Date: 20080528

Docket: IMM-4604-07

Citation: 2008 FC 681

Ottawa, Ontario, May 28, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

MAJID BARZEGARAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for a judicial review of a pre-removal risk assessment (PRRA) officer's decision dated August 13, 2007, refusing the applicant's request for an exemption from the requirement to obtain a permanent resident visa from outside Canada, based on humanitarian and compassionate grounds, filed under subsection 25(1) of the *Immigration and Refugee Protection Act*, R.S.C. 1985, c. I-2 (the Act).

II. Factual background

[2] The applicant was born in Tehran, Iran, on May 1, 1983, and is an Iranian citizen.

[3] On February 4, 2001, the applicant's father died. He was a manager at the National Iranian Oil Company. The applicant attributes his father's death to the actions of the government, which apparently had him poisoned.

[4] The applicant openly expresses his disagreement with religious practices in Iran. He claims to have been suspended from school for a three-week period in 2000 because of his opposition to Islamic prayers.

[5] In spring 2002, the applicant allegedly attended a Catholic church. For that reason, he was apparently arrested, detained and beaten for four (4) days.

[6] In December 2002, members of the "sepah" (Islamic Revolution's Guards Corps) were searching for the applicant because of his opposition to Islam. To avoid being imprisoned, the applicant went to stay in the city of Karaj with a friend of his mother. The applicant's mother informed him that he was being accused of being anti-revolutionary and anti-religious and of having distributed anti-Islamic pamphlets.

[7] With the assistance of an agent, the applicant left Iran on January 16, 2003. He passed through Bangkok, Taipei and Hong Kong and arrived in Vancouver on or around February 2, 2003.

[8] On March 17, 2003, the applicant claimed refugee protection based on a fear of persecution by reason of his religion (perception of having converted to Christianity) and his political opinions (perception of being an enemy of the Iranian regime).

[9] Following a hearing held on December 2, 2003, the Immigration and Refugee Board's Refugee Protection Division (the RPD) rejected his refugee protection claim on the same day in an oral decision. The RPD determined that the applicant was not credible and did not believe his story.

[10] On May 17, 2004, the applicant requested an exemption from the requirement to submit his visa application from outside Canada. On August 9, 2007, he forwarded an update to his file.

[11] The request was reviewed and refused on August 13, 2007, on the grounds that there were insufficient humanitarian and compassionate considerations surrounding the applicant's personal situation to grant the request for an exemption. This application challenging that decision was filed on November 7, 2007.

III. Impugned decision

[12] In her decision dated June 18, 2007, the PRRA officer made the following findings:

(a) If the applicant were to return to Iran to apply for a visa in accordance with the Act, he would not be separated from any family members living in Canada. The presence of his mother in Iran would be an advantage for the applicant, who could benefit from moral and logistical support on his return;

(b) The applicant's presence in Canada for the last four years does not indicate a clear attachment to Canada. The officer noted that he spent the first twenty years of his life in Iran;

(c) The documentary evidence does not demonstrate that the applicant has worked steadily since his arrival in Canada. He filed two records of employment that totalled about four weeks of work over a period of four years and some evidence demonstrating a bank deposit of $25,000 with all subsequent transactions being withdrawals and no additional deposits. He also applied for only one work permit (October 6, 2004) since his arrival in Canada. Consequently, the PRRA officer concluded that the applicant was unable to demonstrate that he could provide for his needs;

(d) Despite the fact that Professor John Murphy acknowledged that he had given the applicant $25,000 and that he is ready to support him in his endeavours, the PRRA officer noted that Professor Murphy is not a Canadian citizen and that that process does not meet the sponsorship standards of the Canadian government;

(e) The PRRA officer noted that the applicant is 24 years old and in good health. He holds a secondary school diploma and a subsequent diploma from the Shahid Bahonar Vocational School in Tehran. For these reasons, the applicant is qualified to continue his studies or to enter the job market in Iran until he can apply for a permanent resident visa in accordance with the Act;

(f) Regarding the risk of persecution, abuse or torture because of his political opinions attributed to those of his father, who died on February 4, 2001, the PRRA officer concluded that the facts on the record are insufficient to determine that the applicant would encounter disproportionate, unusual or undeserved hardship if he had to return to Iran;

(g) Regarding the risk of persecution, abuse or torture because of the applicant's religious beliefs, the PRRA officer noted several contradictions on that issue and the applicant's failure to establish a conversion and beliefs in a religion other than Islam that are such as would put him at risk of persecution;

(h) Concerning the applicant's allegation that he arrived in Canada using false documents and that, on his return to Iran, he would risk being detained, tortured and abused, the PRRA officer noted that the applicant's personal profile would not put him at risk on his return to Iran;

(i) The fact that two aunts of the applicant were acknowledged to be refugees does not confirm the personal risks of persecution, threats to his life or torture alleged by the applicant.

