

Federal Court



Cour fédérale

Date: 20121129

Docket: IMM-8230-11

Citation: 2012 FC 1400

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 29, 2012

Present: The Honourable Mr. Justice Lemieux

BETWEEN:

**MOHAMMAD ZAREE ROBAT TORKI
REZA ZAREE ROBAT TORKI**

Applicants

And

**THE MINISTER OF CITIEZNSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicants, 44-year-old Mohammad Zaree Robat Torki and 31-year-old Reza, are brothers and citizens of Iran. They are seeking to have set aside a decision rendered in English on October 21, 2011, by the Refugee Protection Division (the panel), finding that they were neither Convention refugees within the meaning of section 96 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 (IRPA), nor persons in need of protection within the meaning of section 97 of that statute.

[2] The panel found that their claims were not credible. It did not believe that they had been persecuted by the Iranian authorities because of their political opinions, being opponents of the ruling regime, or, in Mohammad's case, because of his conversion to Christianity in 2004, and additionally the fact that the police were suspicious of him as a result of his friendship with Albert, a Christian.

[3] According to their Personal Information Forms (PIFs), they are targeted by the Iranian authorities because they (1) participated in demonstrations against the ruling regime following the June 2009 elections; (2) were arrested during a demonstration in July 2009; (3) were detained for a month; (4) were abused during their period of incarceration; and (5) were released, on the condition that they would never again participate in demonstrations against the regime, after their father had paid a bribe.

[4] After their release, the two brothers allegedly fled the capital to live in a distant village before leaving Iran illegally on December 11, 2009. They arrived in Canada on January 13, 2010, and made a claim for refugee protection on January 18, 2010. They joined their brother Ali who had fled Iran in 2007 to seek refuge in Canada.

[5] On July 11, 2011, the three brothers participated in a demonstration against the Iranian regime in front of a Montréal hotel where members of the Iranian Embassy in Ottawa were

staying. The issue is whether this act of defiance makes the claimants refugees sur place, or, in other words, whether as a result of this there is a serious possibility that they will be persecuted upon their return to Iran.

II. The impugned decision

[6] At paragraph 35 of its decision, the panel explained why it had concluded that the applicants were neither Convention refugees nor persons in need of protection.

[35] Because of the credibility issues mentioned above, the panel concludes that the claimants are not “Convention Refugees”. Moreover, the claimants did not present sufficient evidence to lead the panel to believe that, were they return to Iran, it would be more likely than not that they would be subject to a danger of torture or to a risk to their lives or to a risk of cruel and unusual treatment or punishment and the panel finds that they are not persons in need of protection. [Emphasis added.]

[7] The panel reached this conclusion after reviewing each of the facts contributing to their fear of persecution, namely, (1) their status as refugees sur place; (2) their status as failed refugees; (3) their participation in the anti-regime demonstrations in the summer of 2009; and (4) the risk alleged by Mohammad as a convert. The refugee protection claimants also raised two issues related to procedural fairness: (5) a reasonable apprehension of bias and (6) translation errors. I will address each of these separately.

(1) Refugees sur place

[8] In paragraph 20 of its reasons, the panel wrote the following:

The panel concludes that the presence of the claimants at one demonstration in Montreal would not put them at risk should they return to Iran and the panel does not consider the claimants to be

refugees sur place by virtue of their presence at this one demonstration. [Emphasis added.]

[9] This is based on the following findings:

1. A contradiction in Mohammad's testimony regarding why the applicants had not participated in other anti-regime demonstrations in Montréal: a first response relating to their relative lack of contact with the Iranian community in Montréal, and a subsequent response indicating that he was aware of the difficulties experienced by Iranians returning to Iran. The panel wrote that, according to Mohammad's testimony, this knowledge was gained during gatherings with his fellow citizens to discuss literature and culture and exchange points of view. Mohammad also told the panel that he was not seriously politically engaged, a statement that the panel found to contradict his testimony that he had participated in six or seven demonstrations in the capital before fleeing his native country. The panel held that his credibility was negatively affected.
2. The applicants filed a letter received from their father (Exhibit P-5) in which he states that the Iranian authorities are aware of their activities in Canada and that he was interrogated on this subject and summoned before the Revolutionary Court because he was responsible for his sons' actions. The panel held that "[t]he claimant's [Reza's] credibility as to the harm his father is experiencing in Iran was adversely affected as a result of his statement his father would not be bothered by the authorities because of his age". The panel had asked him why he had participated in a demonstration if he truly feared for his father's life; Reza had replied that his father was old and retired and that most likely the authorities

“would leave him alone”. The panel held that this answer contradicted what the two brothers had written in their PIFs.

