Federal Court  Cour fédérale

Date: 20171214

Docket: IMM-1636-17

Citation: 2017 FC 1146

Ottawa, Ontario, December 14, 2017

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

SEYED MUSTAFA MOOSAVY KHANSARY

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
AND
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

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 negative Pre-Removal Risk Assessment [PRRA] decision by a PRRA Officer [the Officer], made on March 27, 2017, finding that the Applicant is not a Convention refugee nor a person in need of protection in the meaning of

sections 96 and 97 of the IRPA. The Applicant is seeking an order quashing the decision of the Officer and remitting the matter back for a redetermination by a different officer.

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

II. Background

[3] The Applicant is a 34 year-old citizen of Iran and of no other country. The Applicant comes from a family that belongs to the Sufi sect of Nematollahi Gonabadi Dervish [Sufi]. His family allegedly has a history of persecution because they are Sufi and pro-monarchists.

[4] The Applicant entered Canada on August 17, 2013 in Toronto, Ontario.

[5] The Applicant had first gone to Etobicoke Citizenship and Immigration Canada [CIC] to initiate his claim in November 2013 providing his first Basis of Claim [BOC] form dated September 30, 2013 [2013 BOC]. However, he was turned away and told to obtain his refugee documents from Norway and Denmark.

[6] The Applicant did not disclose his previous refugee claims in his 2013 BOC, instead he made up a story that he was in Iran during the period of 2005 to 2012. The Applicant claims that the agent who assisted him to come to Canada was very insistent when he instructed him not to disclose that he had made a refugee claim in Norway. The agent allegedly said that if the Applicant did so, then he would be arrested and deported back to Norway and from there to Iran.

The Applicant had previously attempted to come to Canada, but he was detained in Denmark and then deported to Norway.

[7] The Applicant subsequently revised his narrative and completed a second BOC form dated January 2014 [2014 BOC] which he submitted when he returned to CIC. His claim was referred to the Refugee Protection Division [RPD] on January 23, 2014.

[8] On January 23, 2014, the Applicant became the subject of a 44(1) Report as he apparently entered Canada using a false passport and did not possess the required visa or other documents required under the regulations in order to establish permanent residence in Canada.

[9] The Applicant and his counsel failed to appear for numerous scheduled refugee claim hearings. Accordingly, the RPD declared his refugee claim abandoned on November 18, 2014.

[10] A warrant was issued for the Applicant's arrest on March 2, 2015, as he failed to appear for a pre-removal interview on December 17, 2014.

[11] The Applicant was ineligible for a PRRA due to the one year bar.

[12] A motion to re-open the Applicant's refugee claim hearing was received on June 19, 2015.

[13] On June 19, 2015, the Applicant became the subject of another 44(1) Report as he was found by Canada Border Services Agency [CBSA] officials to be inadmissible to Canada pursuant to subsection 36(2)(c) of the IRPA for "committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament".

[14] The Applicant was convicted by a judge in Denmark and served a prison sentence of seventy (70) days for the crime of using a fraudulent passport. This crime, if committed in Canada, constitutes an offence under section 403 of the *Criminal Code of Canada*, namely identity fraud, which is punishable as an indictable offence.

[15] The motion to re-open the Applicant's refugee claim hearing was dismissed on June 22, 2015. An application seeking leave for judicial review of the negative decision was dismissed by this Court on November 19, 2015.

[16] The Applicant was thereafter scheduled for removal on June 23, 2015, without a risk assessment. He submitted a request to defer his removal. He also filed an emergency motion for a stay of the removal order. The emergency motion for a stay of removal was scheduled to be heard on June 23, 2015.

[17] The Applicant did not have an Iranian passport and could not obtain one due to Canada terminating its diplomatic relations with Iran, closing its embassy in Tehran, expelling Iranian diplomats from Canada and closing the Iranian embassy.

[18] The Applicant was informed by his CBSA escorts that he was to be removed through the use of a travel document. The only travel document available to CBSA was a Canadian travel document.