[13] For these reasons, the PRRA officer refused the request for exemption and concluded

[TRANSLATION] "that the humanitarian and compassionate considerations surrounding the

applicant's personal situation are insufficient to grant the request for an exemption from applying for an immigrant visa through a Canadian embassy abroad before arriving in Canada".

IV. Issue

[14] Did the officer err in her assessment of the evidence when she determined that the applicant would not encounter disproportionate, unusual or undeserved hardship if he had to apply for a permanent resident visa from outside Canada in accordance with the Act?

V. Standard of review

[15] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada found that there should be only two standards of review: correctness and reasonableness. The Court indicated that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law (see *Dunsmuir* at paragraph 50). When applying the correctness standard, a reviewing court will not show deference to the decision-maker's reasoning process; it will rather undertake its own analysis to decide whether the decision is correct.

[16] The Supreme Court also indicated that, in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir* at paragraph 47).

[17] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law (see *Dunsmuir* at paragraph 54). The following factors will determine whether deference ought to be given to a tribunal: whether there is a privative clause, whether the decision-maker has special expertise in a discrete and special administrative regime and what the nature of the question of law is (see *Dunsmuir* at paragraph 55).

[18] Using the pragmatic and functional approach, the Supreme Court of Canada determined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39 (QL) at paragraphs 57–62, that the appropriate standard of review for H&C applications is reasonableness *simpliciter*.

[19] In this case, the Act does not contain a privative clause. Although it does provide a possible recourse to judicial review, it cannot be done without leave of the Federal Court. As for the decision-maker’s expertise, in this case, the decision-maker is the Minister of Citizenship and Immigration or her delegate. The Minister has some expertise relative to courts in immigration matters, particularly with respect to when exemptions should be granted from the requirements that normally apply. This is a factor militating in favour of deference. Finally, on the nature of the problem in question, the decision about whether to grant an H&C exemption involves a considerable appreciation of the facts of the person’s case, and is not one which involves the application or interpretation of definitive legal rules. Given the highly discretionary and fact-based nature of this decision, this is a factor militating in favour of deference.

[20] For these reasons, I am of the opinion that the standard of review applicable in this case is reasonableness.

VI. <u>Analysis</u>

[21] The applicant's claims can be summarized as follows:

(a) First, the applicant alleges that the PRRA officer made an error in her reasons when she claimed that the applicant had not submitted any new evidence that would make it possible to establish that his religious beliefs contrary to Islam are such that he may be persecuted on his return to Iran. The applicant is relying on paragraph 113(*a*) of the Act to state that there are very strict requirements for filing new evidence and that therefore the PRRA officer could not require new evidence from him.

(b) Second, the applicant claims that the PRRA officer refused his request on the basis of unfounded assumptions and not on the basis of the evidence before her. More specifically,

(i) she refused to consider the applicant's life to be in danger because of the time that had elapsed between the death of his father and the applicant's departure from Iran. She failed to take into account the fact that, while he was abroad, the applicant had become a target, something he was not while he was in Iran because of his youth;

(ii) the PRRA officer failed to take into account the circumstances of and the explanations concerning the conspiracy surrounding his father's death;

(iii) the PRRA officer failed to take into account the fact that the applicant would be at risk if he returned to Iran. The documentary evidence, including the report IRN29286.E, as well as the applicant's sworn statement, demonstrate the danger that the applicant would be in if he returned;

(c) Third, the applicant maintains that the PRRA officer failed to properly evaluate the applicant's integration into Canada. He is challenging the finding that he is not properly integrated into Canadian society because he has not had steady employment in this country. In addition, he claims that a negative finding was made based on the fact that he had a substantial amount of money that made it possible for him not to work in Canada.

[23] I will deal with these claims below.

New evidence

[24] I cannot accept the applicant's argument that subsection 113(*a*) of the Act provides very strict requirements for filing new evidence and that, because of this, the PRRA officer could not have required new evidence from him. The respondent is correct in noting that the request presented before the PRRA officer concerned an exemption from the requirement to apply for a visa from outside Canada. However, paragraph 113(*a*) of the Act applies only to reviewing PRRA applications that are applications to the Minister for protection by individuals who are subject to a removal order. In this case, the applicant filed a request for an exemption from the requirement to obtain a permanent resident visa from outside Canada on humanitarian and compassionate grounds on May 1, 2004. The onus is on the applicant to demonstrate that the hardship that he would face, if he had to apply for his permanent resident visa in the usual manner, would be disproportionate, unusual or undeserved. For these reasons, I am of the opinion that the PRRA officer was not in error when she noted that the applicant had failed to submit any new evidence that would establish that his religious beliefs are such that he could be persecuted.

