

Federal Court



Cour fédérale

Date: 20150826

Docket: IMM-583-15

Citation: 2015 FC 1009

Montréal, Quebec, August 26, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SOGHRA SHARIFIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] First instance decisions are not to be dissected by a "scalpel" but rather examined as a whole. Thus, fact-driven credibility cases do not warrant the interference of this Court unless the findings of the trier of fact are patently unreasonable; and, the word, "findings", refers to conclusions reached, in light of the complete evidence, read in context.

(Sherwani v Canada (Minister of Citizenship and Immigration), 2005 FC 37 at para 1, by the undersigned)

II. Introduction

[1] The Applicant challenges a decision dated January 5, 2015, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], wherein the Refugee Protection Division [RPD] found that the Applicant was neither a Convention refugee nor a person in need of protection.

III. Background

[2] The Applicant is a citizen of Iran who claims a well-founded fear of persecution on the basis of her imputed political opinion and perceived religious beliefs of being a member or supporter of the Nematollahi Gonabadi Dervishes.

[3] The Applicant holds several university degrees, namely, a bachelor's degree in natural resources engineering and a master's degree in educational management. The Applicant was a teacher for ten years and thereafter, for a period of fourteen years, was the principal of a commercial and vocational technical high school, until her retirement in May 2009.

[4] Since approximately 2006, the Applicant became actively involved in a religious and social organization known as Daravish-E-Zahabieh, which consisted of approximately twenty-five intellectual and well-educated people who would meet on a monthly basis and hold speaker or discussion meetings. At the top of their agenda were women's issues, current political issues and criticism of the Iranian regime.

[5] The Daravish-E-Zahabieh group had developed a relationship with the Nematollahi Gonabadi Dervishes, who constitute a particular Shia Muslim Sufi religious sect whose members have been persecuted, harassed and outlawed by the Iranian regime.

[6] On April 20, 2012, the Applicant obtained a visitor visa for Canada in order to visit her brother. She arrived in Toronto on May 5, 2012.

[7] During the month of June 2012, the Applicant received a phone call from her husband indicating that on June 5, 2012, he had received an anonymous phone call from a man asking to speak with the Applicant. Several days later, a man and a woman appeared at the Applicant's home, asking to speak with the Applicant. Because similar incidents had occurred with other friends, the Applicant's husband advised the Applicant not to return to Iran. The Applicant's husband made several inquiries and learned that two of the Applicant's friends, who were part of the Daravish-E-Zahabieh group, had either been captured by Sepah's intelligence unit or had gone into hiding.

[8] Fearing arrest upon return to Iran, the Applicant claimed refugee protection in Montréal, on June 20, 2012.

[9] A hearing was held before the RPD on December 8, 2014, and the Applicant's refugee claim was rejected on January 5, 2015.

IV. Impugned Decision

[10] The RPD rejected the Applicant's refugee claim by finding that there is no reasonable chance or serious possibility that the Applicant would be persecuted should she return to Iran. The RPD found that the Applicant's narrative is, to a large extent, a fabrication.

[11] The RPD is of the view that the Applicant "exaggerated her implication with the Dervishes to the extent of distortion" (RPD Decision, Certified Tribunal Record, at para 9). In particular, the RPD made the following findings:

- i. The Applicant does not mention being a member of the Nematollahi Gonabadi Dervishes Organization at question 26 of the Claim for Refugee Protection in Canada form and does not mention this organization in her response to question 1h) of her Personal Information Form [PIF]. Moreover, at question 31 of her PIF, the Applicant does not mention attending the Dervish temple; rather the Applicant mentions that a commemoration ceremony was held when one of the veteran Dervishes in her group passed away and that on several occasions in the past two years, members of the group had prayed at the Ghoba Mosque, which is a Shia Muslim Mosque, for the release of the Dervishes who had been imprisoned by the Iranian regime;
- ii. The RPD finds that the Applicant's narrative with respect to the events of June 5, 2012, and several days thereafter at her home is not credible. Moreover, the declaration of the Applicant's husband recounting those events fails to mention the two people who allegedly appeared at the Applicant's home, that the Applicant's husband was able to confirm that the telephone number belonged to Sepah's

- intelligence unit and that two members of the group had gone into hiding or had been captured by Sepah's intelligence unit. The failure of the Applicant's husband to include this information leads the RPD to find that the Applicant's allegations in those respects were fabricated;
- iii. Relying on the documentary evidence provided by the Applicant, the RPD finds that the Applicant possesses none of the characteristics of those persecuted by the Iranian State that would put her at risk of being arrested and persecuted;
- iv. The RPD finds that the update filed on October 24, 2014, by the Applicant, alleging that a government informant agent could be living in her and her husband's apartment building lacks credibility and is a fabrication, as this information is not corroborated by any written attestation by the Applicant's husband;
- v. The RPD notes that the Applicant departed legally from Iran on May 3, 2012, with a valid passport as well as a valid Canadian visitor visa. In the past two and a half years, there is no indication that Sepah's intelligence unit or any other security force from the Iranian regime is looking for the Applicant or has attempted to arrest or summon the Applicant.

