Federal Court  Cour fédérale

Date: 20090520

Docket: IMM-4493-08

Citation: 2009 FC 503

Ottawa, Ontario, this 20th day of May 2009

Before: The Honourable Mr. Justice Pinard

BETWEEN:

Seyed Amin HOSEYNI BOB ANARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), of the decision of a Pre-Removal Risk Assessment ("PRRA") officer, dated September 4, 2008.

[2] The applicant, Seyed Amin Hoseyni Bob Anari, is a citizen of Iran who fears returning to his country of origin because of his former membership in the Iranian Revolutionary Guard Corps

("Revolutionary Guard" or Sepah-e or Pasdaran). He alleges that upon return to Iran, he will be immediately arrested, interrogated, tortured and possibly executed.

[3] In a decision dated June 27, 2007, the Immigration and Refugee Board's Refugee Protection Division ("RPD") rejected the applicant's claim on the basis of section F of Article 1 of the Refugee Convention, finding that as a member of the Revolutionary Guard he was complicit in crimes against humanity and thus ineligible for refugee protection under section 98 of the Act. The applicant applied for leave and judicial review of the RPD's decision, but his application was denied on December 17, 2007.

[4] The applicant attended a hearing with the PRRA officer on August 26, 2008. He was informed on October 9, 2008 that his PRRA application had been refused. The PRRA officer concluded that, while it was possible the applicant would face mistreatment upon return to Iran, he was not likely to face a risk of torture, risk to life or cruel and unusual treatment. It is this decision that is the subject of the present review.

[5] The applicant alleges that the PRRA officer made several errors, all of which relate to findings of fact. They should not, therefore, be disturbed unless they are unreasonable, in respect of the facts and the law (*Minister of Citizenship and Immigration v. Khosa*, 2009 SCC 12, at paragraph 46; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 74; *Kandiah v. Solicitor General*, 2005 FC 1057, at paragraph 6).

[6] First, the applicant submits that the PRRA officer erred in her assessment of his credibility by relying on unsupported plausibility findings.

[7] A decision-maker's conclusions regarding credibility are generally accorded a high level of deference. This is so even where the question is one of plausibility, although "in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record" (*Aguebor v. Canada (M.E.I.)*, (1993), 160 N.R. 315 (F.C.A.), at paragraphs 2 to 4).

[8] In this case, the PRRA officer based her negative credibility assessment on a contradiction she identified in the applicant's testimony, and on two separate plausibility findings, as well as on the absence of corroborating evidence.

[9] Upon reviewing the evidence, it appears that the PRRA officer's credibility findings are not without flaws. However, given the high degree of deference afforded to decision-makers on matters of credibility and the dearth of evidence corroborating the applicant's statements, I am not satisfied that this aspect of the decision, when viewed as a whole, is unreasonable.

[10] Second, the applicant contends that the PRRA officer erred in failing to decide whether he would be viewed as a political dissident due to his desertion from the Revolutionary Guard Corps. For the following reasons, I find that there was no error on the part of the PRRA officer in this regard.

[11] Indeed, the reasons disclose detailed consideration of the documentary evidence as to what ramifications the applicant might face upon his return to Iran and how he is likely to be perceived by the Iranian authorities. After canvassing the documentary evidence, the officer writes, at page 12 of the decision:

> I note that the evidence does not support that the applicant is suspected by the security services of being involved in serious crimes or high level anti-regime political activity. I also note that there is little evidence that the Iranian authorities are aware that the applicant made a refugee claim in Belgium and/or that he made a refugee claim in Canada. I also find that, even if the Iranian authorities were to somehow find out that the applicant applied for protection abroad, the preponderance of the evidence does not support a finding that they would link this to reasons other then [*sic*] socio-economic. . . .

[12] The PRRA officer goes on to note that the applicant was not a high-ranking member of the Revolutionary Guard, but rather a "part-time member" while studying at the University. I am satisfied that she duly considered the question of whether the applicant would be perceived as a political dissident.

[13] Moreover, the news articles included in the Application Record do not appear to have been before the PRRA officer. At the hearing before me, counsel acknowledged that the articles were not before the PRRA officer. The latter was not, therefore, in a position to evaluate their impact on the Iranian authorities' view of the applicant and cannot, then, be said to have erred in failing to take them into consideration in her decision.

[14] Third, the applicant argues that the PRRA officer's finding that he would not be tortured or subject to cruel and unusual punishment as a political criminal in Iran is unreasonable. To the extent

that the PRRA officer dealt with the manner in which the applicant is likely to be viewed (and, consequently, treated) as a political dissident in Iran, she dealt with the possibility that he would face torture or cruel and unusual punishment on this basis. I find no error in this portion of her analysis.

[15] Finally, relying on *Zolfagharkhani v. Canada (M.E.I.)*, [1993] 3 F.C. 540, the applicant argues that the PRRA officer erred by failing to consider whether being compelled to "re-join" the Revolutionary Guard, which has been accused of committing crimes against humanity, would in itself constitute cruel and unusual treatment or punishment. I do not agree. The case at bar must be distinguished from *Zolfagharkhani*, *supra*, which dealt with a refugee application made by a conscientious objector. Here, the applicant is not a conscientious objector and prior to his hearing with the PRRA officer, had been found, as a member of the Revolutionary Guard, to be complicit in crimes against humanity and thus ineligible for refugee protection under section 98 of the Act.

[16] For all the above reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of a Pre-Removal Risk Assessment officer, dated September 4, 2008, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4493-08
STYLE OF CAUSE:	Seyed Amin HOSEYNI BOB ANARI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	April 28, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	May 20, 2009

APPEARANCES:

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Mr. Edward Burnet	FOR THE RESPONDENT

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