

Federal Court



Cour fédérale

Date: 20110627

Docket: IMM-3614-10

Citation: 2011 FC 780

Ottawa, Ontario, June 27, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MEHDI SHIRIDOKHT TOURAJI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 18, 2010, wherein the Board determined that the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant requests that the decision of the Board be set aside and the claim remitted for redetermination by a different member of the Board.

Background

[3] Mehdi Shiridokht Touraji (the applicant) is a 26 year old citizen of Iran.

[4] While working at a photo shop in Tehran, the applicant alleged that he took pictures and videos of weddings and parties that were illegal under Iranian law. On June 18, 2009, the applicant was at a funeral in Tabriz, Iran, when his mother informed him that officers had been looking for him and had detained his brother. His father was also detained upon returning to Tehran. The applicant alleges that the photo shop was robbed during this time and the police intercepted the applicant's videos of the illegal parties. The applicant states that he was accused of being anti-regime and that his father and brother were required to sign undertakings to report him.

[5] The applicant also noted in his Personal Information Form (PIF) that he attended anti-regime demonstrations and filmed attacks by Iranian authorities.

[6] The applicant was smuggled into Turkey in July 2009.

[7] The applicant arrived in Canada on October 21, 2009. He filed an IMM5611 form at the port of entry, claiming refugee protection in which he stated that he is being sought by the authorities

because “photos have been published” and also that he was claiming protection in Canada because “some films were printed” and “people were arrested.”

Board’s Decision

[8] The determinative issue for the Board was credibility.

[9] The Board highlighted that all of the events leading to the applicant’s fear of persecution occurred within one month, June 2009. For this reason, the Board expected that the applicant’s evidence would for the most part be internally consistent.

[10] However, the Board found the applicant inconsistent in his account. The main concern for the Board was that the applicant indicated on form IMM5611 that photos from the photo shop had been published and films printed. In the hearing, he indicated that images from the video were never published or printed and that he did not make paper copies of the images from the videos. He stated that the images were deleted as soon as they were given to clients. The Board found the applicant’s explanation to this inconsistency to be non-responsive.

[11] The Board also found that the applicant mentioned late in the hearing that still photos were taken from the videos. The Board found this to be embellishing of the evidence.

[12] The Board drew a further negative inference as to credibility because the applicant did not mention in his IMM5611 documentation that he feared being targeted for his participation in anti-

regime rallies. He added this as part of his fear in his PIF and at the hearing. However, he also stated at the hearing that the rallies were not part of the problem.

[13] The final concern for the Board was the lack of corroborative evidence. The Board found that the applicant had provided no documentary evidence corroborating:

- That he was in Iran until July 5, 2009;
- That he was in Istanbul for two and a half months;
- That his uncle was a brigadier general in the Sepah and travels with President Ahmedinijad;
- His uncle's existence or relationship to the applicant;
- The existence of the photo shop or that the applicant had worked there;
- Evidence of campaign photos made in the shop;
- Photos from anti-Islamic events;
- His trip to Tabriz;
- His father and brother's detentions and release;
- The alleged robbery of the photo shop; and
- That he was wanted by the authorities.

[14] The Board noted it could not reasonably expect the applicant to obtain evidence corroborating all of these facts. However, in conjunction with the inconsistencies in his story, the Board drew a negative credibility inference because the applicant was unable to provide any corroborating documentary evidence.

Issues

[15] The issues are as follows:

1. What is the appropriate standard of review?
2. Did the Board err in its assessment of credibility?

Applicant's Written Submissions

[16] The applicant submits that the Board made several errors of fact leading to its negative credibility finding.

[17] The applicant argues that the Board misunderstood the applicant's comments at the hearing that videos were not printed or published and took this as contradicting the applicant's statement that photos were printed. The applicant also states that he never said that photos were not printed during the hearing. The applicant submits that a translation error of the word published led to confusion by the Board and the negative inference. The Board erred in finding that the applicant first mentioned that photos were being printed during the hearing, as this was mentioned in the PIF. The applicant also stated in his PIF that he was involved in anti-regime rallies in his PIF.