V. Legislative Provisions

[12] The relevant provisions of the IRPA in respect to refugee determination are as follows:

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

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

social group or political opinion,

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 themselves 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.

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

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires

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.

(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.

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.

(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.

VI. Issue

[13] Is the RPD's decision in respect to the Applicant's credibility and well-founded fear of persecution reasonable?

VII. Positions of the Parties

A. *Position of the Applicant*

[14] In respect to credibility, the Applicant contends that, contrary to the RPD's finding, she did raise her affiliation with the Gonabadi Dervish group upon initially claiming refugee protection and that in negating the Applicant's credibility, the RPD failed to consider the

Applicant's evidence in its entirety. According to the Applicant, the RPD was overzealous in its credibility findings, by attempting to find discrepancies and contradictions in the Applicant's refugee claim.

[15] The Applicant also contends that it was unreasonable for the RPD to negate the Applicant's credibility on the basis of information lacking from her husband's declaration. The Applicant also argues that the RPD failed to observe the principles of natural justice in failing to give the Applicant an opportunity to address the RPD's concerns regarding the perceived vagueness of her husband's letter.

[16] According to the Applicant, the RPD erred in failing to consider documentary evidence demonstrating that supporters of the Dervish community, or any other minority group, are being sought and persecuted by the government, such as the *United States Commission on International Religious Freedom 2013 Annual Report* and the article "International Campaign for Human Rights in Iran", among others (Applicant's Record, at pp 35 and 52-54).

[17] Moreover, the Applicant contends that the RPD erred in negating the Applicant's credibility based on the fact that no summons or arrest warrant was issued by the Iranian authorities against the Applicant, considering the evidence demonstrating that such documents are not always issued.

B. *Position of the Respondent*

[18] The Respondent submits the RPD reasonably found that the Applicant lacked credibility in her allegations of being a member of an illegal group whose intent is to disrupt national security. The Applicant filed a letter drafted by her husband, containing general allegations. The silence in the letter regarding certain facts that are central to the Applicant's claim reasonably lead the RPD to question the truthfulness of her allegations.

[19] The Respondent contends that although the RPD is at fault for mentioning that the Applicant never mentioned in her point of entry notes that she is a member of the Daravish-E-Zahabieh group, this issue error does not warrant the Court's intervention, and the decision must be read in its entirety. According to the Respondent, the RPD reasonably noted that the Applicant did not mention in her PIF that she had attended the Dervish temple, despite this being a significant element of her claim.

[20] As such, the Federal Court has held that it is reasonable for the RPD to doubt the truthfulness of an account when an applicant fails to mention important facts in his or her PIF and subsequently adds them to his or her testimony.

[21] In respect of the Applicant's argument of a breach of procedural fairness, the Respondent argues that it is well established that "[a] failure by a claimant to fulfill his obligations and assume his burden of proof cannot be imputed to the Board so as to make it a Board's failure"

(*Ranganathan v Canada (Minister of Citizenship and Immigration)*, (C.A.), [2001] 2 FC 164 at para 11 [*Ranganathan*]).

[22] Finally, the Respondent contends that the RPD is presumed to have considered all evidence on file. The RPD's failure to specify every piece of evidence before it does not constitute a reviewable error.

VIII. Analysis

[23] This Court has consistently maintained that credibility of a narrative is in serious jeopardy when an Applicant omits key or central elements, significant to the narrative in a PIF; and, only, subsequently inserts elements to a narrative that substantially change the original narrative (*Grinevich v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 444 at para 4).

[24] In analyzing the evidence as a whole and the chronology of its presentation, as well as significant lacunae, the Court cites the Federal Court of Appeal which has clearly stated that “[a] failure by a claimant to fulfill his obligations and assume his burden of proof cannot be imputed to the Board so as to make it a Board's failure” (*Ranganathan*, above at para 11).

IX. Conclusion

[25] For all these reasons, the Court rejects the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-583-15

STYLE OF CAUSE: SOGHRA SHARIFIAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 25, 2015

JUDGMENT AND REASONS: SHORE J.

DATED: AUGUST 26, 2015

APPEARANCES:

Nilufar Sadeghi

FOR THE APPLICANT

Lynne Lazaroff

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Montréal, Quebec

FOR THE RESPONDENT