

Federal Court



Cour fédérale

**Date: 20130124**

**Docket: IMM-4382-12**

**Citation: 2013 FC 73**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, January 24, 2013**

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

**BETWEEN:**

**FARIDEH NOUHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant, a citizen of Iran, fears persecution in her country because of her perceived political opinions and her membership in a particular social group. She is challenging the legality of a decision of the Refugee Protection Division of the Immigration and Refugee Board (panel), dated April 12, 2012, rejecting her claim for refugee protection.

[2] The existence of a subjective fear is not really at issue and the panel did not seriously call into question the story found in the applicant's Personal Information Form (PIF) although there are doubts as to the veracity of certain allegations on which we will return later in these reasons. Essentially, the panel found that the applicant is not at risk of persecution in Iran since her son is already in prison and her daughter, who lives in Iran, was not arrested by the police.

[3] The decision under review must be reviewed on the reasonableness standard. The issue in this case is whether the panel's implausibility findings and negative inferences are reasonable and are based on the evidence as the respondent claims or, rather, whether they are purely gratuitous, speculative and unreasonable as the applicant argues.

[4] The allegations that must be taken as proved are relatively straightforward. The female applicant is 66 years old. She is the mother of a son, Ali, who lived with her in Iran, and two daughters, Maryam and Fatemeh, the former living in Canada and the latter in Iran. In June 2009, Ali participated in popular demonstrations challenging the result of the presidential elections. In mid-September 2009, two of her son's friends, Babak and Hamid, came to hide in her residence. The police arrived to arrest them and, at the same time, it also arrested the applicant when her son was absent. The applicant was questioned by the police about her son and was released the same night. Three days later, she was again questioned about her son. In the months that followed, the applicant received various telephone threats, always relating to her son. The applicant arrived in Montréal on May 26, 2010, with a temporary resident visa and she made her refugee claim on August 31, 2010. Soon after, her son was arrested and he has been incarcerated since then.

However, the Iranian authorities allowed Fatemeh to visit him in prison. The authorities continued show interested in the applicant.

[5] It is true that the panel may make “reasonable findings based on implausibility” (*Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1004, at para 30, [2012] FCJ No 1090), but there is nothing in all the evidence on the record to support the panel’s negative inferences and findings of implausibility, when the applicant’s entire testimony and the other documentary evidence on the record are considered. In my opinion, several of the panel’s findings are gratuitous or speculative and the grounds found at paragraphs 7 to 10 of the decision do not support a finding that the rejection of the refugee claim is an acceptable outcome in respect of the evidence and the applicable law. Intervention is warranted in this case.

[6] Therefore, in finding that the applicant was released the day of her arrest, most likely because the Iranian authorities found that the applicant was not complicit in the decision to offer shelter to people who wanted to escape the Iranian authorities, the panel ignored the applicant’s reasonable explanations and the medical evidence on the record. It seems that the applicant indeed experienced discomfort in detention that, according to the applicant’s story, prompted her release, which is plausible in this case.

[7] However, the finding of absence of risk is very much based on the fact that up until then, the applicant’s daughter, Fatemeh, had not been detained. Again, the panel did not consider the evidence on the record. It should be remembered that the fugitives, Babak and Hamid, were found and arrested at the applicant’s home, not at her daughter’s home. Further, the documentary evidence

indicates that the family members of a person detained for political reasons—like the applicant's son—are still at risk of being arrested or harassed, especially when pressure is being exerted on a political prisoner. Mothers are often targeted. Let us not forget that Ali is incarcerated in Evin prison, a prison for political prisoners, which the panel seems to have disregarded.

[8] The panel also relied on the fact that the applicant was able to leave Iran on May 26, 2010. Nevertheless, the panel seems at the same time to have disregarded the documentary evidence that it is quite rare for the Iranian government to prevent its nationals from leaving the country, while the applicant does not have the profile of individuals that the Iranian authorities prevent from travelling abroad. In its very cursory analysis, the panel also did not consider that the Iranian authorities have continued to harass the applicant after her release and ask questions about her.

[9] The panel also drew a negative inference from the fact that Fatemeh did not state explicitly in her letter—fully corroborating the applicant's testimony—that the authorities questioned Ali about the applicant, which also appears to me to be unreasonable. There is no apparent inconsistency between the applicant's testimony and Fatemeh's letter, although according to the uncontradicted evidence on record, in August 2010, the authorities told Fatemeh that they wanted to interrogate the applicant about Babak and Hamid and that her record was still open.

[10] Although the Court enjoys some measure of discretion to supplement defective or insufficient reasons, it must still be satisfied that, on the whole, the panel's reasoning holds and relies on the evidence on the record. That is not the case here. In this case, the panel raised no inconsistencies in the applicant's story in the PIF or her testimony. The panel's reasoning relies

exclusively on what appeared to it to be implausibilities. Further, the version given on these specific points by the applicant also seem plausible and her testimony as a whole is not generally being called into question by the panel.

[11] While the applicant also raised several other grounds for interference, it remains that the cumulative errors or omissions outlined above are determinative and are sufficient to set aside the panel's decision, which is unreasonable in this case. It does not seem appropriate for me to substitute myself for the panel to find my own new arguments to reject the refugee claim, which would be equivalent to rewriting the impugned decision. In the interests of justice, a new decision of the refugee claim by a different decision-maker seems necessary. Of course, the panel will have the opportunity, if it wishes, to rule again on the credibility of the applicant's story and the personalized risk that she may encounter in light of her specific profile and objective elements found in the documentary evidence.

[12] For these reasons, the application for judicial review will be allowed. No question of general importance was raised in this case.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is allowed. The decision of the Refugee Protection Division of the Immigration and Refugee Board is set aside and the matter is referred back to a differently constituted panel so that a new hearing may be held and a new decision on the applicant's refugee claim be made. No question is certified.

“Luc Martineau”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-4382-12

**STYLE OF CAUSE:** FARIDEH NOUHI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 17, 2013

**REASONS FOR JUDGMENT:** MARTINEAU J.

**DATED:** January 24, 2013

**APPEARANCES:**

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