Convention].

[16] On February 18, 2013, the RPD rejected Mr. Sadeghi's claim for protection on the basis that he had failed to establish his identity. In view of that finding, the RPD did not address the issue of exclusion under Article 1F(b) of the Refugee Convention.

[17] Mr. Sadeghi successfully sought judicial review of that decision. On November 13, 2014, this Court found the RPD decision to be unreasonable given the uncontested evidence of the identity of Mr. Sadeghi, set aside the decision and remitted the matter back to the RPD for redetermination.

[18] Prior to redetermination at the RPD, the CBSA referred Mr. Sadeghi to an inadmissibility hearing before the Immigration and Refugee Board, Immigration Division [ID]. The ID found that Mr. Sadeghi was excluded from refugee protection pursuant to section 98 of the IRPA by reason of serious criminality under Article 1F(b) of the Refugee Convention. Based on the ID decision, Mr. Sadeghi's claim before the RPD was terminated, and a removal order was issued against him.

[19] On March 23, 2018, Mr. Sadghi submitted his PRRA application, in support of which his counsel provided the following:

- i. The record before the RPD, including his PIF and the transcript of the RPD hearing;
- ii. A copy of the Federal Court's decision allowing Mr. Sadeghi's application for judicial review;

- iii. Mr. Sadeghi's affidavit dated March 7, 2014 filed in support of his application for judicial review, including his new Iranian identity card filed as an exhibit;
- iv. A translated but undated letter from Mr. Sadeghi's sister which stated, amongst other things, that, sometime in July/August 2015, plainclothes officers came to their home demanding to know the whereabouts of Mr. Sadeghi; and
- v. The written submissions of counsel.

[20] On November 22, 2018, Mr. Sadeghi was notified that his PRRA was negative because of a lack of evidence supporting the submissions of his counsel.

[21] Following an exchange of correspondence, Immigration, Refugees and Citizenship Canada confirmed that the supporting evidence submitted with Mr. Sadeghi's PRRA application had not been included in the file when first assessed, and consequently, his PRRA application would be reconsidered.

III. DECISION UNDER REVIEW

[22] On July 3, 2019, the Officer rejected Mr. Sadeghi's PRRA application. Although acknowledging that Iran is a theocratic republic where there is suppression of dissent and other restrictions in civil liberties, the Officer was not satisfied that Mr. Sadeghi "has met his burden of proof that is, he has presented insufficient corroborating evidence to establish that he is wanted in Iran for military desertion or for his political views."

[23] It is that decision [Officer's decision] which is now being challenged in the present application for judicial review.

IV. STANDARD OF REVIEW

[24] The parties agree that the Officer's decision is reviewable on a standard of reasonableness (*Cao v Canada (Citizenship and Immigration)*, 2020 FC 500 at para 9; *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 at para 13).

[25] As noted by the majority in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. ISSUES AND POSITION OF THE PARTIES

[26] Mr. Sadeghi submits that the Officer's decision was unreasonable because it failed to include an analysis of his sworn testimony before the RPD, primarily Mr. Sadeghi's personal information form including the narrative [PIF] as well as the RPD transcript.

[27] Mr. Sadeghi also argues that the Officer unreasonably discounted supporting documents, *to wit*, photographs and the letter written by his sister. Mr. Sadeghi argues that the failure of the Officer to explain his/her findings of insufficiency renders the Officer's decision unintelligible

and unreasonable. Alternatively, Mr. Sadeghi submits that the Officer unreasonably required corroborating evidence.

[28] The Minister of Citizenship and Immigration [Minister] submits that the decision was reasonable and made with regard to the evidence, and argues that the Officer considered the evidence on the record. In short, the Minister's submits that Mr. Sadeghi simply failed to meet the burden upon him, and that it was reasonable for the Officer to give little weight to the sister's letter.

VI. ANALYSIS

[29] Mr. Sadeghi has the burden of establishing that, on a balance of probabilities, he would be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Iran, and must provide sufficient evidence to support his application (*Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067).

[30] Although a high degree of deference is owed to PRRA officers as to their factual findings and assessment of the evidence (*Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *II v Canada (Citizenship and Immigration)*, 2009 FC 892), findings of insufficiency must nonetheless be explained: PRRA officers must explain, in their reasons, their justification for their findings of fact (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 11 and 35; *Mahmood v Canada (Citizenship and Immigration)*, 2016 FC 328 at para 12).

[31] Mr. Sadeghi asserts that the Officer failed to provide any analysis of his sworn testimony, i.e., his PIF, and argues that such testimony is presumed to be truthful, in the absence of a valid reason to doubt his credibility, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248. However, this presumption “does not absolve a claimant from providing sufficient evidence to support their claim” (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 57).

