Federal Court  Cour fédérale

Date: 20141121

Docket: IMM-1130-14

Citation: 2014 FC 1112

Ottawa, Ontario, November 21, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

MARYAM MASOUMALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a December 31, 2013 decision by a Senior Immigration Officer [the Officer] rejecting the Applicant's Pre-Removal Risk Assessment [PRRA] application. The Applicant is seeking to have the decision quashed and referred back to a different officer for reconsideration.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The Applicant was born on September 1, 1956 in Rasht, Iran. She is married to Mohammad Ebrahim Javadi and has three children. She lived in Rasht until approximately 1983 and then lived in Tehran until they travelled to Canada on March 17, 2005. She entered Canada as a permanent resident in the entrepreneur class as an accompanying dependent of her husband, along with their children.

[4] The Applicant states that she is not a religious person and that she was alarmed by the limitations placed on women in Iran after the Iranian Revolution in 1979. She says that she was harassed by the religious police, including an incident where someone reported her and some friends to the authorities for having a small house party on the anniversary of Ayatollah Khomeini's death.

[5] After coming to Canada, the Applicant travelled back to Iran several times, from September 2006 to March 2007, September 2007 to March 2008 and August 2009 to March 2010.

[6] The Applicant stated that she began participating in demonstrations against the Iranian national elections in 2009, starting with demonstrations in Canada in June 2009. During her last visit to Iran in 2009-2010, the Applicant participated in about five demonstrations against the elections. Her husband also participated in some of these demonstrations. One occurred on

November 4, 2009 in Rasht. The Applicant has filed an undated notarized statement of her long-time friend, Maryam Zadeh, stating that she attended the Rasht demonstration with Ms. Tavana, Ms. Ahmadipour, and the Applicant, and that she and Ms. Ahmadipour were arrested a few days later. Ms. Zadeh was held in jail for about one month and during the lengthy interrogations gave full particulars of the Applicant having accompanied her to the authorities.

[7] On February 11, 2010, the Applicant attended another demonstration, this time in Tehran, with Maryam Hassanpour Nehzami and some of Ms. Nehzami's friends.

[8] On February 14, 2010, the Applicant received a written notice from the police forces requesting that she present herself at the Public Prosecutor's Office in Tehran within three days of the date of the notice [the Police Notice]. The reason to attend on the notice is blank.

[9] The Applicant states that she was afraid and decided not to comply with the Police Notice. Rather she remained in Iran for a full two weeks after the deadline in the Police notice. She was not visited or contacted by the police or any other security force during that time. Although apparently not aware of the arrest of her other friends, her husband encouraged her to leave as she was scheduled to return to Canada in early March 2010. She was permitted to leave the country without difficulty, as was her husband, who left five days after her departure without hindrance.

[10] When her husband returned to Canada in March 2010, he told her of the arrest and detention of Ms. Zadeh in Rasht and arrest of Ms. Nehzami in Tehran. The Applicant testified

that she was unaware of that Ms. Zadeh and Ms. Nehzami had both been arrested until informed by her husband and that that he chose not to tell her before for fear that she would get involved. She declared that in Iran people do not generally talk about arrests - it is often the case that only close family knows that someone has been arrested, questioned, or detained. Her husband advised her to never return to Iran, given what had happened to her friends and that the authorities had also been looking for her.

[11] Evidence was later introduced in the form of an email dated September 7, 2011 from the Applicant's brother-in-law, Mr. EsHagh Djavadi, who her husband had asked to help. Mr. Djavadi indicated that he spoke to Ms. Zadeh and that she had reported that she was subjected to torture, physical abuse and sexual abuse while in jail for one month. In addition, Ms. Zadeh told Mr. Djavadi that the other women who protested with her (Ms. Tavana and Ms. Ahmadipour) were also arrested and had not been fully released. Mr. Djavadi indicated that Ms. Zadeh had obtained this information regarding the jailed women from their families.

