Federal Court  Cour fédérale

Date: 20190219

Docket: IMM-5296-17

Citation: 2019 FC 205

Ottawa, Ontario, February 19, 2019

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

GHOLAMREZA GHODRATI AMIRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Gholamreza Ghodrati Amiri is an Iranian citizen whose application for permanent residence under the Federal Skilled Workers Program was refused on security grounds. A visa officer determined that there were reasonable grounds to believe that Mr. Amiri posed a danger to the security of Canada due to his alleged role in contributing to the development of weapons of mass destruction in Iran. The officer further found that Mr. Amiri was ineligible for consideration for relief on humanitarian and compassionate grounds.

[2] Mr. Amiri seeks judicial review of the visa officer's decision, asserting that he was treated unfairly in the application process as he was denied access to a report prepared by the Canada Border Services Agency (CBSA) that was the primary basis for the officer's inadmissibility finding. Mr. Amiri further asserts that the officer's decision was substantively unreasonable, and that the officer erred in refusing to consider his request for relief on humanitarian and compassionate grounds.

[3] For the reasons that follow, I am satisfied that Mr. Amiri was made aware of the nature of the officer's security concerns and that he was provided with a meaningful opportunity to respond to them. I am further satisfied that the officer's decision was reasonable, and that the officer did not err in concluding that Mr. Amiri was ineligible for humanitarian and compassionate consideration. Consequently, Mr. Amiri's application for judicial review will be dismissed.

I. Background

[4] The chronology of events is important in this case, particularly as it relates to Mr. Amiri's eligibility for relief from his inadmissibility on humanitarian and compassionate grounds.

[5] Mr. Amiri is a University Professor and Civil Engineer who specializes in Structure and Earthquake Engineering. He obtained his PhD in Earthquake Engineering from McGill University in 1997. Following the completion of his PhD, Mr. Amiri returned to Iran where he currently resides with his wife and two children. Mr. Amiri has returned to Canada from time to time to attend conferences, without incident.

[6] Mr. Amiri says that he began working as a professor at the Iran University of Science and Technology in 1998, where he specializes in Structural and Earthquake Engineering. He was Dean of the School of Engineering from 2008 to 2011, and, since 2016, once again occupies that position.

[7] On January 10, 2010, Mr. Amiri applied for permanent residence in Canada under the Federal Skilled Workers Program. He attended an interview in Ankara, Turkey, on July 24, 2014, at which he was questioned extensively with respect to his employment history in Iran. Mr. Amiri denied ever having been approached by the Iranian Ministry of Defence, the Ministry of Intelligence and Security or by any private firms to conduct research with respect to the Iranian Government's nuclear or other weapons programs. Mr. Amiri further denied any association or involvement with the Atomic Energy Organization of Iran or any other Government agencies or private companies associated with Iran's nuclear industry.

[8] Following his interview, Mr. Amiri's application for permanent residence was referred to the National Security Screening Division of the CBSA, and a report was issued in April of 2015. This report concluded that there were reasonable grounds to believe that Mr. Amiri was inadmissible to Canada pursuant to paragraph 34(1)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for being a danger to the security of Canada.

[9] On July 6, 2015, Mr. Amiri was sent a procedural fairness letter (the "first procedural fairness letter"). He was advised that "there are reasonable grounds to believe that you have not accurately disclosed your employment history, failing to disclose employment which is believed to be related to Iran's nuclear development programs". The letter further advised Mr. Amiri that

there were reasonable grounds to believe that he had not disclosed his relationship with certain associates that had been discussed with him at his interview.

[10] Mr. Amiri was then given an opportunity to respond to the visa officer's concerns. He subsequently provided the officer with substantial submissions maintaining that he had accurately reported his employment history, and denying any involvement in Iran's nuclear weapons programs.

[11] On August 28, 2015, Mr. Amiri was advised that his application for permanent residence had been refused as the visa officer had reasonable grounds to believe that he was inadmissible under paragraph 34(1)(d) of *IPRA*. Mr. Amiri sought judicial review of this decision, and his application was subsequently granted on consent in February of 2016.

[12] Mr. Amiri's visa application was then reopened, and he was allowed to make additional submissions in support of his application. Another procedural fairness letter was sent to Mr. Amiri on December 6, 2016 (the "second procedural fairness letter"). This letter, which was more detailed than the first procedural fairness letter, once again advised Mr. Amiri that it had been determined that there were reasonable grounds to believe that he was a danger to the security of Canada.

