Date: 20080425

Docket: IMM-648-07

Citation: 2008 FC 517

Ottawa, Ontario, April 25, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

AHMAD REZA AZALI
AHDIEH DASHTY and
DARIAN AZALI

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision of Immigration Program Manager, Mr. Donald Cochrane (the Officer), refusing the applicants' application for permanent residence to Canada as members of the Convention Refugee Abroad Class, or as members of the Humanitarian-Protected Persons Abroad Designated Class.

ISSUES

[2] The present application raises three issues:

a) Did the Officer err in requiring corroborative evidence as a condition of acceptance of the applications?

b) Did the Officer err in failing to draw a conclusion as to whether he accepted or rejected the applicants' explanation for the error in their forms, which stated that no previous application for a Canadian visa had ever been made?

c) Did the Officer err in failing to confront the applicants with the inconsistency noted in their employment history noted between their application for permanent residence and their prior applications for temporary resident visas?

FACTUAL BACKGROUND

[3] The applicants are citizens of Iran and members of the Kurdish minority. The principal applicant, Mr. Ahmad Reza Azali, alleged that he encountered difficulty with Iranian authorities after having downloaded and distributed a video and pictures from the internet of the murder of Shwan Ghaderi, a Kurd who opposed the Iranian regime. The principal applicant distributed the video to homes in Sanandaj, the applicants' home town, because he was angry with the manner in which the Iranian government mistreated the Kurdish population.

[4] The principal applicant distributed these videos until the arrest of his friend, who had helped to copy and distribute the disks. The principal applicant feared that he too would be the target of Iranian authorities, and therefore left Sanandaj for Tehran. The applicant alleged that he waited

several days to determine whether his friend would be released. On September 10, 2005, upon realizing that his friend would not be released, the principal applicant fled to Turkey.

[5] Applicant Ahdieh Dasthy alleged that after her husband fled to Turkey, the police came to their home in September or October 2005, enquiring about her husband's whereabouts. She informed them that she did not know where he was. She alleged that the police returned to their home a second time, but that she was not home and therefore the police only spoke with the neighbour.

[6] Applicants Ahdieh Dashty and son Darian Azali travelled to Turkey to join the principal applicant on March 14, 2006.

[7] The applicants were interviewed by the Officer at the Canadian Embassy in Ankara, Turkey, on March 21, 2006. Their applications for permanent residence were refused by letter dated December 5, 2006.

[8] By this application, the applicants seek the judicial review of the Officer's decision.

DECISION UNDER REVIEW

[9] In the decision letter, the Officer determined that the applicants did not meet the requirements for immigration to Canada. This determination was based on the Officer's finding that the circumstances leading up to the principal applicant's departure from Iran were not credible. The

Officer drew a negative inference from the fact that the principal applicant was not able to provide any corroborative evidence of his participation in the downloading, copying and distribution of the disks.

[10] The decision is also based on the inconsistencies between the application for permanent residence and previous applications for temporary resident visas in 2002 and 2005. In his application for permanent residence, the principal applicant denied having made previous applications for a Canadian visa, when in fact he had made two previous applications for a temporary resident visa in 2002 and again in 2005. When confronted with this discrepancy, the applicant stated that he misunderstood the question on the application form. Further, the Officer noted that the principal applicant stated in his application and again at the interview, that he had been employed as a shopper from 1994 to 2001, and that he had been employed selling flowers between 2001 and 2005. Applicant Ahdieh Dashty stated at the interview that she had been employed as a secretary with a construction company between 2004 and 2006. However, the Officer noted that in the application for temporary resident visas made in 2005, Applicant Ahdieh Dashty stated that she had been employed as the head of the financial section at Clinic Sakhteman Company for five years, and that her husband was employed as the head of the purchasing department of the same company for the previous eight years. The Officer concluded that these inconsistencies could not be attributed to mistake or inadvertence and that they impacted negatively on the applicants' credibility.

ANALYSIS

Standard of Review

[11] The first two questions raised by the applicant are questions of fact. More particularly, the Officer made negative findings of credibility based on the facts. The Federal Court of Appeal held in *Aguebor v. (Canada) Minister of Employment and Immigration*, [1993] F.C.J. No. 732, that credibility findings must be reviewed according to the most deferential standard. Following the recent decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 53, findings of fact should be reviewed on the deferential standard of reasonableness.