[19] The Applicant also filed an urgent request for interim measures with the United Nations Human Rights Committee [UNHRC]. The UNHRC granted the interim measures and requested that Canada not deport the Applicant. His deportation was cancelled prior to the stay motion being heard. The Applicant requested that the stay motion be adjourned *sine die*, which was granted by the Court.

[20] The Applicant made an application for a PRRA in 2016, after he became eligible.

[21] The PRRA Officer considered the Applicant's 2013 BOC narrative, that he was in Iran up to 2012, previously made for his refugee protection claim. The Applicant did not provide the 2014 BOC with his PRRA, and it was not considered by the Officer.

[22] The Applicant submitted in his 2013 BOC that he was at risk of persecution or harm in Iran from the regime because of his political opinion, his conversion to Christianity from Islam, and because he is a monarchist.

[23] The Applicant's PRRA application was rejected on March 27, 2017.

III. Impugned Decision

[24] The Officer rejected the Applicant's PRRA on the basis that "it has been determined that [he] would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to[his] country of nationality or habitual residence".

[25] The Officer found that there was insufficient evidence to support the Applicant's allegations of risk for his PRRA. The Officer noted a number of gaps leading to that conclusion including:

- No sworn declarations from his family members in Iran to support his alleged risks.
- No objective evidence, such as police report(s) or medical reports, to demonstrate he or his family members were arrested, detained, threatened, beaten, and/or tortured in Iran because of their political or religious beliefs or for other reasons.
- No objective evidence to support that his aunt and uncle were granted refugee status in Sweden or on what grounds they were found to be refugees.
- No corroborating evidence to support that two of his distant relatives were arrested, accused of being communists and executed.
- No evidence to support that he was a member of a political group in Iran, that he distributed flyers for this group, or that he was of interest to the Iranian authorities because of his affiliation with a political group in Iran.
- Although he was detained for 6 hours after he returned to Iran in 2012 to renew his passport, he was released and he was not beaten or tortured during his detention.
- No evidence from his father about the offer of money to retain the deed of their house following the Applicant's release from detention when he returned in 2012.
- No evidence of why he felt he needed to flee after he was detained in 2012.

- No evidence he was not able to freely exit, re-enter, and again exit Iran during his travels.
- No evidence he resided in Iran from 2005-2013.
- No evidence that the Iranian authorities are aware of his membership with the monarchist group in the US or his conversion to Christianity.
- No evidence or examples of how those who returned to Iran from abroad have been harmed and how it compared to his personal situation.
- No evidence of his personalized, forward-looking risks in Iran; no evidence to support that his profile in Iran is similar to those that would currently be at risk of persecution or harm in Iran.

IV. Issues

[26] The following issues arise in this application:

1. Whether the Officer made veiled credibility findings.
2. Whether the Officer erred by failing to convoke an oral hearing.
3. Whether the Officer misapprehended or ignored the evidence.

V. Standard of Review

[27] It is not in dispute that the standard of reasonableness applies in this case and the decision must be in a range of "possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. The PRRA Officer's decision is owed considerable deference, in particular to the weight to be given to evidence presented before him or her. The right to a hearing requires a careful analysis of the facts and is characterized as a

question of mixed facts and law, similarly attracting a standard of reasonableness: *Seyobooka v. Canada (Citizenship and Immigration),* 2016 FC 514, at para 29.

VI. Analysis

[28] The Applicant submits that the Officer's decision should be set aside under three heads of argument: the Officer made veiled credibility findings, the Officer erred by failing to invoke an oral hearing and the Officer misapprehended or ignored the evidence. A finding that the Officer made veiled credibility findings would impact upon the failure to conduct an oral hearing, such that these two submissions will be considered together.

