

Federal Court



Cour fédérale

**Date: 20091216**

**Docket: IMM-2166-09**

**Citation: 2009 FC 1279**

**Ottawa, Ontario, December 16, 2009**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**ALI REZA ZAVALAT**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), dated March 3, 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of Iran who joined with a group of students to discuss issues pertaining to Iran, such as freedom of speech and freedom of the media. The Applicant alleges that after attending a demonstration in Iran he was detained for six days, interrogated and assaulted, which resulted in a broken nose. The Applicant was then made to sign an undertaking not to participate in similar future activities and was expelled from the University.

[3] The Applicant participated again in meetings with like-minded people and was again arrested, interrogated and beaten. He suffered a broken leg. Along with friends, the Applicant then distributed anti-government leaflets. In February of 2006, while the Applicant was in another city, his father was detained and interrogated. His father was told that the Applicant was morally corrupt and should report to the authorities. The Applicant fled Iran for Canada.

[4] The Applicant made a claim for refugee protection which was denied by the Refugee Protection Division of the Immigration and Refugee Board (RPD). The RPD determined that the Applicant was not a credible witness.

## **DECISION UNDER REVIEW**

[5] The decision of the Board turned on credibility. Notably, the Board asked the Applicant on which day his father was arrested. The Applicant's response was March 13, 2006; however, the Applicant had given the date of February 21, 2006 on his Personal Information Form (PIF). The Applicant explained that this error was made because of a miscalculation in the Iranian calendar. The Board did not accept this explanation because the Applicant had committed no other errors with regard to dates in his PIF. Moreover, the Board found that this was an important date since it was the date of the incident that led to the Applicant's flight from Iran. The Board determined that, on a balance of probabilities, the Applicant was not a credible or trustworthy witness.

[6] The Applicant presented a Notification Paper and a Writ of Summons to the Board. However, country documents indicate that in serious issues a defendant is never given a copy of the warrant. Furthermore, the Board noted that although by law a defendant must be informed of the charges within 24 hours, this requirement is often not adhered to. The Board found that "[s]ince I do not believe the Applicant, I prefer the information in the country documents to that of the Applicant's." The Board found that, on a balance of probabilities, the Applicant had tendered false documents to the Board.

[7] The Board cited the Federal Court in *Osayande v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 368, [2002] F.C.J. No. 511 for the proposition that where an applicant

adduces false documents to the Board, it impacts the Board's entire finding of the applicant's credibility. Consequently, the Board found that it had the right to disbelieve the entirety of the Applicant's evidence. It determined that "on a balance of probabilities, I find the Applicant not to be a credible or trustworthy witness and that he did not suffer the alleged harm." Moreover, the member found that "[s]ince I have found the Applicant to have tendered false documents to the Board, on a balance of probabilities, I reject all of the documents tendered from Iran and give no weight to the findings of physical examination conducted in Canada."

[8] The Board also found that counsel had led the Applicant on his answers in numerous occasions during the hearing. For instance, counsel prompted the Applicant on whether he had to sign anything upon his release. The Board found, however, that "[i]f, as the Applicant alleged, he was required to sign an undertaking, he would have stated this spontaneously when describing what happened on his release. Therefore, [on] a balance of probabilities, I find the Applicant was not detained in 1999 and did not suffer the harm alleged."

[9] The Board found that there was no evidence that the Applicant had been in Iran during the time of the incidents he alleged because he had no documentation to corroborate this claim, and because his sister had not testified or sworn an affidavit.

[10] The Applicant expressed a fear of returning to Iran because he believed that Iranian authorities would have knowledge of his refugee claim. The Board noted that Canada does not provide information to any country with regard to refugee claims made in Canada.

[11] The Board also noted that the Applicant had produced a psychological report as well as a report from the Canadian Center for Victims of Torture. The member found that “while I accept the diagnosis arising from the consultation, the Applicant has post-traumatic stress disorder and, most likely, depression, as well as being a vulnerable person; since I do not believe the Applicant, I give these documents no weight with respect to the claim.”

[12] In summary, the Board concluded that “I have found the Applicant not to be credible and to have tendered false documents to the Board. Therefore, I find there is not a serious possibility or reasonable chance that the Applicant would face persecution for a Convention ground, if he returns to Iran.”