[13] The visa officer reviewed the responses that had been provided by Mr. Amiri at his 2014 interview, including his denial of any involvement in Iran's nuclear weapons programs. The officer went on to conclude that he was not satisfied that Mr. Amiri was "not withholding information regarding the nature and extent of [his] relationship with the Government of Iran".

[14] Taking this information into account, as well as other information on file (including classified information that could not be disclosed to Mr. Amiri), the officer concluded that there were reasonable grounds to believe that Mr. Amiri had "engaged in activities that directly or indirectly contributed to the facilitation of Iran's WMD [weapons of mass destruction] programs." The officer went on to observe that "past actions, attitudes and behaviour are a reasonable basis upon which to assess possible future comportment". Based on this, the officer concluded that if Mr. Amiri was to work in his field in Canada, it was "reasonable to believe that [he] would again contribute to Iran's WMD development". As a consequence the officer found that Mr. Amiri was inadmissible to Canada under paragraph 34(1)(d) of *IPRA*.

[15] In a May 31, 2017 response, Mr. Amiri provided detailed submissions in response to the second procedural fairness letter, including an updated employment history and additional scholarly articles that showed the nature of his work and his areas of academic interest. Mr. Amiri's response emphasized the lack of an evidentiary basis for the officer's conclusions, insisting that he lacked the requisite knowledge or interest, as well as access to materials necessary to support Iran's weapons program.

[16] By this point, Mr. Amiri had obtained a heavily redacted version of the April, 2015 CBSA brief through Access to Information requests. However, he submitted that fairness required the disclosure of an unredacted copy of the CBSA brief in order to allow him to fully address the officer's concerns. For the first time, Mr. Amiri also requested relief on humanitarian and compassionate grounds, in the event that a finding was made that he was inadmissible to Canada.

[17] Mr. Amiri's application for permanent residence was refused on October 12, 2017, on the basis that he was inadmissible to Canada under paragraph 34(1)(d) of *IPRA*. Relying upon redacted portions of the CBSA brief, the officer found the undisclosed classified evidence to be "more compelling" than the evidence provided by Mr. Amiri, stating that this evidence "indicates that the applicant has withheld information regarding the nature and extent of his relationship with the Government of Iran and its WMD programs".The visa officer further determined that Mr. Amiri was ineligible for consideration for humanitarian and compassionate relief as a result of his inadmissibility to Canada on security grounds.

[18] It is this decision that underlies this application for judicial review.

II. The Section 87 Motion

[19] The Certified Tribunal Record produced by the Immigration Section of the Canadian Embassy in Warsaw contained a number of redactions, including substantial redactions to the CBSA brief. The respondent then brought a motion for the non-disclosure of portions of the Certified Tribunal Record, pursuant to section 87 of *IRPA*, asserting that the disclosure of the redacted information would be injurious to national security or endanger the safety of any person.

[20] After having been assigned to deal with this matter, I carefully reviewed the redacted information as well as the public version of the Certified Tribunal Record and the parties' submissions on the application for judicial review. An *in camera* hearing was held on October 15, 2018, at which time affiants produced by the respondent testified under oath and were closely examined by me.

[21] As noted in my October 15, 2018 Order, I concluded that to the extent that the redactions claimed by the respondent involved substantive information, the disclosure of this information would identify or tend to identify relationships that the Government of Canada maintains with other intelligence agencies, or would disclose information that had been disclosed in confidence between intelligence agencies. I was further satisfied that the disclosure of the redacted information would be injurious to national security or endanger the safety of any person. Consequently, the respondent's motion was granted.

III. Issues

[22] Mr. Amiri's application for judicial review raises three issues. They are:

1. Was the decision arrived at through a process that was procedurally unfair?

2. Was the decision unreasonable? and

3. Did the officer err in refusing to consider Mr. Amiri's request for humanitarian and compassionate relief?

IV. Standard of Review

[23] I agree with the parties that Mr. Amiri's first issue is reviewable on the standard of correctness, given that it involves a question of procedural fairness. Where an issue of procedural fairness arises, the Court's task is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances, in other words, to apply the correctness standard: see *Mission Institution v. Khela*, 2014 SCC 24 at para. 79, [2014] 1 S.C.R. 502; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 34, [2018] F.C.J. No. 382.

