

Federal Court



Cour fédérale

Date: 20090618

Docket: IMM-2685-09

Citation: 2009 FC 612

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 18, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MOHAMMAD JAVAD NOZARIAN

Applicant

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Parliament has given the Immigration Division (ID) the jurisdiction to review reasons for detention, which the tribunal has done in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) since the applicant's initial detention.

[2] Paragraph 72(2)(d) of the IRPA states that the decision regarding an application for leave is made in a summary way and without a hearing, unless authorized by a judge of the Court.

[3] Based on the legislation cited, the Court is of the view that the applicant's case does not justify an exceptional granting of a hearing on the application for leave and for judicial review (ALJR).

II. Judicial proceeding

[4] This is a motion to obtain a hearing on the application for leave and for judicial review (ALJR) filed by the applicant on May 26, 2009 against the decision by the ID on May 22, 2009, ordering the continuation of the applicant's detention, until the next detention review scheduled for June 19, 2009.

III. Facts

[5] The applicant, Mohammad Javad Nozarian, first arrived in Canada on October 8, 1986, carrying a false passport. He then claimed refugee protection under the name Essy Javad NOROOZI.

[6] On November 24, 1991, the Refugee Division dismissed Mr. Nozarian's refugee claim and found that he was not a Convention refugee.

[7] On December 6, 1991, a deportation order was issued against Mr. Nozarian.

[8] On October 7, 1992, the application for permanent residency filed by Mr. Nozarian for humanitarian and compassionate considerations was dismissed.

[9] On May 26, 1993, Mr. Nozarian was arrested by immigration officials because he refused to leave Canada and was released on conditions.

[10] On November 30, 1994, the Federal Court dismissed Mr. Nozarian's application for a stay. The same day, Mr. Nozarian was placed in detention following acts of violence and an attempted suicide at the Immigration offices in Montréal.

[11] On December 7, 1994, Mr. Nozarian was removed from Canada to Iran under escort.

[12] From 1995 to 1997, Mr. Nozarian reportedly lived illegally in Syria, Turkey, the Dominican Republic, the United States, Germany, Denmark, Sweden and the United Kingdom.

[13] In February 1995, Mr. Nozarian entered the Dominican Republic with a fraudulent German passport. He was then arrested in May 1995 for possession of drugs, was placed in preventive detention by the Dominican immigration courts, and was deported to Haiti in September 1995.

[14] In September 1995, Mr. Nozarian was arrested while trying to enter the United States. He was detained for six months before being deported to Haiti again in March 1996, where he only remained one week. He then went to France for a week, then spent seven months in Germany.

[15] In November 1996, Mr. Nozarian went to Denmark and spent a month in Sweden. He obtained a false Swedish passport.

[16] On February 7, 1997, Mr. Nozarian returned to Canada from the United Kingdom with a false Swedish passport and claimed refugee protection under a false identity.

[17] On February 24, 1999, immigration services received information on the comings and goings of Mr. Nozarian, who was then arrested. Mr. Nozarian acknowledged that he entered Canada under a false identity and with a fraudulent passport. He told the immigration officers that his real name is Nozarian, Mohammad Javad.

[18] On March 2, 1999, a deportation order was issued against Mr. Nozarian.

[19] On May 31, 1999, the refugee claim filed by Mr. Nozarian on May 31, 1999 was deemed admissible. On July 19, 2001, the Minister of Citizenship and Immigration asked to intervene before the Refugee Protection Division under section F of the first article of the United Nations Convention Relating to the Status of Refugees.

[20] On April 30, 2003, the RPD dismissed Mr. Nozarian's refugee claim and found that he was not a Convention refugee.

[21] Between June 2006 and October 2007, Mr. Nozarian was convicted in Toronto for drug trafficking and weapons possession. He had already spent more than four years in preventive custody.

[22] On September 25, 2008, an immigration officer met with Mr. Nozarian, who was in detention, to advise him that he must apply for travel documents so the removal process could begin.

[23] On October 3, 2008, Mr. Nozarian was turned over to immigration authorities and remained in custody for the removal process.

[24] Mr. Nozarian wanted to request a pre-removal risk assessment (PRRA), but refused to cooperate with immigration authorities to obtain a travel document.