3. The panel raised another problem with the father’s letter. The panel had asked why the father had not sent his sons a copy of the summons. Reza replied that the summons was at his father’s house; Mohammad replied that the summons was not official because the Court’s address had simply been written on a scrap of paper. After reviewing the documentary evidence, the panel found that the credibility of their allegations “of repercussions in Iran of their activities was negatively affected as a result”.
4. According to the panel, the documentary evidence (1) “shows that relatives in Iran are targeted if refugees continue their activities outside of Iran and that Iranian intelligence and security forces target families of activists as a means to force them to cease their activities”. The panel found that, in this case, the two brothers did not fit this profile because they had not been politically active in Canada; and (2) according to an Iranian official (Mr. Javdan), a citizen “who had taken non-violent action abroad e.g. participated in demonstrations against the Iranian government would not be punished when returning to Iran. The significance of such persons to the security of the Iranian state was so insignificant that resources would not be used to prosecute them.”
5. Regarding the claim that their situation in Iran was precarious because the Iranian authorities were aware of the activities of their brother Ali. The panel noted that Ali had left Iran in 2007 and that none of their PIFs, their testimony before the panel or the letter from their father referred to any problems from May 2007 “until

the time that the claimants were allegedly arrested for demonstrating in July 2009". The panel found as follows:

The panel does not accept therefore that the problems of their brother Ali would have created additional problems for them in the post 2009 period, since it does not appear that the brothers had any problems because of Ali in that two year period immediately following Ali's flight to Canada, at a period of time when the authorities would be most interested in him. [Emphasis added.]

6. The panel also reached the following conclusion:

Had the brothers feared for their father's safety in Iran, and had they truly believed that their activities in Canada would get back to Iran and risk causing harm to the father, the panel finds that it would have been unlikely then for them to have engaged in any demonstration whatsoever in Canada. On the other hand, the claimants participated in only one demonstration in the one and half years that they have been in Canada. The panel finds that the claimants' photos of them at a demonstration are, on a balance of probabilities, an attempt to bolster their refugee claim and does not believe that their presence at this one demonstration would have drawn the attention of the Iranian authorities. [Emphasis added.]

(2) Participation in the demonstrations in Iran

[10] The second issue dealt with by the panel was whether there was a serious risk that the applicants would be persecuted in Iran for having demonstrated against the regime in the summer of 2009 and then having been arrested and detained.

[11] The panel made the following finding with respect to that issue:

Because of the inconsistent testimony the panel did not find it credible that the claimants, who had no previous political involvement, would have taken part in the demonstration or that they had been arrested and imprisoned as a result. [Emphasis added.]

[12] The panel based this finding on the following observations:

1. The claimants did not report being politically active in Iran in the years preceding the elections and their alleged political involvement in Iran consisted only of taking part in the demonstrations in the summer of 2009. They had experienced no problems in the previous two years in Iran and this was confirmed by the younger brother at the hearing.
2. Contradictions were noted in the testimony of the two brothers:
 - (1) Reza could not remember the dates of the six or seven demonstrations in which he had participated with family members;
 - and (2) their testimony contained contradictions regarding the demonstration during which they were arrested: what had happened during the demonstration; who had arrested them, the police or officers in civilian clothing; at what moment the two brothers were obliged to promise to the authorities that they would never again participate in anti-regime demonstrations before being released or transferred from one prison to another. Reza testified that the authorities had forced him to sign a document stating that he did not believe in God, while Mohammad said that he had not been required to sign such a document.
- (3) Mohammad: a Christian or not

[13] The panel reached the following conclusion on this issue:

The panel also did not find the elder brother's testimony he was a practising Christian to be credible.