[24] I also agree with the parties that Mr. Amiri's second and third issues are reviewable on the standard of reasonableness, given that they involve questions of mixed fact and law.

V. The Statutory Scheme

[25] The inadmissibility finding in this case was made under the provisions of paragraph 34(1)(d) of *IPRA*, which provides that "[a] permanent resident or a foreign national is inadmissible on security grounds for … being a danger to the security of Canada".

[26] In making a finding under subsection 34(1) of the Act, an immigration officer is guided by section 33 of *IPRA*, which provides that the facts that constitute inadmissibility under this section "include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur".

[27] In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114, [2005] 2 S.C.R. 100, the Supreme Court of Canada described the "reasonable grounds to believe" evidentiary standard as requiring "something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities". The Supreme Court went on to hold that reasonable grounds to believe will exist "where there is an objective basis for the belief which is based on compelling and credible information".

VI. Was the Decision Arrived at Through a Process that was Procedurally Unfair?

[28] Mr. Amiri asserts that he was denied the opportunity to meaningfully participate in the application process as a result of the refusal of the visa officer to disclose the entire contents of the CBSA brief to him, thereby limiting his ability to respond to the officer's concerns.

[29] Citing my decision in *Ali v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1174, [2005] 1 F.C.R. 485, Mr. Amiri notes that inadmissibility proceedings under section 34 of *IPRA* can have serious consequences for applicants and that they "should not be reduced to a guessing game, where the applicant has to try to figure out on their own what information is being used against them": at para. 78.

[30] I am not persuaded that Mr. Amiri was treated unfairly on the facts of this case.

[31] The preponderance of the jurisprudence holds that the content of the duty of procedural fairness owed to visa applicants is at the lower end of the spectrum: *Sapojnikov v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 964 at para. 26, [2017] F.C.J. No. 1003; *Akinbile v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 255 at para. 23, [2017] F.C.J. No. 251.

[32] The Federal Court of Appeal has, moreover, held that inadmissibility determinations give rise to a lesser duty of fairness where they involve the refusal of a visa to a person who is outside of Canada. The interests at stake in such cases are less serious, and visa applicants always bear the burden of proving that they are admissible: *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 at para. 54, [2000] F.C.J. No. 2043 (leave to appeal denied: [2001] S.C.C.A. No. 71); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paras. 30-31, [2002] 2 F.C. 413.

[33] That said, procedural fairness generally requires that applicants be provided with the information on which a decision is based so that they can present their version of the facts, and correct any errors or misunderstandings. Procedural fairness does not, however, require that

applicants be provided with all of the information in the possession of immigration authorities. This is especially so where, as here, some of the information in issue raises national security concerns.

[34] Indeed, as Justice Mosley observed in *Karahroudi v. Canada (Citizenship and Immigration)*, "[t]he right of an individual to have an application for a visa determined and to have that decision reviewed in accordance with law, including the norms of procedural fairness, may need to be balanced against the duty of the state to protect national security": 2016 FC 522 at para. 27, [2017] 1 F.C.R. 167.

[35] At the end of the day, what is important is that an applicant has the opportunity to meaningfully participate in the decision-making process: *Karahroudi*, above at para. 33; *Bhagwandass v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 at para. 22, [2001] 3 F.C. 3.

[36] As the Court observed in *Gebremedhin v. Canada (Citizenship and Immigration)*, 2013 FC 380 at para. 9, 431 F.T.R. 42, each case will turn on its own facts. In this case, Mr. Amiri was made well aware of the nature of the visa officer's concerns through the two procedural fairness letters that were sent to him, and by the questions that he was asked at his interview. He was also provided with several opportunities to address those concerns, both orally and in writing, and he availed himself fully of those opportunities. Mr. Amiri thus had the opportunity to meaningfully participate in the decision-making process, and there was no denial of procedural fairness in this regard.

VII. Was the Visa Officer's Decision Unreasonable?

[37] Mr. Amiri further submits that the visa officer's decision was substantively unreasonable as the officer failed to justify his conclusion that Mr. Amiri is a danger to the security of Canada.