[13] Moreover, in consideration of whether the Applicant would be subject to a risk of his life or to cruel and unusual treatment or punishment or torture, The Board determined that “[b]ased on the above analysis, on a balance of probabilities, I find there are no such risks.”

## **ISSUES**

[14] The Applicant submits the following issues on this application:

1. Did the Board act without jurisdiction, act beyond its jurisdiction or refuse to exercise its jurisdiction?

2. Did the Board fail to observe principles of natural justice, procedural fairness or other procedures that it was required by law to observe?
3. Did the Board err in law in making the Decision, whether or not the error appears on the face of the record?
4. Did the Board base its Decision or order on an erroneous finding of fact, made in a perverse or capricious manner or without regard to the material before it?

## STATUTORY PROVISIONS

[15] The following provisions of the Act are applicable in these proceedings:

### Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the

### Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and	infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d’une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

## STANDARD OF REVIEW

[16] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review” (*Dunsmuir* at paragraph 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.



[17] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[18] Reasonableness is the appropriate standard of review with regard to findings of fact. See *Dunsmuir, supra* and *Golesorkhi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 511, [2008] F.C.J. No. 637 at paragraph 8. Accordingly, when considering whether the tribunal based its decision on erroneous finding of facts, or without regard to the evidence before it, reasonableness is the appropriate standard.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[20] The Applicant had also raised procedural fairness issues which are reviewed on a standard of correctness. See *Dunsmuir, supra*, and *Golesorkhi, supra*. Correctness is also the appropriate

standard when considering whether or not the tribunal exceeded its jurisdiction. See *Canada (Minister of Citizenship and Immigration) v. Hua*, 2001 FCT 722.

## **ARGUMENTS**

### **The Applicant**

#### **Factual error**

[21] The Applicant submits that the Board erred when stating that his submissions were received and considered. The Applicant contends that no submissions were received; nor was his counsel given the opportunity to provide them. Rather, the oral hearing concluded without submissions and observations, and was adjourned pending the Board's request for additional documents.

[22] The Applicant submitted documents prior to the deadline for document submission. At the end of the oral hearing, the Applicant's counsel was advised that a decision would be made with regard to the Applicant's further attendance regarding questions that might arise from post-oral hearing documents. Counsel was also told that a decision would be made with regard to submissions and the format thereof. However, no further contact took place until the Applicant received the negative decision.

[23] The Applicant is entitled to make representations pursuant to section 107(c) of the Act. The Applicant submits that denying his counsel this opportunity is a breach of procedural fairness, since the Applicant was unable to address the concerns stated by the Board.

### **Inconsistent Dates**

[24] The Applicant contends that the Board erred further when it alleged that the Applicant was mistaken with regard to the date of his father's arrest. The Applicant used a Farsi interpreter at the oral hearing and provided his interpreter with the same day that was stated in his PIF. Accordingly, the Applicant explained that if an error had been made, it was an error of interpretation in converting Farsi dates to English.

[25] The Applicant submits that the Iranian calendar is difficult to convert for Farsi interpreters. Accordingly, a date in February, 2006 could be calculated with reference to both January and March, 2006. Furthermore, the Applicant contends that no other date in either the PIF or with regard to the Applicant's testimony was compromised with the result of either date being used.

[26] In the alternative, even if the Applicant did make an error with regard to the date given, he submits that the Board erred in failing to consider the relevant evidence regarding his diagnoses of Post Traumatic Stress Disorder and of being a vulnerable person. These diagnoses were accepted by the Board. However, the member failed to consider other relevant evidence because of the one allegedly inconsistent statement on which she based her entire finding of credibility.

### **False Documents**

[27] The Board erred in both fact and law when it rejected all of the documents from Iran as being false and gave no weight to the physical examination that took place in Canada.

[28] The Board determined that the Notification Paper and Writ of Summons that were issued by the Iranian Justice Department were false since, according to documentary evidence, defendants are never given such documentation. However, the Applicant submits that the Board itself spoke to the unpredictability of the Iranian authorities in not always obeying their own laws.