[14] The panel based this conclusion on the following evidence: (1) the inconsistency of "why Mohammad had not been asked to sign a document similar to the one his brother alleges to have signed if in fact he had been the one suspected of being a Christian; (2) the claimant says he has been attending the Persian Evangelical Church since arriving but when asked when was the last time he had gone to services there, he stated that he had last been in August [the date of the hearing was September 30]. He stated he does not go every week as he does not have time but also said he had not been working and that it was only recently that he had found a temporary job; (3) he demonstrated some basic knowledge of Christianity when questioned about it; (4) he was asked what the word Evangelical in the name of his church meant but he was unable to explain this movement; (5) he testified that his friend Albert, who is not a cleric, in Iran had baptized him because it was too dangerous to have a Protestant Minister perform a proper baptism. The tribunal asked him, if in Montréal, he asked the Minister of his church to perform a proper baptism. He answered he did not feel a second baptism was necessary. The tribunal found there was an incongruity between his PIF statement that his baptism in Iran was not a proper ceremony and the fact he failed to undergo another baptism by a proper Minister in Canada".

[15] The panel found the following:

Given the claimant's lack of any desire to have a proper baptismal ceremony by a recognized Protestant Minister, given his own statement that he is not a regular church goer and does not have the time to attend regular services, given the difficulty the claimant had in explaining the word Evangelical, which in the name of the very church he attends, the panel draws a negative conclusion as to his conversion to Christianity. The claimant's failure to practice his religion regularly and to fully participate in organized religion in

Canada, leads the panel to conclude that whatever Christian beliefs he may have would not put him in danger in Iran. The panel is not persuaded, on a balance of probabilities, that the claimant has undergone a genuine conversion to Christianity or that he would practice Christianity in Iran such as to draw attention to himself in Iran as a Christian. For this reason the panel does not believe he would be persecuted in Iran because of his religion. [Emphasis added.]

[16] The panel added a further consideration after its analysis, namely, whether upon his return to Iran, Mohammad would be perceived as an apostate. It held that he would not for the following reasons: (1) he “has not established any credible evidence that the authorities were aware of this Christian beliefs; (2) he would openly practice in Iran; (3) that he would present himself as a Christian to the authorities or (4) that he would come to their attention because of any proselytising”.

(4) Failed refugees

[17] The documentary evidence indicates that failed refugees “are subject to sanctions by the Iranian government when they return to Iran for making up accounts of alleged persecution.” Relying on a 2005 document from Border Services Canada, the panel found that “the claimants would not face a risk because of their failed refugee claims because the Iranian government would not be informed of this fact by the Canadian authorities.”

V. The arguments

(a) The applicants’ arguments

[18] The applicants allege first that the panel’s finding that the applicants are not refugees sur place is unreasonable for the following reasons: (1) it is based on information provided by a

representative of the Iranian government regarding the treatment in Iran of persons who have participated in demonstrations abroad—the Iranian government would never admit that protestors living abroad are persecuted upon their return to Iran; (3) the panel failed to take into consideration recent documentary evidence clearly indicating that individuals who have participated in demonstrations abroad against the Iranian government since the June 2009 elections are targeted and face a risk of persecution in Iran. The document on which the panel relied is dated April 2005; (4) relying on Justice Shore’s decision in *Win v Canada (Minister of Citizenship and Immigration)*, 2008 FC 398, it was unreasonable for the panel to find that news of the public demonstration would not reach the Iranian authorities; (5) the panel failed to address an aspect of Reza’s testimony—his Internet activity. The applicants cite the decision of Justice Martineau in *Zaree v Canada (Minister of Citizenship and Immigration)*, 2011 FC 889 [*Zaree*], relating to their brother Ali.

[19] Second, the applicants contest the panel’s finding that they do not face a risk of persecution upon their return to Iran as failed refugees because the Canadian authorities will not provide this information to the Iranian authorities. The applicants submit that the panel erred because (1) it failed to consider the documentary evidence to the effect that even if the Canadian authorities do not provide this information to the Iranian authorities, the latter can easily deduce, conclude or be informed that a national has made a claim for refugee protection; and (2) the documentary evidence relating to the political opinions attributed to Iranians who have filed a claim for refugee protection abroad. The documents in question were brought to the panel’s attention.

[20] Third, the panel's doubts regarding the sincerity of Mohammad's conversion are unreasonable because (1) he had indicated during the hearing that in the Christian religion one is baptised only once and that he had discussed this in Montréal with the Minister of his church; (2) the panel recognized in its decision that Mohammad had basic knowledge of the Christian religion. He answered all of the panel's questions except the one about the meaning of the term "evangelical", and the term "evangelical" had not been translated for the applicant into Farsi.