A. *Veiled credibility findings and the failure to invoke an oral hearing*

(1) The need for corroboration

[29] The Applicant submits that by requiring corroboration, the Officer was clearly indicating that there were credibility concerns which the Officer was trying to mask as insufficient evidence. The Court disagrees with this conclusion. Mr. Justice Zinn, in *Ferguson v Canada (Citizenship and Immigration),* 2008 FC 1067 at para 27, [*Ferguson*] indicates that "evidence tendered by a witnesses with a personal interest" may be examined for its weight as it normally "requires corroboration if it is to have probative value". He adds that this task may be undertaken before considering its credibility. The Court has already noted a list of subject matters in the Officer's decision where numerous allegations were rejected for the lack of objective evidence in support of the claims of risk.

[30] The Applicant submits that the Officer ignored the jurisprudence regarding the acceptance of sworn testimony in the absence of contradictory evidence, including the need for corroboration: *Maldonado v. Canada (Employment & Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*]. The *Maldonado* decision has been tempered considerably since first issued in 1980.The fact that an applicant attests to the truthfulness of corroborating evidence, no longer applies, as it is a circular proposition. In addition, while an applicant's evidence is accepted on presentation, the need for corroboration has been recognized as required to enhance its weight when the narrative raises questions of improbability and the applicant's self-interest reduces its probative value, per *Ferguson supra*.

[31] The Court also disagrees with the application of the *Maldonado* line of jurisprudence to evidence arising and available in Canada, as opposed to that originating in foreign jurisdictions, where obtaining corroborating evidence adds to the risk or is demonstrated to pose a difficulty in situations of flight. For evidence available in Canada, such as the proselytizing habits of the Applicant, it is expected that the party seeking to prove a fact will adhere to Canada's high standards of bringing forward all the best possible evidence to prove a significant alleged fact.

(2) The insufficiency of the evidence

[32] As described in *Ferguson*, a decision-maker may reject a fact or finding based upon insufficient supporting evidence without the need to make credibility findings. While there may be credibility issues that can affect findings of fact, such as exist in this case, a decision-maker is not required to advert to them when the evidence does not support the finding claimed by the party alleging it. In essence, the insufficiency concept is that the party has not made out a

probable case to support a fact or finding, such that there is no need to consider any internal inconsistencies or extrinsic credibility issues such as the coincidence of the timing of events that call into question the truthfulness of the witness' testimony, which is not accepted.

[33] In this matter, the Officer made a thorough and exhaustive review of the detailed evidence provided by the Applicant over some 17 pages of reasons. The Officer accepted that the Applicant was initially Sufi, but had converted to Christianity while in Greece, as well as being a member of a monarchist group in the United States. However, he also found on a consistent basis that the Applicant's evidence did not support the fact that Iranian authorities would consider him of particular interest upon his return to Iran for the reasons advanced. These findings were not made on any basis of lack of credibility.

[34] The issue of the sufficiency of evidence also relates to the Applicant's claim that the Officer questioned the core of his religious beliefs, which the Court finds not to be the case. The Officer accepted that the Applicant had converted to an evangelizing Protestant Lutheran religion in Canada three months after arriving in the country. However, the Officer found that the Applicant's evidence did not support that he proselytized in Canada or that he intended to or wished to do so in Iran, such that he would be at risk because of his conversion. For example, while the pastor of his church confirmed that its members reach out to "people of our community", and while they strive to live a certain vision by connecting with the community outside the congregation, the Officer concluded that the Applicant did not provide objective evidence of his doing so. There was no need to question the credibility of his claims of outreach

proselytizing when the evidence did not demonstrate that he carried out the activity in public, or similarly that he engaged in official duties on behalf of the church.

[35] The Applicant also submitted that the failure to give weight to letters from a counselor at the Canadian centre for victims of torture and from a psychotherapist report constituted a form of veiled credibility findings. These were not credibility findings, as the Officer concluded that the Applicant failed to provide objective evidence corroborating the alleged traumatic events he asserted occurred in Iran, upon which the reports were based. In addition, this evidence is of little relevance to risk issues in a PRRA proceeding. This matter turned on the Applicant's alleged conduct in Canada and abroad, not his state of mind.