[25] On October 10, 2008, an application for a travel document was sent to the embassy of the Islamic Republic of Iran.

[26] On November 13, 2008, Mr. Nozarian was interviewed by the embassy of the Islamic Republic of Iran.

[27] During the period from December 5, 2008 to April 23, 2008, the embassy's representative informed the Canada Border Services Agency (CBSA) that it has still not received word from authorities in Tehran. He felt that checks would be needed and would require time, as Mr. Nozarian had not provided any identification documents.

[28] In the numerous reviews of Mr. Nozarian's detention, all of the members found that there was no alternative to detention that could offset the flight risk and the danger he represents to Canadian society.

IV. Analysis

(a) The applicant's hands are not clean.

[29] Mr. Nozarian has a lengthy criminal record. As well, he has entered Canada numerous times with false identification documents. Mr. Nozarian also tried to avoid his removal from Canada in

1994 by committing acts of violence and attempted suicide at the immigration offices. In his last detention review, his attitude was threatening toward the representative of the Minister of Public Safety.

[1] Given Mr. Nozarian's conduct, which shows no respect for Canada's criminal and immigration laws, he does not appear before the Court with clean hands. His conduct is a major obstacle to obtaining the relief he seeks (*Brunton v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 33, 145 A.C.W.S. » (3d) 685, at para 4-6; *Gabra v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1491, 243 F.T.R. 318, at para 5).

(b) The applicant cannot obtain a hearing to present his case on the ALJR.

[2] Paragraph 72(2)(d) of the IRPA states that the decision regarding an application for leave is made in a summary way and without a hearing, unless authorized by a judge of the Court.

[3] Based on the legislation cited, the Court is of the view that Mr. Nozarian's case does not justify an exceptional granting of a hearing on the ALJR.

[4] While Mr. Nozarian is demanding that the Court expedite the decision on the ALJR before June 19, 2009 through an in-person hearing, he himself has not been diligent in perfecting his application for leave.

[5] In any event, even if the Court disposed of the application for leave before June 19, 2009 and allowed it, the hearing on the application for judicial review could not be held for at least 30 days after the decision granting leave under paragraph 74(d) of the IRPA.

[6] The action by Mr. Nozarian is an attempt to obtain a stay of the decision on May 22, 2009 maintaining his detention.

[7] That attempt seeks to bypass the heavy burden of proof that Mr. Nozarian must overcome for a stay of the decision under review. In this case, Mr. Nozarian clearly could not satisfy the three criteria required by jurisprudence to stay a decision by an administrative tribunal while awaiting a decision on the merits of the application for judicial review.

(c) Detention reviews are the jurisdiction of the ID.

[8] Parliament has given the ID jurisdiction to review reasons for detention, which the tribunal has done in accordance with the IRPA since Mr. Nozarian's initial detention.

[9] Mr. Nozarian is not facing indefinite detention based on arbitrary grounds, as there is a significant flight risk, as is seen in his immigration history, which shows a flagrant lack of respect for Canada's immigration laws. As well, Mr. Nozarian's criminal record indicates that he is a danger to the Canadian public.

[10] Given Mr. Nozarian's criminal record and the significant flight risks, his firm detention must be maintained and there is no other possibility that could offset those risks and the danger that he represents to the public.

[11] The reasons for decision issued by the ID in the reviews on February 26, 2009, March 27, 2009 and April 23, 2009 take into consideration the reasonable efforts by the CBSA to obtain travel documents from the embassy of the Islamic Republic of Iran in order to remove Mr. Nozarian from

Canada. That task is difficult because Mr. Nozarian has no identification documents, having used false documents to enter Canada.

V. Conclusion

[12] For all these reasons, Mr. Nozarian's motion to obtain a hearing on the ALJR is dismissed.

JUDGMENT

THE COURTER ORDERS that:

1. the motion to obtain a hearing on the application for leave and for judicial review be dismissed;
2. without costs;
3. no serious questions of general importance are certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2685-09

STYLE OF CAUSE: MOHAMMAD JAVAD NOZARIAN
v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 8, 2009

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: June 11, 2009

APPEARANCES:

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