[29] The Board erred in its assessment of the Notification Paper and Writ of Summons, and accordingly rejected all of the documents tendered from Iran, as well as the results of the Applicant's physical examination in Canada. The Applicant submits that there is no connection between the documents from Iran and the findings of the medical examination in Canada. Consequently, the Board erred in failing to consider relevant post-hearing medical evidence that was submitted at the request of the Board itself.

### **Leading questions**

[30] The Applicant contends that the Board also erred in finding that counsel had led the Applicant during the hearing. Moreover, contrary to the conclusion of the Board, a finding that the

Applicant was not detained in 1999 and did not suffer the harm alleged does not automatically flow from the Applicant's failing to volunteer information regarding his release.

[31] At the beginning of the hearing, the Applicant was advised by the Board that he did not have to repeat matters found in his PIF. The Applicant discussed signing the undertaking in his PIF. The Applicant submits that he misunderstood his counsel's question and that, based on his response, his misunderstanding was clear. Accordingly, counsel used another method to clarify the question at issue. The Applicant argues that counsel did not ask whether the Applicant had signed an undertaking upon his release; he simply asked whether or not the Applicant had signed anything upon his release.

#### **Failure to provide witness**

[32] The Applicant contends that the Board made unsupported conclusions based on speculation when it drew a negative inference regarding the Applicant's residence in Iran. The member said her negative inference was based on the fact that no evidence was received from the Applicant's sister with regard to picking him up at the airport. The Applicant submits that this is irrelevant, since such evidence does not impact whether or not the Applicant was in Iran at the time of the alleged incidents. Rather, the Applicant's sister would only be able to provide evidence with regard to her attendance at the airport and their travels thereafter.

[33] The Applicant submits that the Board ignored relevant evidence in the post-hearing documents that corroborates the Applicant's presence in Iran at the time of the incidents. Such evidence includes medical records with regard to the Applicant's broken leg (dated 2003) and a computer course certificate (dated September 2005). Had the Board considered these documents, it would not have concluded that "the panel has no evidence that the Applicant was in Iran during the time of the alleged incidents."

[34] Moreover, since it was the member herself who requested these documents, if she had no questions with regard to them, then presumably she accepted their validity. Accordingly, the Board had unchallenged and corroborated evidence before it that the Applicant was indeed in Iran at the time of the alleged incidents occurred.

#### **Fear of disclosure**

[35] The Board erred in finding the Applicant's fears with regard to the disclosure of his refugee claim to be baseless. While the Applicant concedes that such information is protected by the Canadian government, the Board failed to consider that disclosure could occur within the Iranian Community. Moreover, the Applicant has been in Canada for an extended period of time and fled Iran without an exit visa, an Iranian passport, or a Canadian visa. Thus, the state of Iran could logically conclude that a refugee claim was being made in Canada, or else the Applicant would have been refused entry and deported shortly thereafter.

### **No weight to medial reports**

[36] The Board also erred in law by accepting the Applicant's diagnoses of PTSD, depression and being a vulnerable person, but then refusing to give the medical reports any weight. The medical specialists made their diagnoses based on interviews with the Applicant and symptoms they observed which corroborated substantive aspects of the Applicant's evidence. Thus, it is unreasonable to accept the diagnoses while disregarding the evidence which would corroborate the Applicant's claim.

### **Risk assessment under section 97**

[37] Finally, the Applicant submits that the Board erred when it failed to conduct an assessment of the risk categories listed under section 97. The Board simply relied on its analysis for section 96 and found that "[b]ased on the above analysis, on a balance of probabilities, I find there are no such risks."

### **The Respondent**

[38] The Respondent submits that by referencing Post Hearing Applicant Document 1 in its Decision, the Board clearly demonstrated that the post-hearing documentary evidence adduced by the Applicant was considered.

[39] Moreover, the hearing transcript makes it clear that the Board asked the Applicant if he would like to make submissions but that he declined this opportunity. The Applicant then acknowledged that submissions may not be required if the Board had no additional questions with regard to the post-hearing documents. The Board clearly had no additional questions which required the re-attendance of, and additional submissions by, the Applicant.

[40] The Respondent contends that the pursuant to section 170(e) of the Act, the Board afforded the Applicant an opportunity to present evidence, make representations, and question witnesses.

[41] Moreover, all of the evidence was thoroughly considered by the Board in its rejection of the Applicant's claim, including the post-hearing documents.