[36] In discussing the trauma therapy from the counselor's report, the Court finds that the Supreme Court decision of *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 relied upon by the Applicant is not applicable. The Court described the factual foundation and issue in that matter being that while the Officer did not "dispute the psychological report presented", he found that the medical opinion "rest[ed] mainly on hearsay" because the psychologist was "not a witness of the events that led to the anxiety experienced by the applicant": *Ibid* at para 49. In this matter, the report was not accepted because the Applicant's history taken by the physician, and upon which the diagnosis and prognosis opinions were based, was not sufficiently supported in the evidence.

[37] The decision of *Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299 is also not applicable to these issues. It involved inconsistent statements, i.e. "The officer did indicate,

however, that he drew "a negative inference from the fact that the applicant [did] not seem to have raised [the 2005 assaults] when he withdrew his initial claim for refugee status [in 2006]…"": *Ibid* at para 26. The issue in this matter is not inconsistent statements, which can pose either sufficiency or credibility concerns depending on how the decision-maker considers them, but a failure to properly corroborate a statement that has not been contradicted, as well as to provide clear and convincing corroboration that would be expected of an entirely permissible activity carried out in Canada.

[38] References by the Officer concerning the Applicant's residency beginning in 2005 also do not raise issues of credibility. They were commented on only in respect of the Applicant not providing an explanation for the discrepancy regarding his whereabouts, such that the Officer relied upon the Applicant's evidence from his friends in Greece and the Lead Pastor at his church to conclude that he did not reside in Iran from 2005 to 2013. There was no comment with respect to his credibility concerning this evidence. In any event, it related to his alleged political affiliations and related events in Iran, which were found to be insufficiently uncorroborated throughout.

[39] The Court finds the Officer's factual determinations were sufficiently supported by the evidence and did not constitute veiled credibility findings, nor did they meet the requirements of subsection 113 (a) of the IRPA, or section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 that give rise to the need to invoke an oral hearing.

B. *The Officer misapprehended or ignored the evidence*

[40] The Officer considered and commented on all the following points: the country conditions evidence pertaining to the Applicant's religion as a Sufi, his conversion to Christianity, evangelizing, political activities and returning as a failed asylum seeker. The Officer recognized the "dismal human situation of human rights in Iran and the precarious fate of religious minorities and particularly of converts to Christianity". However, the Officer's conclusions that the Applicant failed to demonstrate that he was similarly situated on a forward-looking basis to those who have suffered harm, or who are at risk of suffering harm in Iran are reasonable and sufficiently supported to fall within a range of possible acceptable outcomes.

[41] The Court also disagrees that the *ratio* in *Golesorkhi v Canada (Citizenship and Immigration)*, 2008 FC 511 at para 18, is applicable that "it is no answer to a claim of risk of religious persecution to say that there is no risk if one does not practice one's religion, or cannot practice it openly". The issue in this matter is whether the Applicant would practice his religion more openly and in public in Iran, particularly by publicly proselytizing, or be at risk as an official of the church. According to his Pastor, he is not required to proselytize, nor is there supporting evidence that he did so in Canada. It is an evidentiary issue, not a legal one.

[42] The Court was also directed to the unpublished decision of Madam Justice McVeigh in *Ming Hui Chen v. Canada (Citizenship and Immigration)*, IMM-13033-12, March 14, 2014 at para 13 with respect to proselytizing in public versus in private. She noted that "Proselytizing in

public could include within a church, in a home or a registered place. You can proselytize by definition anywhere, as it is the attempt to convert, and not form or forum you do it."