Assessment of the evidence

[25] In this case, the applicant alleges that the PRRA officer made several errors in her assessment of the evidence, especially concerning the following: (i) the danger to his life because of his religious beliefs, (ii) his father's death and the fact that the applicant is now a target

wanted by the Iranian authorities, (iii) the fact that the documentary evidence favourable to him was ignored, and (iv) the fact that she failed to properly assess the applicant's integration into Canada.

[26] An applicant has a high threshold to meet when requesting an exemption from the application of subsection 11(1) of Act. The applicant has the burden of presenting the facts on which his request is based in order to demonstrate that he would encounter disproportionate, unusual or undeserved hardship if he had to apply from outside Canada. In my opinion, the applicant has failed to discharge this burden in this case. The PRRA officer weighed all the factors relevant to the applicant's request, including those that the applicant relied on.

[27] The applicant's allegations concerning the PRRA officer's assessment of the evidence are not valid. The applicant was unable to explain why he had waited for almost two years after the death of his father to leave Iran. In addition, the applicant was unable to explain why his family, including his mother and his brothers, had stayed at their family home in Iran, when they were also targeted by the Iranian authorities, just as the applicant was. I cannot find that the PRRA officer erred in determining that such conduct was contrary to establishing the merits of a subjective fear in favour of the applicant and his family.

[28] The PRRA officer's finding that there were some contradictions in the documentary evidence that undermined the applicant's claim that he would be persecuted because he opposed

Islam was open to her. More specifically, the applicant did not address the contradictions in how frequently he went to church and the discrepancies between the dates that the anti-Islamic pamphlets were printed and distributed and the length of his employment at a printing shop. Several of these contradictions had been indicated by the RPD. The PRRA officer correctly attached weight to the RPD decision and noted that the applicant had not submitted any new evidence establishing a conversion to a faith other than Islam which would have put him at risk or in danger on his return. The officer did not err in her assessment of that evidence.

[29] As for the documentary evidence, it is clear from the reasons that the PRRA officer took into account the documentation on the objective situation in Iran. She mentioned in her analysis various pieces of documentary evidence, including the documentation submitted by the applicant. I am of the opinion that the officer did not err in her assessment of the documentary evidence.

[30] Finally, I cannot find errors in the PRRA officer's finding concerning the applicant's degree of integration into Canadian society. Although the applicant had provided a bank statement showing a $25,500 deposit on May 11, 2004, it was then followed by several withdrawals but no new deposits. In addition, the applicant has worked for only a short period of four weeks over a total of four years. He has no family in Canada and is not married. Because of the deference this Court owes to the PRRA officer in assessing the facts, I cannot characterize her decision on this issue as being unreasonable.

VII. Conclusion

[31] In light of the foregoing, I am of the opinion that the PRRA officer's decision refusing the request for exemption on humanitarian and compassionate grounds is not unreasonable. I am satisfied that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Consequently, this application for judicial review will be dismissed.

VIII. Certified question

[32] The applicant proposed the following question to be certified:

> [TRANSLATION]
>
> When dealing with an H&C application concerning a religious conversion, must officers necessarily consider the effects of religious practices on Canadian soil in the case of removal?

[33] In this case, the applicant's allegations that he has converted to Catholicism and that he has practised that religion here in Canada were both assessed by the PRRA officer, who has rejected them. Earlier, I determined that the PRRA officer had not erred in making this finding. The applicant did not prove his allegation. I am of the opinion that the question raised cannot be determinative in an appeal.

[34] I am also of the opinion that the proposed question is related and restricted to the facts of the case at bar and does not transcend the interests of the immediate parties to the litigation.

[35] For these reasons, the question will not be certified (see *Liyanagamage v. Canada (M.C.I.)* (1994), 176 N.R. 4, at p. 5).

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.

2. No question is certified.

"Edmond P. Blanchard"

Judge

Certified true translation
Susan Deichert, Reviser

ANNEX

Immigration and Refugee Protection Act, R.S.C. 1985, c. I-2

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage.

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

25. (1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

(2) Le statut ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

113. Consideration of an application for protection shall be as follows:

113. Il est disposé de la demande comme il suit:

(*a*) an applicant whose claim to refugee protection has been rejected may present

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve

only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

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