[12] The third and final question deals with the opportunity to respond, and as such is a question of procedural fairness. It is settled law that questions of procedural fairness are reviewed on a standard of correctness.

Did the Officer err in requiring corroborative evidence as a condition of acceptance of the application?

[13] The applicants first submit that the Officer erred by drawing a negative inference from the absence of documentary evidence to corroborate their allegations. They submit that requiring corroborative evidence is unreasonable, since court records or official documents regarding the incident in Iran are unavailable.

[14] The respondent argues that it was open to the Officer to rely on the applicants' failure to submit evidence that could "easily" substantiate their allegations as a basis for rejecting the decision. In support of its argument the respondent cites *Khan v. Canada (Minister of Citizenship*

and Immigration), [2002] F.C.J. No. 520, 2002 FCT 400, and specifically relies on paragraph 17 of the decision of Justice Blanchard :

> [17] While there is no legal requirement to produce corroborative evidence, it was not unreasonable in the particular circumstances of this case for the CRDD to consider, as one of the several factors in assessing the well-foundedness of the applicant's fear, the complete absence of any evidence suggesting that the Taliban were targeting members of the Gadoon tribe. I believe the statement of Mr. Justice Hugessen in *Adu v. Canada (M.E.I.)*, [1995] F.C.J. No. 114 (C.A.), online: QL (FCJ) is applicable to the circumstances of this case:
>
> > The "presumption" that an Applicant's sworn testimony is true is always rebuttable, and in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.

[15] The respondent further points to *Ortiz Juarez v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 365, 2006 FC 288:

> [7] The Applicants complain that there was no basis for requiring corroborative evidence since there is a presumption of veracity in favour of the Applicants. This submission is simply startling. The requirement for corroboration is only a matter of common sense. In *The Law of Evidence in Canada*, Sopinka, Lederman and Bryant, Toronto: Butterworths, 1999, 2nd ed., the matter is succinctly put at page 973:
>
> > The general rule is that the testimony of a single witness, if believed to the requisite degree of certainty, is sufficient to found a conviction or civil judgment. Because there may be concerns about the reliability of a witness' testimony -- perhaps the witness has a financial interest in the outcome of the proceedings or he or she is an accomplice -- the trier of fact may search for supporting evidence to confirm that witness' testimony. This search for confirmatory evidence is a matter of common sense.

[16] Both *Khan* and *Oritz Juarez*, above, are cases which are narrowly tailored to the facts. In *Khan*, Justice Blanchard specifies that the requirement of corroborative evidence is particular to the circumstances. Similarly, in *Oritz Juarez*, Justice Phelan goes on to say in the following paragraphs:

> [8] The Applicants contend that they could not document the transfer of funds between the accounts because the records were lost when the bank went through a restructuring. There was neither evidence of such loss nor any evidence that the Applicants took any steps to request the bank records.
>
> [9] The bank records, or at least the attempt to secure the records, were material evidence and could reasonably be expected to be available. It was more than reasonable for the IRB to seek out such evidence and to then draw adverse conclusions from the Applicants' failure to provide it.
>
> [Emphasis added]

[17] I am therefore sympathetic to the applicants' submission that corroborative evidence would not have been easily available in light of the facts of the case at bar. However, the weight that the Officer placed on the lack of corroborative evidence does not, in my opinion, amount to a reviewable error. Even noting the difficulties the applicants might face in obtaining corroborative evidence, it is my opinion that the inference drawn by the Officer falls within a range of acceptable conclusions which are reasonable in light of the facts.

[18] Furthermore, I adopt the respondent's submission that the absence of corroborative evidence was but one basis for rejecting the applicants' claim. Even if I am wrong, the Officer based his decision on two other grounds, which I will proceed to examine.

Did the Officer err in failing to draw a conclusion as to whether he accepted or rejected the applicant's explanation for the error in their forms, stating that no previous application for a Canadian visa had ever been made?

[19] The applicants allege that the Officer erred in drawing an adverse inference from the applicants' failure to acknowledge their previous applications for temporary resident visas, and by failing to explicitly state his conclusion; that is, the applicants submit that the Officer failed to draw an explicit conclusion as to whether he accepted or rejected their explanation for the omission. The applicants further submit that by not addressing their explanation, the Officer ignored the oral evidence before him.