[43] The Officer found that the evidence did not support the argument that he could not practice his religion insofar as he did not play an official role within the church, or publicly proselytize, so as to avoid a heightened risk of coming to the attention of the authorities. The Officer cited the World Christian Database statistics report that there are approximate 285,000 Christians in Iran, admittedly mostly consisting of ethnic groups. The Officer considered the report concerning the status of Protestant denominations, which existed in Iran, including evangelical groups. The size of the Protestant community is estimated to be less than 10,000 persons. This evidence was considered along with that from the 2015 Netherlands Ministry of Foreign Affairs report [Netherlands Report] which indicated that many Protestants or converts reportedly practice in secret and that the authorities have been keeping a closer eye on the "new" Christian church communities for the last two years, particularly on evangelical Christian denominations. The same report indicated that there is no specific legislation dealing with evangelization and conversion and that during that period there had been no known cases of persecution based on outward symbols of the Christian faith.

[44] The Officer considered this evidence along with that of other country conditions documentation and concluded that ordinary converts to Christianity who are discreet about their faith are of little or no interest to the authorities, a situation which he considered to be similar to how the Applicant practiced his religion in Canada. It is not the Court's function to reweigh the

evidence, insofar as the Officer's conclusions can be reasonably drawn from the mass of evidence that must be considered in these cases.

[45] The Officer also considered it a relevant fact that the Applicant was not a person of interest on his return to Iran from either Norway or Greece, when issues of his political or religious affiliations would have been a risk. In addition, the Applicant was able to re-enter, renew his passport and exit Iran after he first converted to Christianity in Greece. He was however questioned regarding his conversion and detained for six hours, but was not harmed in any way. The Officer found that there was no evidence that the Applicant left Iran without a passport or that he would come to the attention of the Iranian authorities upon his return, even for having made an unsuccessful refugee claim. Particularly given the fact that he had not been in Iran since 2012. Despite the difficult situations in the Applicant's country, the Officer found that they applied to the general population, and did not support the conclusion that the Applicant faced a personalized risk as a result.

[46] The Officer also made reference to the recent events in Canada, including the Facebook reports and the events and incidents as described in his updated submissions. Based on his past treatment when returning to Iran and the duration of his absence since 2012; the Officer concluded that the evidence would not support that he was being sought by the Iranian authorities, or that his participation in activities may have brought him to the attention of the authorities.

C. *Illegible reports on country conditions*

[47] The Applicant complains that two relevant documents were not referred to by the Officer because portions were not found or were illegible in the Certified Tribunal Record. The documents consisted of a forensic report provided by a refugee coordinator with the Toronto office of Amnesty International under its letterhead, and a report entitled "The Cost of Faith - Persecution of Christian Protestants and Converts in Iran" published by an American organization described as the International Campaign for Human Rights in Iran. The Court agrees with the Respondent that the Applicant has not demonstrated that these documents were illegible to the Officer, who is presumed to have consulted all of the evidence introduced by the parties.

[48] The report of the Amnesty International employee related primarily to the harsh treatment of prominent individuals and church leaders. Of the six cases referred to, five concerned arrests in 2008 and 2009, and the other in 2012, being an American Pastor. The remainder of the report referred to returning refugee claimants, which issue was considered by the Officer and rejected on several grounds, not the least of which was the Applicant's ability to return to Iran on two occasions without undue complications.

[49] Moreover, the Court is of the opinion that expert forensic opinion evidence [provided for use in forensic processes], which would include this report, should not be admitted because opinion evidence is "presumptively inadmissible" and it does not meet the "gatekeeper" requirements of being either necessary or providing any benefit to the decision-making process:

White Burgess Langille Inman v. Abbott and Haliburton Co., [2015] 2 SCR 182, 2015 SCC 23 (CanLII), paras 16–24, *R. v. Abbey*, 2009 ONCA 624 (CanLII), 97 O.R. (3d) 330, paras 87-96, and of particular relevance here, para 94 as follows:

> [94] It seems self-evident that an expert opinion on an issue that the jury [decision-maker] is fully equipped to decide without that opinion is unnecessary and should register a "zero" on the "benefit" side of the cost-benefit scale. Inevitably, expert opinion evidence that brings no added benefit to the process will be excluded: see, for example, *R. v. Batista*, 2008 ONCA 804 (CanLII), [2008] O.J. No. 4788, 238 C.C.C. (3d) 97 (C.A.), at paras. 45-47; *R. v. Nahar*, 2004 BCCA 77 (CanLII), [2004] B.C.J. No. 278, 181 C.C.C. (3d) 449 (C.A.), at paras. 20-21.

[50] The Court further acknowledges its consideration of whether an employee of a reputable organization such as Amnesty International should be providing forensic evidence on behalf of a refugee involved in an individual immigration decision-making process. It could be seen as both assessing country conditions and advocating the acceptance of the conclusions in refugee proceedings, perhaps raising issues of objectivity and self-promotion.

[51] The Cost of Faith document contains text that presumably was highlighted which is difficult to make out in the Court's copy, but this is not to say that the copy provided to the PRRA Officer was illegible. The report contained evidence similar to that cited above from the Netherlands Report regarding the difficulties facing Protestants or converts reportedly requiring them to practice in secret or in house churches. This evidence was considered by the Officer and found not to be sufficiently supporting a risk to the Applicant given his private manner of practicing his religion in Canada. The Court does not conclude therefore, that the Officer failed

to consider or ignore the evidence contained in the report, or that it would have had any bearing on the outcome.

[52] Furthermore, there is no evidence in the record concerning the International Campaign for Human Rights in Iran organization, in terms of its objectives, funding etc., apart from it being situated in New York and having published other reports unrelated to refugee matters which are highly critical of Iran. It is up to the party submitting a report to demonstrate its reliability and objectivity, either as constituting a report regularly referred to in the neutral governmental or UNHCR compilations on country conditions normally employed to objectively determine country conditions, or by some other means. This also has the benefit of making the evidence more persuasive.

VII. Conclusion

[53] The Court concludes that the Applicant has not demonstrated any reviewable error by the Officer, whose decision is sufficiently justified, transparent and intelligible and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Accordingly, the application is dismissed.

VIII. Certified question

[54] To be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad

significance or general importance. As a corollary, the question must also have been raised and dealt with by the court below, and it must arise from the case, not from the Judge's reasons: *Liyanagamage v Canada (Secretary of State)*, 176 NR 4 at para 4; *Canada (Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras11−12; *Varela v Canada (Citizenship and Immigration*), 2009 FCA 145 at paras 28−29 and 32; *Zhang v Canada (Citizenship and Immigration*), 2013 FCA 168 at para 9.

[55] The Applicant noted that the central issue in this matter, at least over the course of the hearing, became whether the Applicant evangelized outside of his church in Canada, rather than his fear to practice his faith at all in Iran. The Applicant argues that in the context of freedom of religion, which includes a freedom to demonstrate one's religion or belief in public or private, that the Court should certify the following question:

> Is the concept of religious freedom unduly limited by requiring a claimant to practice his faith with the following restrictions:
>
> - practice in fear in a secret house church due to security issues
> - proselytize in public, outside of the confines of the secret house church
> - practice in a public church that is of a different ethnicity, domination, culture and language.

[56] The Respondent submits that the proposed question would not be dispositive of the appeal, and that the issue is not one of religious freedom, but one of insufficiency of evidence on the issues raised by the Applicant, which extend beyond issues of his religious freedom. The Court agrees that the issues that are the subject of proposed questions were considered by the

Officer and rejected on the basis of insufficiency of evidence which did not demonstrate that the Applicant would be at risk in Iran given the nature of his religious practices in Canada.

[57] The issues in this matter are not ones of general importance, but rather pertain to the weight and sufficiency of evidence tendered by the Applicant. No question will be certified for appeal.

JUDGMENT for IMM-1636-17

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-1636-17
STYLE OF CAUSE:	SEYED MUSTAFA MOOSAVY KHANSARY v MPSEP AND MCI
PLACE OF HEARING:	TORONTO
DATE OF HEARING:	NOVEMBER 2, 2017
JUDGMENT AND REASONS:	ANNIS J.
DATED:	DECEMBER 14, 2017

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