[21] Moreover, the panel's finding that "the claimant has not established any credible evidence that the authorities are aware of his Christian beliefs" is unreasonable for the following reasons:

1. First, this finding is contradictory and incoherent. The panel drew a negative inference from the fact that Mohammad was not obliged by the Iranian authorities to sign the same document as his brother Reza, but the panel also stated that it did not believe that Reza had signed such a document (paragraph 26 of the decision).
2. Second, the panel drew a negative inference from the fact that Mohammad was not obliged like his brother to sign a document stating that he did not believe in God. The panel wrote: "why Mohammad had not been asked to sign a document similar to the one his brother alleges to have signed if in fact he had been the one suspected of being Christian" (paragraph 26). Christians believe in God. If we follow the panel's logic, why would the Iranian authorities have made Mohammad sign such a declaration? The panel's inference is illogical and arbitrary. Furthermore, the applicant never claimed that the authorities were aware of his beliefs, merely that they had their suspicions.

[22] Fourth, the applicant never claimed

- (a) that he would openly practise his religion in Iran;
- (b) that he would present himself as a Christian to the authorities; or
- (c) that he would encourage people to convert.

[23] Given the situation in Iran, very few people do such things. The applicant cites the decisions in *Sadeghi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1236 [*Sadeghi*] and *A.B. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 325 [*A.B.*]. According to the applicant, the panel failed to deal with the issue of whether Mohammad could be subject to persecution if the state authorities were to learn that he had rejected Islam.

[24] Fifth, the applicants submit that the panel made erroneous findings of fact in a perverse and capricious manner, without regard for the material before it. Counsel for the applicants provided several examples.

[25] Sixth, the applicants point to several translation errors.

[26] Seventh, the panel erred in its finding that the applicants had not mentioned having experienced problems during the period from May 2007 to July 2009. Mohammad's PIF indicated that the applicants had been questioned about Ali in June 2007. They add that the panel misunderstood their argument. What their counsel had raised at the hearing was the issue of political opinions that could be attributed to the applicants because of their brother's involvement

in political activities. They add that their brother Ali was with them during the demonstration in Montréal.

(b) The respondent's arguments

[27] The respondent's memorandum addressed the following issues raised by the applicants:

- (a) Did the RPD commit a reviewable error in finding that the applicants were not refugees sur place?
- (b) Did the RPD commit a reviewable error in finding that the applicants were not failed refugees?
- (c) Did the RPD commit a reviewable error in finding that the applicant Mohammad did not face a risk on account of his conversion to Christianity?

[28] On the first issue as to whether the applicants are refugees sur place, the respondent submits that in order to be recognized as a "refugee sur place", an applicant must establish a serious possibility of persecution based on credible evidence. He must establish all the components of the definition of a Convention refugee, including the subjective and objective aspects of the alleged fear and the existence of a fear of "persecution" based on events that, in this case, allegedly occurred after the applicant arrived in Canada, and is of the view that the applicants did not file any credible evidence establishing that the Iranian authorities would be interested in them merely for having participated in a demonstration in Montréal.

[29] According to the respondent,

1. the panel specifically took into account their testimony about the purpose of these photos and how they obtained copies of them;

2. the panel noted that the documentary evidence in the file indicated that the Iranian authorities would not arrest a citizen who demonstrated in his personal capacity in a demonstration in Canada against the ruling regime and that this same evidence confirmed that the applicants' profile would in no way attract the attention of the authorities;
3. the documentary evidence on which the panel relied came from the Danish Immigration Report, an independent and reliable source. Mr. Javdan was not the only source from the Danish Immigration Report. This document cites the "Organization for defending victims of violence's international department", which mentions that "insofar as the demonstration was organized by one of the big opposition groups and the asylum seekers had participated in the actual organization that person could risk legal persecution when returning to Iran".
There is no evidence in the file that the applicants helped organize the demonstration in Montréal;
4. the respondent cites the decision *Khosravi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1192, which rejected the arguments submitted by an Iranian citizen on this point; and
5. the respondent submits that the panel did not fail to consider the recent documentary evidence produced since the 2009 elections and, in accordance with Justice Martineau's decision in *Zaree*, above, the panel considered the current situation in Iran and weighed the applicants' testimony in light of the recent documentary evidence in the file.

