

Date: 200910013

Docket: IMM-4606-08

Citation: 2009 FC 1023

Ottawa, Ontario, October 13, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

FARIBORZ KAZEMI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Kazemi, an Iranian currently living in Turkey without status, applied for a permanent resident visa as a member of the Convention Refugee Abroad Class. Following an interview, his application was denied by a Visa Officer at the Canadian Embassy in Ankara. This is the judicial review of that decision.

[2] Section 99 of the *Immigration and Refugee Protection Act* (IRPA) provides that a claim for refugee status may be made from within or outside Canada. In either case the question is whether the Applicant is a refugee by reason of a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion as per section 96 of IRPA or is otherwise in need of Canada's protection in accordance with section 97.

[3] The Officer did not find Mr. Kazemi to be credible and also was not satisfied that his fear of persecution should he return to Iran was objectively substantiated.

[4] The basis of the claim as presented to the Visa Officer was that Mr. Kazemi and a friend were well known to security forces, having been arrested for workplace activities in 1992 as members of the left-leaning secular Fedayeen. Seven years later they were both at student protests along with approximately two thousand others. He believes he was singled out by the security forces as the 'man in the white t-shirt', that his friend was arrested and apparently confessed that Mr. Kazemi was with him.

[5] The Officer was of the view that these two events seven years apart were unrelated and that if he and his friend had been members of the Fedayeen they would not have been released in 1992. She also doubted that he was singled out by the security forces at the student protest in 1999 or that his friend's arrest would prompt a renewed interest in his own activities. She concluded that there was no objective basis to his fear of persecution.

ISSUES

[6] Counsel for Mr. Kazemi submits that there are three issues. The first is that the Officer drew improper and unreasonable inferences from the objective facts which were before her. The second is that had she been alert and sensitive to Mr. Kazemi's predicament she would have considered the possibility that while in Turkey he became a refugee *sur place*. Finally no proper consideration was given as to the likelihood that Mr. Kazemi would be persecuted should he be returned to Iran.

DISCUSSION

[7] It is common ground that Turkey is not party to the United Nations Convention. In addition although Mr. Kazemi first applied to the United Nations High Commissioner for Refugees in Turkey, he was rejected. No reasons were given. The fact of his rejection does not figure in the Visa Officer's notes.

[8] Having reviewed the record, I am not satisfied that the Visa Officer's inferences were unreasonable. Not only are the Officer's findings of facts to be reviewed on a reasonableness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190), but this deference also applies to inferences (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[9] It was submitted before me, but not before the Visa Officer, that Mr. Kazemi remained politically active while in Turkey and that had the Officer been alive and alert to his predicament this point would have come up in the interview. The burden however is upon the Applicant. Continued political activity was not something staring the Visa Officer in the face and she cannot be

taken to task for not speculating on what was not before her. In any event she did ask why Mr. Kazemi feared returning to Iran after so many years away. This gave him ample opportunity to declare his continued activities.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4606-08

STYLE OF CAUSE: FARIBORZ KAZEMI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 6, 2009

REASONS FOR ORDER: HARRINGTON J.

DATED: October 13, 2009

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