[38] Mr. Amiri states that the second procedural fairness letter did not explain how his prior employment contributed to the Iranian nuclear program, or how his presence in Canada would facilitate the transfer of knowledge to Iran for this purpose. Moreover, the officer's decision focused on the dangers posed to Canada by Iran's WMD programs, rather than assessing the actual danger posed by Mr. Amiri himself in light of his employment history. Indeed, Mr. Amiri says that his only connection to nuclear matters involves analysing the integrity of nuclear power plants in the event of earthquakes.

[39] Mr. Amiri notes that in *Mugesera*, above, the Supreme Court observed that the "reasonable grounds to believe" standard requires that there be an objective basis for the finding based on compelling and credible information: at para. 114.

[40] Citing this Court's decision in *Moghaddam v. Canada (Citizenship and Immigration)*, 2018 FC 1063, [2018] F.C.J. No. 1075, Mr. Amiri submits that, as was the case in *Moghaddam*, what is missing in the visa officer's decision is a link between Mr. Amiri's employment and a finding that he represents a danger to the security of Canada. That is, Mr. Amiri contends that the officer failed to assess the actual danger that he posed to the security of Canada in light of his employment history as a university professor specializing in Structural and Earthquake engineering.

[41] Nor, he says, has the visa officer identified any training or work experience that Mr. Amiri had in nuclear science that could have assisted Iran in pursuing its WMD programs. There is, thus, no compelling evidence that he is a danger to the security of Canada.

[42] It is true that there is little discussion of these issues in the visa officer's decision. However, as the Supreme Court of Canada observed in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, reasons have to be assessed in light of the record that was before the decision-maker, and, where necessary, reviewing courts may look to the record for the purpose of assessing the reasonableness of the outcome in a given case.

[43] I agree with Mr. Amiri that a mere association with a university will generally provide an insufficient basis for finding that someone is a danger to the security of Canada. It is clear from the public record, however, that the officer was not merely concerned with the fact that Mr. Amiri was employed with the Iran University of Science and Technology. The refusal of his application for permanent residence was based on his failure to satisfy the visa officer that he was not withholding information regarding the nature and extent of his relationship with the Government of Iran and its WMD programs.

[44] The basis for the visa officer's danger finding is confirmed when regard is had to the unredacted version of the CBSA brief, and the result is well within the range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[45] Mr. Amiri has thus failed to persuade me that the visa officer's decision was substantively unreasonable.

VIII. Did the Visa Officer Err in Refusing to Consider Mr. Amiri's Request for Humanitarian and Compassionate Relief?

[46] Mr. Amiri also challenges the visa officer's finding that he was not eligible for humanitarian and compassionate consideration.

[47] As noted earlier, Mr. Amiri's application for permanent residence under the Federal Skilled Workers Program was filed on January 10, 2010. His application did not include a request for an exemption from the requirements of the *Immigration and Refugee Protection Act* on humanitarian and compassionate grounds. This is not surprising, given that there was no suggestion at that point that Mr. Amiri was inadmissible to Canada.

[48] In his May 31, 2017 response to the second procedural fairness letter, Mr. Amiri expressly requested relief on humanitarian and compassionate grounds in the event that a finding was made that he was inadmissible to Canada. Mr. Amiri did not identify the humanitarian and compassionate factors that he intended to rely on at that time, instead reserving the right to make H&C submissions in the event of an inadmissibility finding.

[49] At the time that the decision was made to refuse Mr. Amiri's application for permanent residence, humanitarian and compassionate relief under subsection 25(1) of *IPRA* was not available to individuals who had been found to be inadmissible to Canada under section 34 of the Act. This was the result of a legislative amendment included in the *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16, which was assented to on June 19, 2013. Prior to this

amendment, those found to be inadmissible to Canada on security grounds were entitled to seek an exemption from the requirements of *IPRA* on humanitarian and compassionate grounds.

[50] The transitional provisions accompanying the change to subsection 25(1) of *IPRA* provide that the earlier version of the provision would apply to requests that had been made prior to the coming into force of the new subsection. In particular, section 29 of the *Faster Removal of Foreign Criminals Act* states that "[s]ubsection 25(1) of the Act, as it read immediately before the day on which section 9 comes into force, continues to apply in respect of a request made under that subsection 25(1) if, before the day on which section 9 comes into force, no decision has been made in respect of the request".

