

BETWEEN:

**NASRIN MOUSAVI-SAMANI,  
MONA KHALAJ,  
ARSHIA KHALAJ, and  
RABIOLAH KHALAJ,**

Applicants,

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION,**

Respondent.

**REASONS FOR ORDER**

**HEALD, D.J.:**

This is an application for judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the "Board") dated November 20, 1996, wherein the Board determined that the applicants were not Convention refugees.

**THE FACTS**

The applicants are citizens of Iran and are four in number. Nasrin (the "female claimant") her spouse Rabiolah (the "male claimant"), and their children Mona and Arshia (the "minor claimants"). They claim persecution on the basis of political opinion and/or membership in a particular social group. The female applicant is employed by the Bank of Saderat in Iran. In August of 1993 she became aware of fraud being

perpetrated at the bank by several prominent state officials of the Devotees and Deprived foundation, a well-known government agency whose mandate was to oversee and assist disabled/handicapped war veterans. This fraud was performed by taking cheques from the accounts of the officials and certifying them even though insufficient funds were available for legitimate certification.

The female applicant shared her concerns with her bank manager. The manager advised her that the situation was beyond her responsibilities. He also stated that this was a confidential matter. She became concerned about being implicated in this scheme. She sought the assistance of her former supervisor. He was stabbed to death in April of 1995. Officials of the state claimed that the former supervisor was killed in a robbery attempt.

In April of 1995, the female applicant and her spouse prepared a document detailing particulars of the alleged fraud and sent it to a number of newspapers. The ensuing publicity resulted in the arrest and conviction of most of the participants in the fraud.

The female applicant learned that she and her husband were being investigated. She thought it likely that they would also be prosecuted for the fraud. She feared that a particular person who was involved in the fraud but who had not been prosecuted would retaliate against them (Mohsen Rafigh - Doost).

### **THE BOARD'S DECISION**

The Board made positive findings with respect to the credibility of the female claimant's narrative.<sup>1</sup> It also identified two central issues: (a) Does the

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<sup>1</sup>Applicant's application record, page 8.

fear of vengeance of the applicants' amount to persecution? and, (b) Was there a nexus to a Convention ground?

(a) Fear of Vengeance

The Board concluded that the government's action in arresting, convicting and sentencing the other participants in the fraud, clearly demonstrates that the government does not tolerate such action. After observing that Iran is notorious for the absence of due process, the Board concluded that this only shows that the applicants may be in need of protection but does not establish that they are being persecuted. The applicants' fear of prosecution is because of the perception that they are involved in criminal activity and not because of their political opinion.

(b) Nexus to a Convention Ground

On this issue, the Board considered whether the reporting of the fraud by the applicants amounted to a challenge to the regime's authority to govern, thereby constituting an expression of political opinion. The Board concluded that since strong action was taken by the state against some of the corrupt officials, denouncing corruption cannot be perceived as a challenge to the authority of the regime. The mere fact that state officials are involved in this harm feared by the applicants does not provide a nexus to the Convention by reason of political opinion.

(c) Particular Social Group

The Board also concluded that informants against criminals, corrupt officials etc. cannot be considered a particular social group. Referring to *Canada (Attorney General) v. Ward*<sup>2</sup> the Board concluded that the applicants' fear being the target of a highly individualized form of persecution. They do not fear persecution because of their group characteristics.

## ANALYSIS

### 1. Fear of Vengeance

In my opinion it was reasonable for the Board to conclude that the personal vendetta feared by the applicants did not constitute persecution as set out in the

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<sup>2</sup>[1993] 2 S.C.R. 689.

definition of Convention refugee. This view is supported by the decision in *Marincas v. M.E.I.*<sup>3</sup> where Tremblay-Lamer J. stated: "The fear of personal vengeance is not a fear of persecution". To the same effect is the decision of Gibson J. in *Rawji v. M.E.I.*<sup>4</sup> Even though the personal vengeance herein is by a government official, it was reasonable for the Board to conclude, as it did, that this circumstance did not, *per se*, change the character of those actions to persecution. There was no evidence that the perpetrator was acting in a government capacity.

## 2. Nexus to a Convention Ground

In my view, it was also reasonable for the Board to conclude that the applicants had not established a nexus to a Convention ground. The Board's finding that the actions of the applicants did not constitute a challenge to the authority of the Iranian regime to govern was a reasonable finding on the record. I so conclude because it was based on the Board's findings of fact that the state took strong action against some of the corrupt officials, thus publicly denouncing corruption.

## 3. Particular Social Group

In my view, the Board's analysis on this issue is supported by the principles set out in *Ward supra*. The Board concluded that the applicants' fear of prosecution for fraud may call for protection but such protection is not related to any of the Convention reasons. Accordingly, it is not protected under the definition. Their fear of prosecution is because of suspected involvement in a criminal activity and not on the basis of a Convention ground. Since the Board had already found that the applicants were not targeted for their political opinion, it was reasonably open for it to find that the applicants' possible prosecution for fraud was because of suspected involvement in the crime and not as a reprisal for exposing a corrupt state.

## CONCLUSION

Accordingly, and for all of the above reasons, the application for judicial review is dismissed.

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<sup>3</sup>IMM-5727-93, August 24, 1994.

<sup>4</sup>IMM-5929-93, November 25, 1994.

**CERTIFICATION**

Counsel for the applicants suggested the certification of three serious questions of general importance pursuant to the provisions of section 83 of the *Immigration Act*.

Those questions read as follows:

1. Does exposure of corruption perpetrated by state officials amount to a political opinion?
2. Must the state machinery be engaged in order for one who exposes corruption by the state to be considered persecution?
3. Does possession of knowledge of corruption within the state machinery amount to membership in a particular social group?

Counsel for the respondent opposed the application for certification. In her submission the result of this application depends to a large degree on determinations of fact. I agree with the respondent's counsel. The salient issue herein is whether in their actions the adult applicants were or were not acting on behalf of the state. The Board, as the trier of fact, found against the applicants on this issue. Accordingly, the Court of Appeal's answers to these questions

could not possibly affect the outcome of this application for judicial review. On this basis, the questions suggested herein should not be certified.<sup>5</sup>

Darrel V. Heald  
Deputy Judge

Ottawa, Ontario  
September 30, 1997

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<sup>5</sup>Compare *Malouf v. Canada (Minister of Citizenship and Immigration)* (1995) 190 N.R. 230.