Federal Court  Cour fédérale

Date: 20110908

Docket: IMM-800-11

Citation: 2011 FC 1057

Ottawa, Ontario, September 8, 2011

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

JOHN DOE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision, dated February 16, 2010, of a Pre-Removal Risk Assessment (PRRA) officer (the Officer), denying the applicant's request for protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

FACTS

Background

[2] The applicant is a citizen of Iran. He arrived in Canada in October of 1991 and made a refugee claim. Although the materials related to the claim have all since been lost or destroyed, the applicant testified that his initial claim was based on his claim to have been detained for about 3 or 4 months and tortured by Iranian authorities because they alleged that he was a spy for Iraq and a communist. The applicant's claim was not successful at first instance or on appeal to this Court.

[3] The applicant began dating a Canadian permanent resident – a Jewish Kurd who had received status in Canada as a Convention refugee – in 1997. The two had a child in 1998 and married in 1999. The applicant then applied for Permanent Resident Status under the family class, sponsored by his wife, but the application was denied. Between 1997 and 2004 the applicant filed three different applications. In November of 2005, the applicant's third family class application was approved in principle. This application was never finally approved, however, because the applicant was found to have been involved in organized crime, as discussed below.

[4] In a decision dated January 19, 2010, The Immigration Division of the Immigration and Refugee Board found the applicant inadmissible to Canada pursuant to section 37(1)(a) of the Act, which states that a foreign national is inadmissible for organized criminality, as defined in that section.

[5] As a result of the admissibility decision, a deportation order was issued for the applicant. Following the issuance of the deportation order, a PRRA application that had been initiated in 2004, was reactivated. It is the PRRA officer's decision on that application that is the subject of this judicial review application.

Decision Under Review

[6] The Officer reviewed the history of the applicant's attempts to remain in Canada. The Officer stated that the applicant's refugee claim is relevant to the PRRA application because the applicant submitted that he may be on a "black list" because of his previous problems. The Officer stated, however, that the applicant was not able to detail his 1991 refugee claim. He did not explain why his claim was rejected, other than that the case was poorly prepared because there was no medical evidence and the interpretation was inadequate.

[7] The Officer summarized the applicant's submission regarding the risks that he will face if returned to Iran:

> The applicant cites risk of mistreatment upon return to Iran due to his long absence (19 years) (sic) and because he will be returned on a travel document issued in Canada. He sates that he has become "westernized," that he is an atheist who does not adhere to Islam and that he does not speak Farsi well. For these reasons, he "will not be able to blend in with the local community." He states he will be seen as an infidel due to his civil, not religious, marriage to his wife, and due to his opinions about organized religion. He states he will be returned on a travel document and not a passport, exposing himself to increased scrutiny and possibly torture.

[8] The Officer found that there was no evidence of the applicant's allegations that he was tortured in Iran 20 years ago. The Officer stated that the applicant's family, including his father,

continue to live in Iran without being mistreated by authorities. The Officer therefore found that the applicant's earlier experiences in Iran were not a significant risk factor.

[9] The Officer then turned to risks the applicant feared as a result of being a returnee to Iran from Canada. The Officer quoted from correspondence dated November 7, 2005, included in the Country Documentation Package, in which an Australian official that returnees to Iran are more likely to face discrimination because of their attitudes than because of the fact that they are "Western returnees". The official stated, however, that returnees may face interrogation, confiscation of their passports, or arrest upon return. The document quoted an Australian professor who stated that there are a "range of experiences" faced by returnees, ranging from one "extreme" where a man was tortured upon return, to no mistreatment whatsoever.

[10] The Officer found that the evidence demonstrated that the applicant would probably be questioned upon his return but would not face a risk of cruel and unusual punishment or treatment or a serious possibility of torture:

> I note the evidence regarding the severe treatment of some returnees, though in general I find this evidence to be anecdotal, in that only a few cases are described and little context is given. I find it probable that the applicant will be questioned upon his return to Iran, but the evidence does not support a finding that he will face a risk of cruel and unusual punishment or treatment, or that he faces a serious possibility of torture. I accept that the applicant's long absence from Iran might reasonably expose him to increased scrutiny upon return to Iran. However, I find insufficient evidence that returning refugees are mistreated in such frequency that I would conclude the applicant faces a likelihood of cruel and unusual punishment or treatment or torture. I find, given the evidence, that he is unlikely to be perceived as an opponent to the regime.

[11] The Officer also found that the applicant's criminal charges in Canada were not likely to present problems for the applicant. The Board stated that the Iranian authorities were unlikely to discover the applicant's connection, especially because he has not been convicted of a crime and the decision finding him inadmissible is not public and is not likely to be disclosed to Iranian authorities.