[51] Mr. Amiri submits that as his application for permanent residence had been made in 2010, it was governed by the earlier version of subsection 25(1) of *IPRA*, with the result that he was eligible for consideration for humanitarian and compassionate relief.

[52] In support of this contention, Mr. Amiri relies on this Court's decision in *Fathi v. Canada (Citizenship and Immigration)*, 2015 FC 805 at paras. 23-25, [2015] F.C.J. No. 856, where Justice Roy held that as long as an application was made prior to June 19, 2013, it is the previous version of subsection 25(1) that governs. In *Fathi*, the H&C application in issue was filed prior to the legislative change, with the result that the applicant was not excluded from consideration on humanitarian and compassionate grounds.

[53] The decision in *Fathi* is, in my view, readily distinguishable from the present case. Mr. Fathi had previously been found to be inadmissible to Canada on security grounds, and his application for judicial review of the inadmissibility finding was dismissed. He then made a new

application for permanent residence in early 2013, this time being sponsored by his wife. It appears that this latter application was accompanied by a request for an exemption from his inadmissibility on humanitarian and compassionate grounds. The immigration application underlying the *Fathi* decision thus included an application for H&C relief.

[54] The decision in relation to Mr. Fathi's H&C application was rendered in 2014, in which a visa officer found that there were insufficient humanitarian and compassionate factors to justify granting him an exemption from the admissibility requirements of *IPRA*. Mr. Fathi sought judicial review of this decision, and it appears that it was only then that the respondent asserted that he was ineligible for H&C relief as a result of the 2013 amendments to subsection 25(1) of *IPRA*. It was in this context that Justice Roy held that as long as an application was made prior to June 19, 2013, it would be governed by the previous version of subsection 25(1).

[55] What is important to note is that the immigration application at issue in *Fathi* included an application for a humanitarian and compassionate exemption. This H&C request was made in early 2013, prior to amendment to subsection 25(1) coming into force, and no decision had been made in relation to that application at the time that the amended legislation came into effect. As such, Justice Roy quite properly concluded that Mr. Fathi's case fell within the transitional provision in section 29 of the *Faster Removal of Foreign Criminals Act*, with the result that his immigration application was governed by the earlier version of subsection 25(1) of *IPRA*, and he was entitled to be considered for H&C relief.

[56] This should be contrasted with the present case. Here, Mr. Amiri's application for permanent residence was filed in 2010. The application was made under the Federal Skilled Workers Program, and, unlike the situation in *Fathi*, it was not accompanied by a request for a

humanitarian and compassionate exemption. The first time that such a request was made was in 2017 – long after the amendment was made to subsection 25(1) eliminating the availability of H&C relief for those found inadmissible to Canada on security grounds.

[57] While acknowledging that the first time that an express request was made for humanitarian and compassionate consideration was in 2017, Mr. Amiri nevertheless submits that he had alerted the visa officer to humanitarian and compassionate factors in his favour "throughout the history of his communications with the Visa/Immigration Section". I do not accept this submission.

[58] At paragraph 47 of his original memorandum of fact and law, Mr. Amiri lists the submissions that he says he made that amount to humanitarian and compassionate submissions. It is evident from a review of this list that these submissions primarily relate to Mr. Amiri's work history and fields of academic study, and were clearly intended to address the officer's admissibility concerns. They are not humanitarian and compassionate factors operating in Mr. Amiri's favour.

[59] As noted above, the amended version of subsection 25(1) of *IPRA* provides that the earlier version of the legislation will continue to apply "*in respect of a request made under subsection 25(1)*" if no decision had been made with respect to the application prior to the day on which the amendment came into force [my emphasis]. No request had been made by Mr. Amiri under subsection 25(1) of *IPRA* when the amendment to that provision came into effect in June of 2013. As a result, the transitional provision of section 29 of the *Faster Removal of Foreign Criminals Act* had no application to Mr. Amiri's case.

[60] The visa officer thus did not err in finding that Mr. Amiri's application for humanitarian and compassionate consideration was governed by the version of subsection 25(1) of *IPRA* that was in effect after June of 2013, with the result that he was not entitled to be considered for a humanitarian and compassionate exemption.

IX. Conclusion

[61] For these reasons, Mr. Amiri's application for judicial review is dismissed. I agree with the parties that the case does not raise a question that is suitable for certification.

JUDGMENT

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

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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