[20] The applicants acknowledge their error. They maintain that they misunderstood the question contained in the forms, and had not intended to mislead immigration authorities. They submit that they made no effort to hide their past applications.

[21] The respondent submits that the Officer's failure to categorically state that he was not swayed by the applicant's explanation does not constitute a reviewable error. The respondent suggests that the Officer's rejection of the explanation is obvious.

[22] I agree with the position taken by the respondent. In the refusal letter, the Officer states generally, both at the beginning and the end of his analysis, that he did not find the applicants' account to be credible:

> I did not find your description of the circumstances leading up to your departure from Iran to be credible.
> …
> In conclusion, I find that the descriptions of events, as described to me, are not credible.

[23] Based on these clear statements, it is plain from the context of the refusal letter that the explanation provided by the applicants was rejected by the Officer. I am satisfied that the Officer considered the evidence, in particular the explanation offered by the applicants regarding their failure to disclose their previous attempts at obtaining a temporary resident visa, which was reproduced in the refusal letter.

Did the Officer err in failing to confront the applicants with the inconsistency in their employment history noted between their application for permanent residence and their applications for a temporary resident visa?

[24] Finally, the applicants submit that they were not given the opportunity to respond to the inconsistent versions of their employment history presented for the purpose of the application presently under review, and the prior applications for temporary resident visas. They argue that the Officer was required to confront them with this discrepancy, and offer them the opportunity to disabuse him of his concerns.

[25] The respondent submits that no basis exists for this argument. The respondent contends that the duty of fairness was not breached, because the Officer did not rely on any extrinsic evidence; rather, he relied on documents supplied by the applicants themselves, the contents of which they cannot plead ignorance.

[26] I agree with the respondent. This is not a case where the Officer failed to confront the applicants with extrinsic evidence; rather, he relied on information which was not only known to the applicants, but supplied by them. Their duty of fairness does not require that the applicants be confronted with information which they themselves supplied. In *Dasent v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 720, at paragraphs 22 and 23, Justice Rothstein (as he was then) emphasized that in determining what constitutes extrinsic evidence, the relevant factor will be whether the evidence was known to the applicant. In this case, there is no doubt that the other version of the applicants' employment history was known to them.

[27] A similar question was addressed by Justice Tremblay-Lamer in the context of a hearing of the Refugee Protection Division of the Immigration and Refugee Board. In *Ngongo v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1627 at paragraph 16, she established a list of factors that should be weighed in determining whether a refugee claimant should be confronted with inconsistencies in his or her testimony before the Board:

> [16] In my view, regard should be had in each case to the fact situation, the applicable legislation and the nature of the contradictions noted. The following factors may serve as guidelines:
>
> 1. Was the contradiction found after a careful analysis of the transcript or recording of the hearing, or was it obvious?
> 2. Was it in answer to a direct question from the panel?
> 3. Was it an actual contradiction or just a slip?
> 4. Was the applicant represented by counsel, in which case counsel could have questioned him on any contradiction?
> 5. Was the applicant communicating through an interpreter? Using an interpreter makes misunderstandings due to interpretation (and thus, contradictions) more likely.

6. Is the panel's decision based on a single contradiction or on a number of contradictions or implausibilities?

[28] Certain of these factors listed above are instructive, though I do not suggest that the same factors should be applied in the case at bar given the significantly different context. It is salient that the factors attempt to assess the substance of the contradiction, and determine whether the contradiction is technical or whether it reflects a substantially different version of events. In the present case, based on the facts, the Officer correctly assessed the nature of the contradiction when he found that it could not be attributed to mistake or inadvertence.

[29] For the aforementioned reasons, I find that the Officer did not breach his duty of fairness by failing to confront the applicants with the contradictions between their application for temporary resident visas, and their applications for permanent resident visas. The negative inference drawn from the contradictions was reasonable.

[30] Taken as a whole, the Officer’s decision that the applicants did not meet the requirements for immigration as members of the Convention refugee abroad class or as members of the country of asylum class was reasonable and free from reviewable error. I therefore dismiss the application for judicial review.

[31] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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