[18] The applicant submits that the Board only asked him to corroborate three areas, his time in Istanbul, identification of his uncle and business cards from his shop. The Board did not consider the applicant's explanations for why he did not have this evidence. The Board further failed to ask the applicant why there were not documents of his residency in Iran. The applicant also argues that

the Board erred in not allowing the applicant to present post-hearing corroborating evidence. The applicant submits that generally the types of evidence the Board required from the applicant were unreasonable.

Respondent's Written Submissions

[19] The respondent submits that the Board's credibility findings were reasonable. The applicant failed to provide credible testimony in support of his claim. The Board noted multiple specific examples of the applicant's inconsistent testimony, which the applicant was unable to explain in a satisfactory manner. This was particularly important given the short period of time in which the events occurred. The Board was in the best position to gauge the credibility of the applicant and draw the necessary inferences.

[20] The respondent further submits that the Board was also entitled to draw a negative inference from the lack of corroborating evidence. The applicant did not provide any corroboration for his assertions. The onus was on the applicant to establish his claim under subsection 100(4) of the Act and Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228. Given his problematic testimony, the Board was entitled to make an adverse credibility finding due to the complete absence of documentary corroboration.

Analysis and Decision

[21] **Issue 1**

What is the appropriate standard of review?

Assessments of credibility are essentially pure findings of fact and it was Parliament's express intention that administrative fact finding would command this high degree of deference (see *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at paragraph 46). This Court must not substitute its assessments for those of the Board unless the applicant can demonstrate that the findings of fact were made in a perverse or capricious manner without regard to the material before it (see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 (FCA) at paragraph 24).

[22] **Issue 2**

Did the Board err in its assessment of credibility?

The Board found that the applicant was inconsistent in his IMM5611 form, his PIF and his oral testimony before the Board.

[23] There is no doubt that inconsistencies and contradictions can be held against the applicant and can support a finding of a lack of credibility.

[24] I have reviewed the contents of the IMM5611 form, the PIF and the applicant's oral testimony before the Board. I am satisfied that the applicant provided explanations for most of the suggested inconsistencies.

[25] By way of example, the applicant has offered an explanation for the confusion between “published” and “printed”. The confusion with respect to these terms appears to have permeated different areas of the Board’s decision. As well, there was an explanation dealing with photographs. The applicant also explained what created the concern from Iranian authorities. He explained why in his IMM5611 form he only mentioned activities at the bookstore. These explanations were not satisfactorily addressed by the Board in the decision and I have no way of knowing what the Board’s conclusion with respect to credibility would have been had they been considered.

[26] The Board also found that the applicant was unable to provide any corroboration, by way of documentary evidence, of the events that happened to him in Iran. There were certain events for which it was impossible to obtain corroborating evidence according to the applicant’s testimony. In fact, the Board agreed that some of the information needed to corroborate the applicant’s evidence could not have been obtained. The Board stated at paragraph 24 of its reasons:

The Panel has noted that some of the above information could reasonably have been expected to have been obtained by the claimant, some not.

[27] The Board, however, did not state in the decision how many of the corroborating documents could not be obtained. Without this information, it is impossible to determine how the lack of corroborating documents negatively impacted applicant’s credibility. As well, I would note that some of the documents said to be needed for corroboration purposes were out of the country and out of the control of the applicant. With respect to this type of document, the Federal Court of Appeal in *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, 98 NR 312 stated:

Finally, how in reason can the failure to produce at a hearing in Canada documentation which someone else, in another country, had

given “some indication” would be forthcoming reflect adversely on the Applicant’s credibility? In my opinion, it cannot. My opinion would be the same as long as the documentation is outside Canada and the Applicant’s control.

[28] For the above reasons, I am of the view that the Board’s decision is unreasonable and must be set aside. The matter is to be referred to a different panel of the Board for redetermination.

[29] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[30] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different panel of the Board for redetermination.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions*Immigration and Refugee Protection Act, SC 2001, c 27*

72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

...

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

...

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3614-10

STYLE OF CAUSE: MEHDI SHIRIDOKHT TOURAJI
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 25, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: June 27, 2011

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