[12] The Officer then considered whether the applicant faced risks as a result of his attitudes towards religion and, in particular, Islam, or his "westernized" manner. The Board found that the applicant did not face risks on these grounds for the following reasons:

a. As an atheist, the applicant would not convert to another religion and would not publicly renounce Islam;

b. The authorities were unlikely to learn that the applicant's marriage had not been a religious one, and there was little evidence that people who do not have Islamic marriages are mistreated in Iran;

c. Although the applicant would "stand out" because he is "westernized", there was insufficient evidence to find that such attitudes expose an individual to any risks defined in section 97 of the Act;

d. The applicant had not stated any political reviews against the regime and was unlikely to be politically engaged in Iran. The Officer therefore found that reports regarding attempts by Iranian authorities to intimate returnees who tried to teach or speak against the government were not applicable;

e. Moreover, while opponents to the regime may face "severe sanctions", the regime has also brought expatriates back and there have been no reports of mistreatment or detention of those people.

[13] The Officer initially issued the PRRA decision on November 30, 2010. Subsequent to that decision, the applicant submitted a psychological report prepared on November 30, 2010. The Officer found that the report did not change the initial decision:

> I have reviewed the document and it does not relate to risk as defined in section 97 of IRPA. The report recounts the events leading up to the applicant's deportation order. It concludes, for the most part, that the applicant's mental state is normal. It refers to stress resulting from his immigration situation, but I find this is not evidence of risk in Iran. Overall, the information provided by the applicant does not change my original decision.

LEGISLATION

[14] Section 96 of the Act, grants protection to Convention refugees:

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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[15] Section 97 of the Act grants protection to persons whose removal would subject them personally to a danger of torture, or to a risk to life, or to a risk of cruel and unusual treatment or punishment:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	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 (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (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, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (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) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[16] Section 112 of the Act provides for a Pre-Removal Risk Assessment and sets out exceptions to who may apply for protection:

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to	112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la

the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

(2) Despite subsection (1), a person may not apply for protection if

(a) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;

(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or

(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

(3) Refugee protection may not result from an application for protection if the person

protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;	b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;
(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or	d) il est nommé au certificat visé au paragraphe 77(1).
(d) is named in a certificate referred to in subsection 77(1).	

[17] Section 113 of the Act establishes the procedure for considering an application for protection:

113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve

has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts

survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

> committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

ISSUES

[18] The applicant submits after discontinuing one issue at the hearing, the following two issues:

a. Did the Officer err in the assessment of country conditions in Iran or the applicant's risk if returned to Iran?

b. Was there was a breach of natural justice because of the non-disclosure to the applicant of removal proceedings under way against the applicant?

STANDARD OF REVIEW

[19] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, per Justice Binnie at paragraph 53.

[20] The first issue raised by the applicant is a question of the Officer's understanding of the law applicable to the applicant's claim. It is to be reviewed on a standard of correctness. If it is determined that the Officer correctly understood the law, then the Officer's application of the law to

the facts of the applicant's case is reviewable on a standard of reasonableness: *Canada (Citizenship and Immigration) v. Li*, 2010 FCA 75, at paragraph 20.

[21] The second issue raised by the applicant is a question of fact and mixed fact and law. It is reviewable on a standard of reasonableness.

[22] The final issue raised by the applicant is a question of procedural fairness. It must be correct.

ANALYSIS

Issue 1: Did the Officer err in the assessment of country conditions in Iran or the applicant's risk if returned to Iran?

[23] The applicant submits that he is at serious risk of being detained and tortured upon his arrival in Iran for the following reasons:

a. He has been outside the country for nearly 20 years;

b. He has ties to serious crimes in Canada;

c. He would be forcibly returned to Iran; and

d. He was previously detained and tortured in Iran.

[24] The applicant submits that his evidence demonstrated that persons returning to Iran may face interrogation and be arrested. Even if he is not detained upon his return, the applicant submits that he would be at risk of cruel and unusual treatment or punishment due to his non-adherence to Islam and Iranian cultural norms.

[25] The applicant submits that the Officer erred by considering each of the applicant's grounds for fearing persecution – his religion, his reason for return, and his westernization – separately instead of holistically. The applicant submits that the Officer unreasonably found that it is "probable" that the applicant would be questioned upon his return to Iran, and would be exposed to "increased scrutiny", but that it was not likely that Iranian authorities would find out about his connection with organized crime, his connection to the other suspects involved in those crimes, his views towards religion, his political opinion, or his marriage. The applicant submits that the Officer also ought to have considered whether, even if none of those elements would individually cause the Iranian authorities to harm the applicant, the cumulative effect of the applicant's characteristics would expose him to a section 97 risk.