#### **No error in finding of credibility**

[42] The Court should not interfere with the Board's assessment of credibility when it is based on an oral hearing because the Board has had the advantage of seeing and hearing the witness. On the other hand, the Court may interfere if it is satisfied that the Board based its conclusion on irrelevant considerations, or ignored evidence; however, the Respondent submits that this did not occur in the present case.



[43] Furthermore, the Court should not interfere where the Board's inferences and conclusions are reasonable. It is not the Court's role to re-weigh the evidence, even if it disagrees with the inferences and findings of the Board.

[44] The Board found the Applicant was not credible. The Respondent submits that this finding was open to the Board because of the Applicant's inconsistency in testimony on a key issue and the tendering of false documents to the Board. The Applicant cast doubt on the totality of his testimony. As stated by the Federal Court in *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238, 71 D.L.R. (4<sup>th</sup>) 604 at 244:

[E]ven without disbelieving every word an applicant has uttered, a...panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim....In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony.

#### **Date inconsistency**

[45] Although the Applicant attempted to explain his inconsistency with regard to the date of his father's arrest as being an error in calendar interpretation, the Respondent contends that the Board refuted this argument in finding that the date of his father's arrest was the only inconsistent date given by the Applicant. Accordingly, had an interpretation error existed, the Respondent submits that it would have been a consistent error over the interpretation of the Iranian calendar.

[46] The Respondent points out that no single error was responsible for the Board's finding that the Applicant was not credible. Rather, it was the totality of the evidence which included inconsistencies and implausibilities that led to the Board's negative finding on credibility.

### **No error in weighing medical evidence**

[47] The Board concluded that, while the diagnoses were accurate, the doctors' reports should be given no weight since they had no probative value in connection with the Applicant's treatment in Iran. The Respondent contends that there is no automatic correlation between the diagnosis of psychological problems and the cause of psychological problems. Accordingly, the Board did not err in accepting the diagnoses as legitimate while also rejecting the Applicant's claim that his psychological problems had been caused by mistreatment in Iran.

[48] The Respondent submits that, based on the Board's negative credibility finding, it was open to the Board to find that the Applicant's medical evidence did not relate to incidents of persecution.

A similar situation occurred in the case of *Boateng v. Canada (Minister of Citizenship and*

*Immigration)*, [1995] F.C.J. No. 517, where the following determination was made at paragraph 5:

Where, as in this case, the Board did not find the applicant to be credible, the medical evidence did not persuade the Board that the scars which were present on the applicant necessarily stemmed from persecution...It is not necessary for the Board to speculate as to the origin of the scars but rather it must determine whether the scars and bumps found on the body of the applicant resulted from persecution... .

[49] Accordingly, the Respondent contends that the weight given to medical reports depends on their relevancy and consistency with the totality of the evidence. In this case, documentary evidence shows that an accused in Iran is not given a copy of arrest warrants when charged with a serious crime, and that forged official Iranian documents are common. As a result, it was not unreasonable for the Board to find it implausible that the Applicant would be given a Writ of Summons and a Notification Paper after having been detained.

[50] The Applicant's contention that, because the Board accepted that the Iranian authorities do not always follow their own laws it should, therefore, have inferred that the documents adduced were authentic, is not persuasive.

[51] The Respondent submits that the existence of an alternative inference does not make the Board's inference erroneous, as long as the Board's initial inference was reasonable on the facts. The country conditions supported the Board's inference that the Applicant would not have been given a Writ of Summons or a Notification Paper because his alleged crimes were serious in nature.

[52] The Respondent points to the Board's reference to *Osyande* in making its determination of the Applicant's credibility. Indeed, according to *Osyande*, an applicant who tenders false documents with regard to a certain instance damages his or her credibility with regard to not only that instance, but also to the totality of the evidence.

[53] The Respondent contends that, based on the logic of *Osyande*, because the Board determined that the Applicant's documents were false, it was reasonable for the Board to make an adverse inference with regard to the Applicant's overall credibility.