[12] On March 3, 2010, while the Applicant was in Tehran, Citizenship and Immigration Canada [CIC] issued a section 44 report (report of non-conformity of the IRPA) for the Applicant, her husband, and their children on the grounds that the conditions imposed at the time of landing had not been met.

[13] On June 25, 2010, a removal order was made against the Applicant and all members of her family. They appealed the order to the Immigration Appeal Division [IAD] of the

Immigration and Refugee Board [IRB]. On October 19, 2010, the Applicant's husband withdrew his appeal and left Canada voluntarily on November 7, 2010.

[14] On December 23, 2010, the IAD allowed the childrens' appeal, concluding that there was sufficient evidence of humanitarian and compassionate considerations to warrant equitable relief in their case (*IRPA*, s 67(1)(c)). However, the IAD refused the Applicant's appeal.

[15] In her appeal, the Applicant requested to be exempted from the permanent residence requirements on humanitarian and compassionate grounds. On the issue of hardship upon return to Iran, the Applicant contended that after living abroad, she could no longer accept the discrimination against women and would not be able to conform to the "conservative values and rules imposed on women in Iran". The IAD rejected this argument, concluding that the objective evidence does not support the finding that all Iranian women suffer oppression or discrimination.

[16] With respect to risk on return, the IAD panel indicated that although the Applicant stated that her brother was in prison for four years for anti-regime activities, no details of the circumstances, actual activities or charges were provided such that the IAD could draw conclusions about whether the Applicant would be subject to any risk on this account. There is no reference in the decision to the Applicant participating in the anti-regime demonstrations in Iran, the arrest and detention of Ms. Zadeh, or disobeying the Police Notice to attend at the prosecutor's office in the IAD's decision. There is also no reference to the risk arising from the Applicant participating in anti-regime demonstrations in Canada, which she says continued after returning to Canada.

[17] The IAD pointed out that the Applicant and her family did not come to the country as refugees or as persons in need of protection and would suffer no hardship on return. It noted that her husband had returned to Iran, where he has active business interests and that this was not the profile of a family in desperate circumstances under a repressive regime. The IAD noted that while she had become active in the community, the Applicant had not established a business or career that would be lost if she were removed (unlike her children) and that her adjustment to life in Iran would be more natural because her husband and family were there and she had already lived most of her life within the restrictions of Iranian society.

[18] Subsequent to the IAD decision, it is alleged that a further Notice to Appear, dated March 16, 2011, was delivered to her husband's home in Tehran directing the Applicant to attend before the General Penal Court of Tehran "for certain explanations" The husband provided her with a copy of the Notice. She also learned at this time from Mr. Djavadi that two of the women she protested with in November 2009 were still in jail. She states that this information was confirmed by Mr. Djavadi's email and that, having read the email, she has no doubt about its truthfulness.

[19] The Applicant submitted a PRRA application on August 26, 2011.

[20] The Applicant has no plans to voluntarily return to Iran in the future, despite the fact that her husband now resides there. The Applicant alleges that she does not feel safe or secure in Iran. She says that life is difficult there for women because it is very repressive and that she is concerned because she can no longer "conform to the strict requirements of the Iranian regime in terms of [behaviour] of women".

[21] The Applicant has never previously applied for refugee protection.

III. Impugned Decision

[22] In terms of the scope of the PRRA, the Officer noted that because the Applicant has never applied for refugee protection and therefore there had been no IRB hearing, the PRRA would be based on all of the evidence presented by the Applicant and all current and publicly available information regarding country conditions and human rights in Iran.

A. *Political Opposition*

[23] The Officer considered the affidavits of Ms. Zadeh and Ms. Nehzami regarding the Rasht and Tehran demonstrations and their subsequent dealings with the Iranian authorities. These were considered to have some probative value in the PRRA. However, he pointed out inconsistencies in Ms. Zadeh's affidavit. For instance, the affidavit did not mention the arrest of Ms. Tavana due to participating in the protests, which was referred to in the Applicant's declaration and in Mr. Djavadi's email where he states that Ms. Tavana was arrested and continued to be detained in prison when he spoke to Ms. Zadeh.