[26] The applicant also submits that the Officer made the following errors in its assessment of the evidence itself:

a. The Officer found that the applicant's atheism does not put him at risk because he would not have to renounce Islam. The applicant submits that by stating that he is an atheist he has renounced Islam.

b. The Officer had not referred to reports submitted by the applicant demonstrating an increase in charges of "enmity against God" – a vague offence that could be used to punish the applicant for atheism. These included a January 2010 confirmation from Amnesty International that two men were hanged for being convicted of that offence, among others.

c. The Officer had relied on a report from 2005, but had no considered more recent evidence. For example, the applicant had submitted articles from 2010 from Human Rights Watch, the United States Department of State and Amnesty International that spoke to human rights abuses in Iran. For example, the Amnesty International article is dated March 30, 2010, and entitled "Iran executions send a chilling message". The article states the following in its opening line:

> Recent developments in Iran have prompted fears that the Iranian authorities are once more using executions as a tool to quell political unrest, intimate the population and send a signal that dissent will not be tolerated."

[27] The respondent submits that the Officer made no error in assessing the evidence. The respondent submits that the Officer specifically referred to documentary evidence provided by the applicant, especially that regarding the severe treatment faced by some returnees and attempts by Iranian authorities to intimidate expatriate Iranians, but found that the applicant had failed to satisfy the Officer that he faced a risk. The respondent submits that this finding was open to the Officer.

[28] The Court agrees with the respondent. Although the Officer should have referred more explicitly to more recent evidence, none of the documents relied upon by the applicant speak of risks faced by returnees. Instead, the documents suggest that political dissidents and Iranian citizens who are perceived by authorities to be critical of the country's human rights record face great risk in Iran. The Officer specifically found that the applicant is not such a person.

[29] The Court finds that although the Officer did not expressly consider whether all of the applicant's alleged risk factors could cumulatively put the applicant at greater risk than any individual factor, all of the factors were related and the Officer's reasons demonstrate that the factors were, in fact, considered together.

[30] Accordingly, the Court finds that the Officer's decision was reasonably open to him, and the Court cannot intervene.

Issue 2: Was there was a breach of natural justice because of the non-disclosure to the applicant of removal proceedings under way against the applicant?

[31] The applicant submits that he was not informed of the negative PRRA decision until January 25, 2011, two months after the decision was made on November 20, 2010. During that time, the

applicant has learned that the Canadian Border Services Agency initiated removal arrangements without informing the applicant.

[32] When he learned of the PRRA decision, the applicant was also informed that he would be traveling on a “single-journey” document, the airline’s purser would decide whether to give the applicant’s documents to the applicant on the plane or to give them to Iranian authorities upon arrival, and the applicant would be escorted by a Canadian Border Services Agency officer.

[33] The applicant submits that there are two ways in which this process breached his rights to procedural fairness and natural justice. First, the applicant submits that certain removal arrangements can themselves heighten a person’s risk upon return. He submits that he made submissions regarding the additional danger posed to deportees from Canada who traveled on “single journey” travel documents. He submits that his risk could have been lessened if he had been given the opportunity to apply for a new passport, been assured of receiving his travel documents on the plane, and left to travel unescorted. The applicant submits that he should have had the opportunity to make submissions regarding the arrangements for his deportation in order to respond to the risks that they raise.

[34] Second, the applicant submits that the Officer should have considered the removal arrangements in the PRRA decision itself.

[35] The respondent submits that there was no breach of natural justice. The respondent submits that the applicant did make submissions regarding increased risk posed by potential methods of

deportation, and that the Officer found that while the applicant is more likely to be questioned upon his return to Iran, the evidence did not support a finding that he will face a section 97 risk as a result.

[36] The Court agrees with the respondent. The Officer did consider the applicant's submissions regarding the potential additional risk posed by the choice of removal procedures. The applicant has not shown any error in the Officer's evaluation of the evidence in that regard.

[37] The removal arrangements are not the responsibility of the PRRA Officer or the respondent. CBSA is responsible for removing the applicant, and their actions are not the subject of this application for judicial removal. However, the Court agrees that CBSA ought to recognize that its removal arrangement should not exacerbate the risk facing the applicant upon returning to Iran, and that its removal arrangements be modified accordingly within reason.

CONCLUSION

[38] For the reasons stated above, this application for judicial review will be dismissed.

[39] To minimize the risk for the applicant upon return, the Court has deleted details regarding the criminal activity and suggested to the applicant that this judgment and reasons for judgment be anonymized by the substitution of "John Doe" for the name of the applicant in the style of cause. The applicant welcomed this suggestion and the respondent did not object. This precaution was incorporated by Mr. Justice Mosley in *S. K. v. The Minister of Citizenship and Immigration* 2011 FC 788, para. 21 where Justice Mosley stated:

> …the open court principle normally requires that the name of the parties be set out in the style of cause, the courts have recognized

> exceptions to that principle such as where the decision contains highly personal information or would put a party at risk.

[40] In view of the nature of the evidence and the conclusion which the Court has reached, I will delete the applicant's name in the style of cause on the judgment and reasons for judgment, and substitute the name "John Doe".

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Vancouver, British Columbia
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APPEARANCES:

Ms. Judith Boer	FOR THE APPLICANT
Ms. Hilla Aharon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Elgin, Cannon and Associates Vancouver, BC	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General Ottawa, Ontario	FOR THE RESPONDENT