### **Fear of Iranian knowledge of refugee claim**

[54] The Respondent submits that in order for the Applicant to be a refugee *sur place*, there is an onus on him to show an objective basis for his subjectively held, prospective fear of persecution. The Board determined that no objective basis existed in this instance because all Canadian refugee claims are kept confidential. As such, the Board committed no error in finding that the Applicant's fear of persecution upon his return was not objectively substantiated.

### **Separate section 97 analysis not required**

[55] The Respondent contends that the Board conducted a section 97 analysis, despite the fact that it did not use the specific words "section 97." The Respondent says this conclusion is obvious based on the wording of the Decision which contains language that mirrors the language of section 97.

[56] The Respondent acknowledges *Kule*, but finds this case to be distinguishable on its facts because the testimony of the applicant in *Kule* was considered credible. In the case at hand, however, the Applicant's testimony and evidence were not considered credible. Moreover, the

Respondent notes that the applicant in *Kule* had different grounds for his sections 96 and 97 refugee claims while, in the case at hand, the grounds for each of the section 96 and 97 claims were the same. Consequently, the Respondent submits that the inconsistencies and the implausibilities that were the basis for the rejection of the Applicant's application under section 96 apply equally to his section 97 claim.

## **ANALYSIS**

[57] At the heart of the Decision are two general negative credibility findings from which everything else flows.

[58] The first one involves the discrepancy in dates over the father's arrest. As a result of this discrepancy the Board finds "the claimant not to be a credible or trustworthy witness."

[59] The second negative finding results from the Board's reading of the country documents to indicate that "in serious issues the defendant is never provided with a copy of the warrant." This leads to a conclusion with regards to the Writ of Summons and Notification that, because official documents are often forged in Iran, "I find the claimant tendered false documents to the Board with the intention of misleading the Board."

[60] These two findings are not independent because the Board says "[s]ince I do not believe the claimant, I prefer the information in the country documents to that of the claimant's."

[61] In the end, everything can be related back to the negative credibility finding based upon the discrepancy in dates regarding the father's arrest.

[62] In written argument, the Respondent says that "no single factor determined the adverse credibility finding. Instead, the totality of the evidence, with its inconsistencies and implausibilities mutually as opposed to individually considered, led to the finding that the Applicant was not a credible witness." This is not the case.

[63] The Decision is, in fact, an inverted pyramid. In the end, everything can be traced back to one discrepancy in dates over the father's arrest. The balance of the Decision dealing with documentation, the medical evidence from both Iran and Canada, and the sister's failure to testify all relate back in one way or another to the one inconsistency in dates. Take, for example, the medical evidence:

Since I have found the claimant to have tendered false documents to the Board, on a balance of probabilities, I reject all of the documents tendered from Iran and give no weight to the findings of the physical examination conducted in Canada.

The finding on false documents arises because "[s]ince I do not believe the claimant, I prefer the information in the country documents to that of the claimants." And the reason why the Board does not believe the Applicant is because of the inconsistency over the date of the father's arrest.

[64] As a result, if the Board's conclusion with regard to the date discrepancy is unreasonable, the whole inverted pyramid comes tumbling down.

[65] In his PIF the Applicant said that his father was arrested on February 21, 2006. However, he testified through a Farsi interpreter. At the hearing he again testified through a Farsi interpreter and this time the interpretation came out as March 13, 2006.

[66] The transcript shows that in order to provide the March 13, 2006 date, the Applicant had to convert from the Iranian to the western calendar:

So it's on the 22<sup>nd</sup> of month of Islam of 84 which is the Iranian calendar and if I may I will just convert it. That would be 13<sup>th</sup> of March, 2006.

[67] When the discrepancy with dates was raised with the Applicant, he gave the following answers:

1. "So 22<sup>nd</sup> of month of 1384 of the Iranian calendar";
2. "The date is exactly on that 22<sup>nd</sup> of month of Estan(ph) and Madam Member, 22<sup>nd</sup> of that month is 13<sup>th</sup> of March of 2006";
3. "I don't know exactly because it should be that month of Estan(ph), because that was the date. Madam Member, month of Estan runs between 20<sup>th</sup> of February to 20<sup>th</sup> of March";
4. "So when I said 22<sup>nd</sup> of 12, which is Estan of Iranian Calendar, I meant to say 22<sup>nd</sup> of February, because Estan is 12 in Farsi and then 2 in February 2006, but that's where I made the mistake."