[24] The Officer did not give evidentiary weight to Mr. Djavadi's email that referred to information from Ms. Zadeh about being tortured, which was not in her affidavit, or to the information about Ms. Ahmadipour and Ms. Tavana obtained from their families because of its hearsay nature and not being corroborated by affidavits. The Officer also noted that there were some inconsistencies between the Police Notice and the Notice to Appear. The Officer found that

there was a "question of provenance" of the second notice concerning its details of delivery and receipt.

[25] The Officer found that the Applicant had not demonstrated that she was charged or convicted of any crime, or that she was wanted for arrest. The Officer pointed out that there was no evidence that the Applicant was wanted for arrest, that she was able to stay in Iran for two weeks beyond the deadline in the Police Notice without difficulty, and that both she and her husband were able to leave Iran, departing from the airport unhindered in 2010.

B. *Risk due to Family Opposition*

[26] The Officer did not dispute the Applicant's allegations that her brother was tortured in prison in 1982, but found that she had not established her claim that her brother's sentence had negatively affected her family. The Officer found that the Applicant had not provided information that was consistent with the documentary evidence regarding the treatment of family members of political opponents in Iran. The Officer considered the fact that, to the contrary, the Applicant had been able to obtain an Iranian passport and exit visas, to travel to Europe and the United States, and to immigrate to Canada. This issue was not pursued before the Court.

C. *Risk as a Woman*

[27] The Officer considered the Applicant's allegations regarding the treatment of women in Iran and confirmed that the documentary evidence showed that women there face widespread discrimination. However, the Officer concluded that this did not amount to persecution. Firstly,

the Applicant did not fall into the category of "women who campaigned for their rights…political activists, journalists or bloggers" that faced "pressures, intimidation and sometimes prosecution and imprisonment" according to the documentary evidence. Further, the Applicant had lived most of her life within the discriminatory conditions in Iran without any demonstrated persecution or risk to her life. The Officer found that she had not provided any information or documentation, personalized or otherwise, that would establish that she was a Convention refugee or a person in need of protection under sections 96 and 97 of the *IRPA* on the basis of her gender.

D. *Situation in Iran*

[28] The Applicant alleged that the international political situation and deteriorating conditions in Iran constituted a risk to the Applicant's life. The Officer found that the Applicant's supporting evidence, while indicative of Iran's poor human rights record, did not establish a risk of persecution or personalized risk to the Applicant. He noted that the situation was improving with the improvement of international relations and the election of the new president which were factors in the country conditions in Iran.

IV. Issues

[29] The Applicant submits that the following issues arise in this application:

1. Did the Officer err in law because he failed to consider the Applicant's profile cumulatively?

2. Did the Officer err in law because he failed to consider the Applicant's risk due to her participation in demonstrations?

3. Did the Officer err in law because he failed to properly consider the Applicant's risk due to her being a woman who refused to conform?

4. Did the Officer make unreasonable findings in relation to the evidence?

[30] The Respondent submits that the following issues arise in this application:

1. Is the Officer's decision reasonable?

2. Did the Officer's failure to assess the cumulative impact of the discrimination alleged amount to an error of law?

[31] I would rephrase these submissions as a single issue:

1. Did the Officer err by failing to sufficiently consider and apply the Applicant's evidence?

V. Standard of Review

[32] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] held that a standard of review analysis does not need to be conducted in every case. Where the standard of review for a particular question has been well-settled by past jurisprudence, a reviewing court may adopt that standard of review without further analysis.

[33] Questions of fact and discretion are reviewable on the standard for reasonableness (*Dunsmuir* at paras 51 and 53). This means that reasonableness is the appropriate standard of review for determining whether the Officer erred by failing to sufficiently consider all of the Applicant's evidence in the PRRA decision (*Rana v Canada (Minister of Citizenship and Immigration)*, 2010 FC 36, 87 Imm LR (3d) 291).

VI. Analysis

A. *Political Opposition in Iran*

[34] In her further memorandum, the Applicant submitted that she would be at great risk by being associated with her brother who was active against the current regime and was imprisoned for his political views in 1982. This argument was not pursued during the hearing.

[35] The Applicant also challenged the reasons of the Officer because she received information that her friend Ms. Zadeh was tortured, sexually assaulted and abused during her one-month detention and that two of the other women who were arrested in November 2009 were still in jail.

[36] The Officer discounted this evidence because it was based on an email from her brother-in-law recounting discussions he had with Ms. Zadeh, which is obviously hearsay of a second-degree. Moreover, the information on the friends who remained in jail was obtained by Ms. Zadeh from that woman's family, which is hearsay of a third-degree. None of this information

was contained in Ms. Zadeh's affidavit which was limited to being questioned and detained in prison for one month.

[37] The Officer cannot be criticized for dismissing evidence of a second and third degree of hearsay which does not accord with the sworn notarized statement of Ms. Zadeh. Moreover, the inconsistencies in the alleged statements of Ms. Zadeh with Mr. Djavadi's email raise questions about her affidavit.

[38] At best, the totality of the evidence relied upon to show the Applicant's risk of serious harm was contained in the affidavit of Ms. Zadeh to the effect that she had been imprisoned and questioned in 2009 in Rasht for a month, after she was apparently arrested at random from the millions of persons who participated in these demonstrations against the 2009 elections. This evidence does not meet the threshold of sufficient gravity for persecution or being in need of protection.

[39] The Officer further pointed out inconsistencies in the affidavit of Ms. Zadeh, in naming the participants with her, as well as the fact that she did not seem to be overly affected from her arrest by declaring under oath that she was in sound and complete physical and psychological health.

[40] At the hearing, the Applicant's counsel argued that the Officer committed a reviewable error by citing passages regarding practices for issuing summons by courts in Iran suggesting that the Officer found that the proper procedures had not been followed. In my view, counsel

misapprehends the reasons of the Officer. The Officer's difficulty was with the lack of information regarding the provenance of the Notice to Appear for its lack of details, such as whether the husband signed the notice or was questioned about his wife's whereabouts or any other information relating to the Notice.

[41] In effect, the Officer was underscoring the fact that the main corroborating witness to nearly all of the events related in the Applicant's affidavit was her husband who was assisting her and that this evidence was all hearsay. The failure to provide details of these events, preferably by an affidavit from the principal corroborating witness, who chose not to contest his removal, is a valid factor to diminish the reliability of the evidence for its lack of specificity. It was reasonable for the Officer to be critical of the absence of information regarding receipt of the key document being relied on by the Applicant to establish that she was wanted by the Iranian authorities. I find no reviewable issue regarding this evidence and find that the Applicant's criticism is not of sufficient significance to undermine the reasonableness of the decision.

[42] I am otherwise satisfied that the conclusion that the Applicant failed to demonstrate that she was wanted by authorities is sufficiently supported by the evidence and reasonable. The Officer pointed out that written notices contained no indication that the authorities intended to arrest or imprison her. The Police Notice was sent in the mail and merely requested the Applicant to attend at the prosecutor's office which differs from the circumstances of Ms. Zadeh and Ms. Nehzami who were actually arrested.

[43] The Officer was correct in concluding that there was no evidence to show that the Applicant had been charged or convicted of any crime, or that she was wanted for arrest for her conduct. In that regard, the Officer could properly rely upon the fact that the Applicant departed from Tehran without encountering any difficulty at the airport. It was also reasonable for the Officer to conclude that the Applicant did not appear to be unduly concerned by the summons by remaining in Tehran for two weeks, after failing to comply with it. If truly exhibiting fear to the extent described in the statutory declaration, one would have thought that she would have left Iran before the expiry of the time to attend at the prosecutor's office.

