Federal Court  Cour fédérale

Date: 20111107

Docket: IMM-1260-11

Citation: 2011 FC 1263

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 7, 2011

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

BEHZAD KHALILZADEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is an Iranian citizen. He is challenging the lawfulness of a decision by the Immigration and Refugee Board, Refugee Protection Division (panel), rejecting his refugee claim on the ground that he is not credible and, objectively speaking, that he would not be subject to a personalized risk if he were to return to his country.

[2] Essentially the applicant fears persecution and fears for his life because he refused to disclose to the Iranian authorities the identity of a source possessing information on the circumstances of the death of Zahra Kazemi, the Iranian-Canadian journalist who died in July 2003 in a prison in his country. The applicant's involvement in the activities of the company GoldQuest International, a pyramid-type sales company, which were deemed illegal, was apparently the pretext used by the authorities for arresting him and for continuing to searching for him today. Furthermore, the applicant claims to be a "refugee sur place" because he participated in organized demonstrations in Montréal against the Iranian regime after the presidential elections in June 2009.

[3] In its reasoned decision, the panel found that the applicant is not a Convention refugee or a person in need of protection. Of course, the applicant does not agree with the panel's reasoning and findings. For example, how can it be explained that the panel disregarded or attached no weight to the statements by the applicant's brother and Mehdi Saberi (discussed later), which support the applicant's allegations of persecution and danger?

[4] With force and conviction, the applicant submits that, if it were not for the panel's errors of fact, the refugee claim would have succeeded. But this is not the test to be applied. Because the standard of review is reasonableness, the Court must limit its review to " . . . 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" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59).

[5] That being said, it is well established that the panel is assumed to have weighed and considered all of the evidence unless the contrary is shown (*Santos v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 706 at paragraph 25, among others), and, in this case, the applicant did not convince me that the panel's general finding is unreasonable.

[6] First, the panel did not believe that the applicant initially escaped Iran in 2006 like he alleged in his Personal Information Form (PIF). The panel's finding relies on the evidence in the record and does not appear unreasonable in this case. The applicant stated that he also sought refugee protection in Sweden in 2006 and returned to Iran in 2008. Considering the applicant's negative response at the hearing with respect to the official documents (supposedly left in Sweden), his lack of knowledge of his counsel's name in Sweden, and the absence of any request by his representative for time to obtain these documents, the applicant cannot now complain that there was a breach of natural justice. It was simply too late to submit in evidence before the panel an untranslated letter from an immigration appeal court in Stockholm dated February 28, 2008, which the applicant now says he received only after being informed of the panel's negative decision.

[7] Second, the panel did not accept the applicant's allegation that he was suspended from his part-time journalist job in July 2003 after making a report to the editorial office on the suspicious circumstances surrounding the death of Ms. Kazemi. It must be remembered that, according to his PIF, an unidentified source told him that Zahra Kazemi had not died of natural causes, but as a result of a blow to the head. However, the applicant purportedly refused to disclose the name of that

source to his superior, and after some time, intelligence officers apparently interrogated him and even threatened him if he failed to cooperate.

[8] The panel found this entire portion of his account implausible because, according to the evidence in the record, Ms. Kazemi's death was reported by the international media on July 11, 2003, and the Iranian vice president admitted publicly, on July 13, 2003, that she had died in prison. Therefore, the applicant could have obtained that information other than by way of a secret source: an inference grounded in the evidence in the record and which does not appear unreasonable given the applicant's other credibility problems.

[9] Third, the applicant stated that, in September 2003, agents raided the GoldQuest International sales office where he worked with his friend and associate, Mehdi Saberi. During his absence, the agents arrested his friend. Seeing a direct link to the problems at his newspaper, the applicant therefore left Tehran to live in hiding in Karaj, and then Tabriz, where he carried out odd jobs. We saw earlier that the panel did not believe that the applicant left Iran in 2006 and returned in 2008. Regardless, given that Mr. Saberi was released only in March 2010, more than six years later, the applicant now fears persecution and cruel and unusual treatment if he were to return to Iran.

[10] In this case, it was reasonable for the panel to find that the applicant's past involvement in the GoldQuest activities, objectively speaking, was not a valid reason to fear persecution or to fear for his life. According to the applicant's PIF and his testimony before the panel, he was no longer an active member of the company when the GoldQuest activities were declared illegal and when its

offices were closed in Tehran in September 2005. The applicant stated in his PIF and in his testimony before the panel that he stopped working for GoldQuest in September 2003, but continued to pay membership fees in the hopes of recovering the $25,000 the company owed him in commissions. What is more, it was reasonable for the panel to find that there was no tangible evidence that the Iranian authorities were looking for the applicant (the activities had taken place several years earlier), and that, even if this were the case, no evidence was put forward regarding the nature of the penalties that the applicant would face today.

[11] At the risk of repeating myself, the applicant is submitting his own interpretation of the facts and asking this Court to take the place of the panel to determine that the GoldQuest office raid in September 2003 was only a pretext and that the real reason was the Kazemi matter. In my opinion, however, it was not unreasonable to consider that the applicant had not met his burden of proof, given all of the circumstances, especially if we accept his version of the facts, that he returned to Iran in August 2008 without being arrested and that more than seven years has passed since he was no longer an active member of GoldQuest.

[12] Fourth, the applicant is challenging the lawfulness of the panel's finding that he is not a "refugee sur place". This does not seem unreasonable to me even if the applicant participated in demonstrations against the Iranian regime in Montréal. The fact that nothing demonstrates that he was photographed or otherwise identified at these demonstrations, in which hundreds of demonstrators participated, seems to be a relevant factor, even if not necessarily determinative. It depends upon the circumstances of each particular case, which must, in fact, be assessed in light of the documentary evidence as a whole (*Zaree v. Canada (Minister of Citizenship and Immigration)*,

2011 FC 889 at paragraph 14). Be that as it may, the applicant's scanty allegations in his PIF and in his answers at the hearing did not leave the panel with a lot of choice regarding analysis and may explain here the somewhat summary nature of the reasons for the rejection in that respect.

[13] In conclusion, the panel's general finding that the applicant did not meet the burden of demonstrating that he could be persecuted or subject to a personalized risk if he were to return to Iran appears reasonable in all respects and must not be reviewed by the Court.

[14] For these reasons, the application for judicial review must fail. No question of general importance was presented by counsel to the Court.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review be dismissed. No question for certification arises.

"Luc Martineau"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1260-11
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PLACE OF HEARING:	Montréal, Quebec
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