[32] Mr. Sadeghi did not provide any statement in support of his PRRA application. He relied simply upon the evidence that was before the RPD, in particular his PIF, the transcript of his RPD hearing, the letter from his sister supporting his claims, and a series of photographs.

[33] Mr. Sadeghi argues that the Officer’s decision should have referenced the specific portions of his testimony before the RPD which supposedly established his assertion of risk; however, no specific portions of that testimony were included in Mr. Sadeghi’s submissions in support of the present application, nor outlined during the hearing before me.

[34] In addition, Mr. Sadeghi’s counsel’s submissions in support of the PRRA application do not specifically point to any evidence, in particular the photographs, that might have led the Officer to determine that Mr. Sadeghi is wanted or at risk in Iran for military desertion and for his political views. That said, the Officer did raise the issue of the photographs in her decision, but, in the end, was not satisfied that the photographs were sufficient to establish the risk that Mr. Sadeghi alleges in his application.

[35] Before me, Mr. Sadeghi points to the fact that in his PRRA submissions, his counsel insisted that an oral hearing take place if the Officer had any credibility concerns. No oral hearing took place, and the Officer's decision was rendered on the strength of the written submissions and evidence adduced.

[36] However, at no point in her decision does the Officer take issue with Mr. Sadeghi's credibility. At no point does the Officer question that Mr. Sadeghi actually did escape from the military training facility, or that he did participate in the distribution of flyers and attend demonstrations against the Iranian regime. What the Officer simply took issue with was that Mr. Sadeghi was asking that a connection be made between such activities and the fact that he is at risk and in need of protection if he were to return to Iran.

[37] Although, before the Officer, Mr. Sadeghi's counsel argued that his client faces outstanding charges, no evidence of such charges has been provided.

[38] Overall, I am not convinced that the Officer failed to address key elements of Mr. Sadeghi's evidence that would go to support his assertion of risk if returned to Iran.

[39] I should mention as well that there is no evidence to suggest that Mr. Sadeghi was experiencing any difficulty living in Iran between 1992 and 1999, prior to his departure for Turkey. Although he was able to work with a falsified military completion card, there is no evidence that any military personnel, police, or other state agents were searching for him during this period.

[40] As regards the photographs of the demonstration, they were discussed at length during the RPD hearing, the transcript of which the Officer stated she had read. However, in her decision, the Officer found that, amongst other things, Mr. Sadeghi did not explain how the photographs relate to the risk alleged in his PRRA application.

[41] In short, the Officer found the testimony before the RPD as regards the photographs and Mr. Sadeghi's sister's letter insufficient to establish the risk asserted by Mr. Sadeghi in his PRRA application, and provided reasons as to why the photographs and the letter from the sister did not establish a connection to such risk. I can see no error in the manner that the Officer dealt with the issue of the photographs.

[42] The sister's letter did not identify why the plainclothes officers were enquiring about Mr. Sadeghi. I appreciate that the Officer should be reading the sister's letter for what it says, not for what it does not say (*Mangoza* at para 49; *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205). However, where there is no other reliable objective evidence to support the grounds set out by Mr. Sadeghi in his PRRA application, neither should the Officer read into the sister's letter something it does not say.

[43] Mr. Sadeghi submits that his sister's letter was entered as evidence simply to establish that the authorities were looking for him in Iran, but not the reason why. That may be so, but that is precisely the point: it may very well be that Mr. Sadaghi is being sought by the Iranian authorities, but there is no credible objective evidence to establish that Mr. Sadaghi is being

sought for the reasons he sets out in his PRRA application, and his sister's letter simply does not satisfy that requirement.

[44] I am not satisfied that the Officer failed to explain the reason why she felt the evidence of risk exposure was insufficient.

[45] As mentioned, the submissions of counsel in support of Mr. Sadeghi's PRRA application do identify the evidence supporting the risk that is alleged. When an Officer is swamped with a mass of documents, he or she is not required to comb through documents "in the hope of finding some passages that support the Applicant's position" (*Maio v Canada (Citizenship and Immigration)*, 2010 FC 354 at para 19). The onus is on Mr. Sadaghi to establish the necessary elements in support of his PRRA application (*Yousef v Canada (Citizenship and Immigration)*, 2006 FC 864 at paras 21 and 22).

[46] I accept that for a decision to be reasonable and meet the standard of justification, transparency and intelligibility, the decision-maker's rationale for essential elements must be addressed in the reasons and cannot be simply inferred from the record (*Vavilov* at para 98). I have read the Officer's decision, and I find that she did in fact provide a cogent rationale in support of her conclusions.

VII. CONCLUSION

[47] Therefore, I would dismiss the application for judicial review. Neither party raised a question for certification.

JUDGMENT in IMM-5433-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5433-19

STYLE OF CAUSE: KAMRAN SADEGHI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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