Federal Court  Cour fédérale

Date: 20111027

Docket: IMM-191-11

Citation: 2011 FC 1192

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 27, 2011

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Roghieh KHOSRAVI

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 of Anna Brychcy of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the panel). This application is submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*,

S.C. (2001), c. 27 (the Act) by Roghieh Khosravi (the applicant), a 62-year-old Iranian woman. The panel found that the applicant was not a refugee or a person in need of protection and therefore rejected her refugee claim.

[2] Considering herself to be a *sur place* refugee, the applicant says that she fears returning to Iran because of her children's and her participation in demonstrations in Montréal against the Iranian government. She said that she also fears being persecuted because of false accusations made against her by the Iranian authorities.

[3] The panel found that several important aspects of the applicant's refugee claim were not credible and that, as a result, her allegations of being a *sur place* refugee and of subjective fear within the meaning of the Act had not been proven. In so concluding, the panel based its findings in part on the following elements explained in its decision:

- After her initial examination in July 2004, only the applicant's daughter filed a refugee claim, not the applicant herself.
- Despite her children's difficulties, which caused them to leave Iran, the applicant had never before filed a refugee claim and continued to travel.
- After having said that her previous examination related to her son's activities had taken place in 2004, she now states that it was actually in 2005.
- There is a contradiction in the applicant's testimony about her passport.
- It is unlikely that the Iranian authorities searched the applicant's house looking for evidence during her detention, since she was out of the country for six months without returning to her home.
- After she left Iran in 2009, the applicant did not file a refugee claim in England and she also failed to file one immediately after she arrived in Canada.
- The applicant has been able to leave Iran several times since 2004.

- The applicant was unable to tell whom she allegedly bribed to allow her to leave Iran.

- The applicant never took an active part in the demonstrations she attended.

- There is no evidence that the Iranian authorities are aware of the applicant's presence at these demonstrations.

- On the basis of documentary evidence from 2005 contained in the National Documentation Package, it is unlikely that the Iranian government is aware of the applicant's participation in the demonstrations.

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[4] This application for judicial review raises the following fundamental issues:

i. Did the panel breach the principles of natural justice and its duty of procedural fairness by depriving the applicant of the opportunity to be heard and to present her evidence?

ii. Did the panel err in its assessment of the facts and the applicant's credibility with respect to her allegations of being a *sur place* refugee and her subjective fear?

[5] The applicable standard of review in any question of law, procedural fairness and breach of natural justice is correctness (*Dunsmuir v. Nouveau-Brunswick*, [2008] 1 S.C.R. 190 [*Dunsmuir*]).

[6] Furthermore, the standard of reasonableness applies with respect to the second question on the panel's findings of fact.

[7] On the first question, the applicant alleged that the panel acted in an unfair manner, in breach of the principles of natural justice, by failing to inform her of the evidence against her and failing to give her the opportunity to be heard. The applicant stated that a party must be informed of the panel's concerns and the evidence against it and be able to comment on this evidence (see *Skripnikov v. Minister of Citizenship and Immigration*, 2007 FC 369, at para. 22; *Sheikh v. Minister of Citizenship and Immigration*, 2008 FC 176, at para. 10; and *Tamber v. Minister of Citizenship and Immigration*, 2008 FC 951, at para.16). The panel allegedly erred by failing to inform the applicant of its concerns about her credibility during the hearing.

[8] However, on the face of the decision, it appears that the panel did give the applicant the opportunity to explain her contradictory testimony. The applicant indeed had the opportunity to fully share her point of view and present her evidence, as required by procedural fairness (*Baker v. Canada* (*Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817 at para. 22). As noted by the respondent, the burden of proof in a refugee claim is on the applicant: she had to establish a subjective fear and a serious possibility of persecution on the basis of credible evidence. It is not for the panel to seek additional evidence.

[9] The applicant further criticizes the panel for failing to draw her attention to the documentary evidence in her country of nationality's package, specifically the document by the "director for the consular office in the Iranian Foreign Language Ministry." This documentary evidence is used, in the panel's decision, as evidence establishing the unlikelihood that the Iranian government knew of the applicant's actions and that she would be persecuted. Since she was not offered the opportunity to contradict this document, the applicant alleges that her right to procedural fairness was breached.

[10] The respondent refers to paragraph 170(*h*) of the Act to emphasize the discretion granted to the panel in terms of credibility and assessment of the evidence. The respondent notes that the document "director for the consular office in the Iranian Foreign Language Ministry" was part of the package and that it was specifically brought to the applicant's attention before the hearing.

[11] It should be noted that under the Act, the panel has the discretion to consider everything that is found in the package. Further, the panel is presumed to have considered all of the evidence before it (see *Florea v. Canada* (*Minister of Employment and Immigration*) (1993) F.C.J. No. 598 (F.C.A.), at para. 1). The panel certainly was not obligated to comment on each of the exhibits placed in evidence (*Cepeda-Gutierrez et al. v. Canada* (*Minister of Citizenship and Immigration*) (1998), 157 F.T.R. 35, at para. 16).

[12] Therefore, in light of the record, I find that the applicant had the full opportunity to be heard and that the panel in no way breached its duty of procedural fairness.

[13] On the second issue, with respect to the assessment of the facts and the applicant's credibility, with respect to her claims of being a *sur place* refugee and of her subjective fear, I am not persuaded, after reviewing the evidence and hearing the counsel for the parties, that the Court's intervention is warranted.

[14] It does not appear to me that the panel based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (see

paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7). Although some documents supporting the applicant's claims were not analyzed in the decision and the panel's determination that the temporary absence stamp in the applicant's passport could be an error, I do not think that this would be sufficient to invalidate this decision. In this matter, this Court cannot substitute itself for the panel. In summary, I am of the view that it was not unreasonable for the panel to have weighed all the facts as it did in its finding of the applicant's lack of credibility and the lack of sufficient evidence to show that she is a *sur place* refugee and that she has a subjective fear consistent with the Act. Having considered all relevant circumstances, the panel's decision and its findings of fact are warranted in essence and fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. In my opinion, the decision appears to me to be justified, transparent and the hearing is intelligible (see *Dunsmuir* at para. 47).

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[15] For all these reasons, the application for judicial review is dismissed.

[16] I agree with counsel for the parties that this is not a case for certification.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board that the applicant was not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-191-11
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