[68] It is clear from the relevant passages in the transcript that the inconsistency arose because of a mistake in converting from the Iranian to the western calendar.

[69] The Board rejects the Applicant's explanation for the mistake in conversion and, on the basis of this mistake, eventually goes on to reject everything else he says and all of the documents he tenders. A similar error occurred in *Bahdanava c. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1365, [2008] F.C.J. No. 1727 at paragraphs 12-13.

[70] The Board does not check to see if the date from the Iranian calendar is consistent. Instead, it faults the Applicant entirely for his attempts at conversion and refuses to believe anything he says.

[71] At the hearing, the Board appeared to give the Applicant the benefit of the doubt. At page 182 of the transcript the Board leaves the matter thus:

Claimant: I don't know exactly because it should be that month of Estan(ph), because that was the date. Madam Member, month of Estan runs between 20<sup>th</sup> of February to 20<sup>th</sup> of March.

Member: Okay, so it could have been. I'll leave you to make submissions on that.

No further submissions were made on the point because the Board did not provide the opportunity for submissions that it said it would provide.

[72] It is important to put this issue in perspective. The Applicant later produced Canadian medical evidence of severe physical and psychological trauma. The Applicant says that if he is sent back to Iran he will be tortured and killed. Notwithstanding these dire consequences, the Board, in



effect, chose to reject all of the verbal testimony and written evidence of the Applicant on the basis of a single inconsistency in dates which the Board indicates it will allow submissions on, but then rendered a negative decision without allowing submissions. See, for example, *Canada (Minister of Citizenship and Immigration) v. Dhaliwal-Williams*, 131 F.T.R. 19, [1997] F.C.J. No. 567 at paragraph 9.

[73] As regards the issue of submissions, it is worth pointing out that, at the beginning of the Decision the Board says “Submissions received and considered.” However, the record is clear that no submissions were made. The reason why is a little complex but my review of the transcript leads me to conclude that they were not made because counsel was never allowed an opportunity to make them. This is contrary to section 170 of the Act. See section 170 of the Act which provides that the RPD must give the Applicant “a reasonable opportunity to present evidence, question witnesses and make representations.

[74] The following appear in the transcript:

1. Page 185

Member: Before we start, sir, I'm going to give you time to get the medical report and the original summons. Counsel you have the option of giving me your submissions now or waiting until we see if we can get those documents?

Counsel for Applicant: Maybe I could do both. Assuming I get an opportunity to comment on the documents when they come in as we all will. I don't know if you're planning on reconvening.

2. Page 186:

Member: Well if the claimant provides credible hospital documents for example, that shows he was there at the time, at least 2003 I guess, and we don't know what Iranian X-rays look like. But I know that in Canada they usually have the date at the bottom of them.

Counsel for the Claimant: I'll wait for the documents. I dearly wanted the opportunity to respond to his prosecution versus persecution.

Refugee Protection Officer: I know

Counsel for the Claimant: But I'll wait for the documents.

Member: Okay sir, how long do you think you will need to get the documents over here?

[75] Under covering letter on October 22, 2008, counsel for the Applicant provided the post-hearing documents that the Applicant had been able to obtain and said "I await the Board's instructions."

[76] Counsel needed the Board's instructions because, at the hearing, the transcript discussion shows that he needed to know whether the Board had any problems with the post-hearing documents.

[77] No instructions came from the Board. The Board simply issued a negative decision in which it said "Submissions received and considered."

[78] This amounts to a breach of procedural fairness. Section 170 of the Act says that the Board "must" give the person and the Minister a reasonable opportunity to present evidence, question witnesses and "make representation." That did not occur in this case with the result that the Applicant was deprived of a significant right that the Board indicated he would have. See, for example, *Dhaliwal-Williams, supra*.

[79] There are various other problems with the Decision. However, the foregoing are sufficient to render it procedurally unfair and unreasonable. It must be returned for reconsideration.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2166-09

**STYLE OF CAUSE:** ALI REZA ZAVALAT  
v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 4, 2009

**REASONS FOR  
Judgment and Judgment:** RUSSELL J.

**DATED:** December 16, 2009

**APPEARANCES:**

Steven A. Morris FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Steven A. Morris FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, ON

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada