



FEDERAL COURT OF CANADA
(TRIAL DIVISION)

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BETWEEN:

IMM-2509-96

MOSAYES TAVAKOLLI et al,

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent

Held before the Honourable Associate Chief Justice
Jerome in the Federal Court of Canada, Courtroom No. 7,
330 University Avenue, Toronto, Ontario, on Tuesday,
April 22, 1997.

REASONS FOR JUDGMENT

(Delivered orally from the Bench
at Toronto, Ontario on April 22, 1997)

APPEARANCES:

Peter Krochak for the Applicant

Ann Margaret Oberst for the Respondent

Deborah Mombourquette - Registrar

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Per: Sarah Nicholson, CVR.



1 HIS LORDSHIP: It is well established
2 that of all areas that are within the jurisdiction of a
3 tribunal, that in which they should be given the
4 greatest respect by the reviewing court is that of
5 credibility. The reasons for that are self-evident. It
6 is primarily that only the people who conduct a hearing
7 are the ones who see and can judge and based on not
8 just the printed word but the demeanour and the
9 appearance and, therefore, when a tribunal finds, as
10 they do here, that the claimant has not called enough
11 credible evidence to support his claim, it would be
12 extraordinary for me to set it aside unless they failed
13 to substantiate their finding to identify the causes
14 for their concern.

15 And at the middle of page 2 of their
16 reasons or page 5 of the applicant's record, having
17 recited at the beginning of the factual basis, they
18 indicate that there are a number of problems with the
19 scenario and for the rest of that paragraph they
20 indicate that he was forced to sign a confession but it
21 didn't appear anywhere else in his recital of the
22 events, that it's inconsistent with him being released
23 and his family being notified.

24 All this follows and is to me a very
25 adequate analysis of all the factors that should be



1 taken into account in assessing whether all of the
2 elements in play here as: is there credible evidence
3 that this claimant has a subjective fear to start with
4 and is his evidence in that regard plausible or
5 reasonable?

6 For the reasons set out on page 5 and
7 following, they found that the confession of guilt was
8 inconsistent with the balance of his testimony. It
9 also returns to that topic on page 3, with the
10 paragraph that begins as follows:

11 A written confession, in our
12 opinion, creates a greater
13 hurdle for the male claimant.

14 And their analysis, to that extent, I think is quite
15 reasonable.

16 Then they go on to say:

17 We find it implausible that
18 the behaviour of the
19 revolutionary guard would be
20 both so stupid and so
inefficient.

21 Therefore, they find portions of his
22 testimony not just incredible but implausible and that,
23 as is quite clearly established, is their perfect right
24 to do in the jurisprudence that I am aware of.

25 And then in the end, in the second full



1 paragraph beginning on page 4, they indicate he has no
2 history of any kind of difficulty. He is a successful
3 business man, away on business, and that it is
4 difficult to understand why he would even claim that he
5 would have difficulties with the authorities; and they
6 also recite a factual element that supports their
7 conclusions in that the claimant met with several
8 persons who knew him, right after the demonstration.
9 And, therefore, they have, in my opinion, done more
10 than the minimum required of it.

11 The test, of course, is not whether I
12 would have reached a different conclusion but, rather,
13 whether there was a failure to do the proper and
14 adequate analysis of the evidence before them, and I
15 certainly think probably I would have come to the same
16 conclusion because it seems to me to be the only
17 reasonable one on the evidence.

18 However, that is not the test; the test
19 for me is whether this tribunal did a proper job in
20 assessing credibility and in identifying in their
21 reasons, justification for the conclusion that their
22 finding of credibility was adverse to the claimant and
23 to the female claimant in turn.

24 Therefore, for these reasons, the
25 application is denied.



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CERTIFIED CORRECT:

Sarah Nicholson, CVR.
Reporter.