[30] With respect to the second issue of whether failed refugees face a risk of persecution upon returning to Iran:

1. The respondent notes that the applicants criticize the panel for having considered a 2005 document from the Canadian authorities indicating that [TRANSLATION] “at no time would the Canadian authorities inform the Iranian authorities that a person had filed a claim for refugee protection in Canada”;
2. To the applicants’ criticism that the panel should have mentioned other paragraphs from the document (Response to Information Request), the respondent replies that the applicants do not fit the “student activist” profile, nor are they Kurds.
3. Furthermore, according to the respondent, the passage referred to by the applicants indicates that any Iranian citizen returning to his or her country may be subjected to questioning, not just failed refugees.

[31] On the issue of Mohammad’s conversion to Christianity, the respondent argues that:

1. The panel clearly stated that the applicants’ testimony on this point was contradictory and lacked credibility;
2. Mohammad was incapable of defining or explaining “what the word Evangelical in the name of the Church meant”;
3. The panel noted that Mohammad had never been formally baptised, despite the fact that he faced no danger in Canada;

4. That it was reasonable for the tribunal to find it unlikely that a person who allegedly took such a great risk in his own country to try to change his faith would not, once out of danger, attempt to be baptized formally;
5. That it was clearly implausible that Mohammad was not required to sign a document indicating that he was not a Christian given his claim that the authorities suspected his conversion to Christianity; and
6. In accordance with the decisions of the Federal Court in *Sadeghi* and *A.B.*, the panel analyzed the applicants' allegations and noted that, on account of the large number of implausibilities in this part of the evidence, it did not believe that Mohammad had been a practising Christian in either Iran or Canada or that he faced a risk of being brought to the attention of the Iranian authorities because of this supposed conversion.

[32] With respect to the applicants' claim that there were translation errors that had a direct impact on the panel's findings regarding their 2009 detention, the respondent states that despite one or even several interpretation errors, these were not determinative of the panel's ultimate conclusion as to the applicants' credibility, citing the decision in *Fu v Canada (Minister of Citizenship and Immigration)*, 2001 FC 155.

V. Analysis and conclusions

(a) Standard of review

[33] The applicants are essentially challenging the panel's decision on the basis of its treatment of the evidence in the file and the way it reached its findings relating to credibility. The

issues raised are questions of fact. The Supreme Court of Canada, in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, that the standard of review for such issues is reasonableness. At paragraph 47 of its judgment, the Supreme Court explained this standard as follows:

47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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.

(b) Conclusions

[34] For the following reasons, I find that this application for judicial review must be allowed:

1. On the issue of whether the applicants were refugees sur place or had reason to fear persecution as failed refugees, the panel based its findings on the evidence from 2005 and not that from 2009, which clearly demonstrated that the repression of demonstrators following the disputed 2009 elections (see the Tribunal Record, Amnesty International Report, pages 38 and 100; UNHCR Report, page 168; Radio Free Europe – Special Court to be established for Iranians abroad, page 172; The Australian – Court targets Iranian experts, page 178; Australian Refugee Tribunal, page 180, Asylum seekers Iran, page 176, and, finally, the Swiss Organization’s report on the treatment of failed refugee protection claimants).

2. Although it is well established that the Court must show considerable deference to an administrative tribunal's assessment of credibility, it must intervene if the tribunal has made its credibility findings in a perverse or capricious manner. I believe this to be the case, for example, with respect to the basis of the finding that the applicants had not participated in demonstrations in Iran.
3. The panel failed to consider Reza's evidence of his Internet activities (see Justice Martineau's decision in *Zaree*, above, at paragraph 14).
4. The court also failed to consider the fact that Mohammad had discussed whether he should be baptized with the leader of his Church.
5. The translation errors could have influenced the panel's findings (for example, the word "Evangelical" was not translated) (see also *Zaree*, above).

[35] The errors identified above are sufficient to justify the intervention of this Court.

JUDGMENT

THIS COURT'S JUDGMENT IS that this application for judicial review is allowed, the panel's decision is set aside and the applicants' claim for refugee protection must be reconsidered by a differently constituted panel. No question of general importance was proposed.

“François Lemieux”

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8230-11

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REZA ZAREE ROBAT TORKI v THE MINISTER
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PLACE OF HEARING: Montréal, Quebec

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