[44] The Officer also referred to the documentation on country conditions in Iran provided by the Applicant's counsel. The Officer noted that the articles related to specific human rights causes, particularly involving the desecration or insulting of Islam and the economic sanctions levied on Iran by Canada, the EU, and the United States. The Officer concluded that they did not however demonstrate a risk of persecution or a personalized risk to life or cruel or unusual treatment of the Applicant. Rather, they demonstrated that the situation in Iran had undergone a substantial improvement since the election of the moderate Hasan Rouhani in respect of improved relations with the West thereby dampening risks of war and events that might put the Applicant at risk.

[45] In the circumstances, I find no reviewable error that was made by the Officer with respect to the rejection of the Applicant's claim based on her political opposition to the former regime.

B. *Refusal to Conform to Restrictions on Women*

[46] The Applicant argues that the Officer did not assess her claim that she was at risk because she was no longer prepared to conform to the strict requirements of the Iranian regime in terms of the behaviour of women, such as conforming to the dress code. Her counsel submitted that this evidence required some consideration by the Officer, such as being rejected for lack of credibility or being speculative. The Applicant argued that the case law supported that persecution could arise from risk of harm to women by refusing to conform to dress codes imposed on women.

[47] While I agree that the reasons on this point are brief, I also agree that they repeat the IAD's conclusion that the Applicant had lived most of her life in Iran and lived under these conditions of discrimination without any difficulty or hardship. It is difficult to conceive how an Applicant can make an argument on humanitarian and compassionate grounds which are found not to rise to a level of hardship by compassionate standards, yet suggest that the same facts pose a risk of harm of persecution.

[48] I also disagree that the case law on the risk to women who refuse to conform to dress or other requirements applies to the situation. The facts in those cases were not similar to those here where the applicant is attempting to rely upon a recently self-imposed declaration of an intention to refuse to comply with conditions in Iran after spending most of her life there without being subject to serious mistreatment. The cases cited involved persons who had suffered past serious abuse as women for failing to adhere to requirements imposed on women, thereby providing the evidentiary foundation for a well-founded fear of persecution.

[49] I also agree with the Respondent's submission that upon examination of the reasons as a whole, the Officer considered the evidence tendered by the Applicant, but gave little weight to it throughout, including her declaration of her intention in the future to refuse to comply with the requirements imposed on women by the Iranian regime.

C. *Failure to Consider Risk from Participation in Demonstrations in Canada*

[50] The Applicant submits that the Officer committed a reviewable error in failing to assess the risk to the Applicant due to the fact that she had attended anti-regime demonstrations in Vancouver, which added to her risk profile.

[51] I agree that the Officer's reasons did not respond to this argument. However, I am of the view that the Officer was entitled to ignore this issue for its complete lack of substantiation.

[52] In a certified tribunal record measuring some 5 inches in thickness, there is one paragraph of evidence (in the Applicant's statutory declaration) which describes her attendance at demonstrations in Vancouver on June 14, 2009. Moreover, none of the documentation on country conditions indicates any Iranian surveillance of or connection with demonstrations in Canada. There is no indication that a person would be at risk by simply participating in demonstrations abroad without some degree of heightened profile to bring them to the attention of authorities who might have been reporting on demonstrations in Canada.

[53] There is no requirement on PRRA officers, any more than there is on this Court, to respond to arguments completely lacking in merit.

VII. Conclusion

[54] I conclude that the decision of the Officer falls within the range of reasonable acceptable outcomes and was justified by reasons that were intelligible and transparent. The application is dismissed. No certified question was proposed and none exists.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1130-14
STYLE OF CAUSE:	MARYAM MASOUMALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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