Federal Court

Cour fédérale

Date: 20090731

Docket: IMM-685-09

Citation: 2009 FC 790

Ottawa, Ontario, July 31, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SHAHRAM ALVANDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, Mr. Shahram Alvandi, is a citizen of Iran who first came to Canada in 1996. He applied for refugee status, which claim was declared to be abandoned on March 12, 2001.He was deported to Iran where, according to the Applicant, he was immediately arrested and incarcerated at the Evin's prison facility in Tehran. Following eight months of detention, the Applicant was released for one week after his family bribed prison officials. He immediately went into hiding and returned to Canada illegally in August 2005. After being issued with a deportation

order on May 25, 2007, the Applicant applied for a pre-removal risk assessment (PRRA) on July 25, 2007.

[2] In a decision dated January 8, 2009, a PRRA Officer concluded that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of of cruel and unusual treatment or punishment if returned to Iran. The Applicant seeks judicial review of that decision.

II. Issues

[3] This application raises the following issues:

1) Did the PRRA Officer err by giving low weight to the Applicant's uncorroborated allegations regarding the risks he will face if returned to Iran?

2) Did the PRRA Officer err by concluding that the Applicant failed to rebut the presumption of state protection?

III. The PRRA Officer's Decision

[4] The PRRA Officer's decision was based on the following findings:

- The basis of the claim was found in the Applicant's personal narrative from 1996 and was not corroborated or supported by any independent authority, such as a government agency, police or the press. It was therefore afforded low weight;

- Though the reports concerning country conditions show that Iran had a poor record with human rights abuses, corruption, political impunity and religious discrimination, the Applicant failed to link this evidence to his personalized forward-looking risks; and

- In spite of problems with corruption and human rights violations, the country documents show that Iran has an established police and military and makes reasonable efforts to protect its citizens. The Applicant did not provide clear and convincing evidence to refute the presumption of adequate state protection. The objective evidence showed that he had different avenues of redress within the Iranian legal system if he contends unjust treatment by the authorities.

IV. Analysis

A. *Issue #1: Lack of Corroboration*

[5] The question of whether the PRRA Officer erred by giving little weight to the Applicant's allegations of risk turns on the sufficiency of the evidence that was before the PRRA Officer.

[6] The Applicant submitted very little to support his application. He provided an undated Personal Information Form (likely from 1996) and a statement in his PRRA application that "I spent 3 years in prison, had harassed, arrested, detained, beat to death interrogated several times." Beyond

this, the Applicant submitted only the letter of his then-counsel providing a few further details on the Applicant's incarceration in Iran.

[7] In dealing with this evidence, the Officer wrote:

> The Applicant has submitted his undated Personal Information Form narrative as well as objective evidence including IRB's Standardized Country Profile of Iran, and the US Country Report on Iran dated 06 March 2007.
>
> The narrative describes the events that occurred in Iran that caused the applicant to flee Iran in 1996 and eventually apply for refugee protection in Canada in December 1996. This narrative is supplied by the applicant and is not corroborated or supported by an independent authority such as a government agency, police or the press and is consequently afforded low weight.

[8] The Applicant submits that, given that his evidence was not contradicted, the Officer erred by giving low weight to his narrative and effectively finding him to be not credible merely because there was no corroborating evidence. Given that the Officer made no adverse credibility findings with respect to the evidence, the Applicant argues that his story should have been accepted as credible and true (*Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 971). It should not have been given little weight.

[9] In *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, Justice Zinn dealt with substantially the same issue in his review the case of a Jamaican woman who claimed to be subject to risk as a lesbian. At paragraphs 25 and 26, Justice Zinn set out the

distinction between credibility and the amount of weight to be given to a piece of evidence in an officer's assessment of whether an Applicant has met the legal burden of proof:

> 25 When a PRRA applicant offers evidence, in either oral or documentary form, the officer may engage in two separate assessments of that evidence. First, he may assess whether the evidence is credible. When there is a finding that the evidence is not credible, it is in truth a finding that the source of the evidence is not reliable…
>
> …
>
> 26 If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.

[10] In *Ferguson*, above, Justice Zinn found that it was reasonable for the PRRA officer to have given limited weight to the submissions made by Ms. Ferguson's counsel because there was no supporting evidence to support those submissions.

[11] The same reasoning applies to the present case. The Applicant is seeking to rely on submissions made by his then-counsel and an undated personal narrative to support his claim. None of these documents were sworn and there was no other corroborate evidence, such as even a sworn affidavit from the Applicant or his family members who would have had knowledge of the incidents

claimed. Therefore, it was reasonably open to the PRRA Officer to afford low weight to the evidence before her.

[12] Even though I have found that the Officer was not unreasonable in giving little weight to the evidence, I note that the Officer did not dismiss, as not credible, the Applicant's complete story of being imprisoned in Erin prison and escaping from the authorities.

B. *Issue #2: State Protection*

[13] The Applicant submits that the PRRA Officer erred by requiring the Applicant to provide clear and convincing evidence to refute the presumption of adequate state protection since the members of the State are the alleged source of persecution in this case. Depending on the facts of each case, the jurisprudence indicates that, where agents of the state are the source of the persecution and the applicant's credibility is not undermined, an applicant may successfully rebut the presumption of state protection without exhausting every conceivable recourse in the country (*Chaves v. Minister of Citizenship and Immigration)*, 2005 FC 193 at para. 15, *Gallo Farias v. Minister of Citizenship and Immigration*, 2008 FC 1035 at para. 19).

[14] The Officer, in her decision, made extensive references to the problems in Iran, including its poor record with human rights abuses, corruption, political impunity and religious discrimination. The Officer specifically commented on problems with the Iranian law enforcement. The Officer appears to have relied heavily on the objective evidence that referred to agencies that deal with complaints concerning corruption and abuse. Specifically, the PRRA Officer concluded that, "The

objective evidence shows that the applicant has different avenues of redress within the Iranian legal system if he contends unjust treatment be the authorities". The problem with this conclusion is that the Officer does not identify the "avenues of redress" that are available to the Applicant who alleges that state officers are his persecutors or explain how these "avenues of redress" could provide any assistance to him.

[15] It is abundantly clear from the jurisprudence that claimants must rebut the presumption of state protection with clear and convincing evidence (*Flores Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636, *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). However, in a country such as Iran, where the concept of democracy is faint, it appears to me that an applicant may have an easier task in rebutting the presumption. In this case, the Applicant poses an additional layer of complexity by alleging that his fears stem from police actions. In this case, while holding that the Applicant had not provided sufficient evidence to fully support his claim, there is no explicit finding that the Officer found the Applicant's story to be fabricated. Further, the Applicant's claim has never been assessed in a refugee hearing. In such circumstances, I would expect the Officer to be very careful to analyze the country condition documents in light of the particular circumstances of the Applicant. This is not a case where a "cookie cutter" state protection analysis will suffice. That is not to say that the PRRA Officer ought to have found that state protection did not exist for this Applicant. It is always open for the Officer to reject the application, provided that the elements of the Applicant's fears are considered.

[16] In short, the PRRA Officer simply does not analyze the documentary evidence in light of the particular circumstances faced by the Applicant. In my view, the PRRA Officer's conclusion that the Applicant had not provided clear and convincing evidence to refute the presumption of adequate state protection does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

VI. <u>Conclusion</u>

[17] For these reasons, the Application will be allowed. Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. this application for judicial review is allowed, the decision of the PRRA Officer is quashed and the matter remitted to the Respondent for re-consideration by a different PRRA Officer; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mr. Marc J. Herman	FOR THE APPLICANT
Mr. David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Herman & Herman Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT