Federal Court  Cour fédérale

Date: 20130405

Docket: IMM-8086-12

Citation: 2013 FC 345

Ottawa, Ontario, April 5, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ENSHAALLAH ZENDEH PIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Enshaallah Zendeh Pil seeks judicial review of a Pre-removal Risk Assessment that determined that he would not be at risk in Iran. Mr. Pil asserts that the officer's findings with respect to the sufficiency of his evidence of risk were, in reality, disguised credibility findings. As a consequence, he says that he was treated unfairly as the PRRA officer made these findings without first affording him an interview. Mr. Pil also submits that the PRRA officer erred in ignoring evidence.

[2] For the reasons that follow, Mr. Pil has not persuaded me that the PRRA officer erred as alleged. As a consequence, his application for judicial review will be dismissed.

Background

[3] In order to put the issues raised by Mr. Pil into context, it is necessary to have some understanding of his immigration history in Canada.

[4] The Refugee Protection Division of the Immigration and Refugee Board accepted that Mr. Pil had been convicted of plotting a coup d'état in the early 1980's and that he had served five years in an Iranian prison before being released from prison in 1986.

[5] The Board also found that Mr. Pil was able to leave the country on three separate occasions in the ensuing years, returning to Iran each time, and that he had obtained a visa which would have permitted him to go to the United Kingdom that he chose not to use. In 2004, Mr. Pil was able to obtain an exit visa allowing him to come to Canada for up to six months. He then left Iran.

[6] According to Mr. Pil, he had to post security with the Iranian authorities in order to secure the exit visa. When he did not return to Iran within six months, and did not seek an extension to his exit visa, the State realized on the security posted by Mr. Pil by seizing his home.

[7] Mr. Pil claimed to have a well-founded fear of persecution in Iran, asserting that because he had overstayed his exit visa and because of his past conviction, he would be perceived as a

subversive. As a result, he claimed that he would be detained and tortured if he were to return to Iran.

[8] The Board found that the claim was not well-founded. Insofar as the risk faced by Mr. Pil based upon the fact that he had overstayed his exit visa was concerned, the Board concluded that Mr. Pil had not provided sufficient credible or trustworthy evidence to demonstrate the existence of a well-founded fear of persecution in this regard.

[9] Giving him the benefit of the doubt, the Board did accept that Mr. Pil had been convicted of anti-regime activity in 1980. However, the Board was not satisfied that he would be of any ongoing interest to the Iranian authorities. The Board specifically found Mr. Pil's claim to have been the subject of on-going surveillance by the Iranian authorities, and to be a perceived opponent of the regime not to be credible.

[10] The Board found as a fact that Mr. Pil had served his sentence and that he had not encountered any further problems with the Iranian authorities between the time of his release from prison in 1986 and his departure for Canada in 2004.

[11] Finally, Mr. Pil's delay in leaving Iran, his repeated reavailment, and his delay in seeking refugee protection once he was in Canada all led the Board to find that Mr. Pil did not have a subjective fear of persecution.

[12] The Board's decision was affirmed by this Court: *Pil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1067. The principle argument advanced by Mr. Pil in his application for judicial review of the Board's decision was that the Board had erred in failing to consider the risk implications that arose from the confiscation of his family home. The Court did not accept this argument, finding that the Board had not overlooked this issue. The Court further found that the lack of evidence regarding the relationship between exit visas and the need to post security meant that the Board's finding that the seizure of Mr. Pil's home carried limited probative weight in determining his future risk in Iran was reasonable.

[13] The Court also did not accept Mr. Pil's argument that the Iranian regime was unpredictable, and that the Board should therefore have assumed the worst for his return. The Court observed that Mr. Pil had the burden of proving that he faced a real risk of harm in Iran, noting this burden could not be satisfied by speculating about what the authorities might do.

[14] Mr. Pil's PRRA application was based upon the same risk assertions that had previously been rejected by the Board, and many of his arguments, such as those based upon the alleged unpredictability of the Iranian regime have already been considered and rejected by this Court.

[15] Mr. Pil did provide the PRRA officer with new evidence in the form of photocopies of two subpoenas issued in 2011, which were allegedly delivered to his wife in Iran. The documents seek to compel Mr. Pil's attendance at the "Boroojerd Intelligence Bureau of Sepah" in order "To provide some explanations". According to Mr. Pil, the documents demonstrate that he continues to be a person of interest to the Iranian authorities.

[16] The subpoenas were specifically considered by the PRRA officer, who clearly had concerns with respect to the dates of the documents. In this regard, the officer noted that while Mr. Pil had stated that a number of warrants for his arrest had been left with his wife in the years after he left Iran because of his failure to return home, the only documents he had provided were the two subpoenas issued in 2011. No other evidence had been produced by Mr. Pil to indicate that he was of any interest to the Iranian authorities during the years between the rejection of his refugee claim and the filing of his PRRA application. Given the close proximity in time between the dates on the subpoenas and the filing of the PRRA application, the officer's concerns were clearly reasonable.

[17] The officer further noted that the fact that the documents were photocopies meant that their authenticity could not be verified. The officer did note, however, that one of the documents had an error apparent on its face, and that neither document provided any details as to the kind of "explanations" being sought from Mr. Pil or the purpose of the interviews. In the circumstances, the officer concluded that the subpoenas were insufficient evidence of a risk to Mr. Pil.

[18] Mr. Pil has not persuaded me that this finding was in fact a veiled credibility finding or that it was unreasonable. The officer's reasons for finding that the subpoenas were not sufficient to displace the Board's finding that Mr. Pil was not of any ongoing interest to the Iranian authorities are intelligible, and the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47, and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59.

[19] Moreover, an interview is not required when the issue is the sufficiency of the evidence: see *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] F.C.J. No. 1308.

[20] Finally, I have not been persuaded that the PRRA officer erred by ignoring evidence. While Mr. Pil's counsel made a valiant effort to show how documentary evidence relating to country conditions in Iran demonstrated that her client was at risk in that country, none of these submissions had been made to the PRRA officer by Mr. Pil's former counsel, and the officer cannot be faulted for failing to consider an argument that had not been made. More fundamentally, however, Mr. Pil has not demonstrated that he shares the profile of those identified in the documents as being at risk from the Iranian authorities, or that he would now be perceived to be an enemy of the regime.

Conclusion

[21] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8086-12
STYLE OF CAUSE:	ENSHAALLAH ZENDEH PIL v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 3, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	MACTAVISH J.
DATED:	April 5, 2013

APPEARANCES:

Lina Anani	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LINA ANANI Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
WILLIAM F. PENTNEY Deputy Attorney General of Canada	FOR THE RESPONDENT