

Federal Court



Cour fédérale

**Date: 20191112**

**Docket: IMM-1078-19**

**Citation: 2019 FC 1386**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, November 12, 2019**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**SAEID MIRKARIMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] Saeid Mirkarimi is seeking judicial review of a decision of a senior immigration officer (Officer), who rejected his Pre-Removal Risk Assessment (PRRA) application on February 1, 2019.

[2] The Officer determined, among other things, that Mr. Mirkarimi had not demonstrated that authorities in Iran knew about his past involvement with the People's Mojahedin Organization of Iran (PMOI), and he concluded that Mr. Mirkarimi had failed to demonstrate, on a balance of probabilities, that he would be exposed to a danger of torture, a risk to his life and a risk of cruel and unusual treatment, should he return to Iran. In an addendum in connection with additional allegations of risks related to his political activities in Canada since his arrival, the Officer added that Mr. Mirkarimi still had not demonstrated that he had the profile of a person known for his political and anti-government activism or of a person of interest to Iranian authorities.

[3] For the reasons that follow, the application for judicial review will be allowed.

## II. BACKGROUND

[4] Mr. Mirkarimi is an Iranian citizen. On October 7, 2013, he left Iran, and on December 26, 2013, he entered Canada and claimed refugee protection. In his Basis of Claim Form (BOC Form), which he signed on January 12, 2014, Mr. Mirkarimi indicated that he believed he would suffer hardship and be mistreated and threatened should he return to his country, because [TRANSLATION] “people who, like me, have a history with the Iranian authorities as well as sympathisers that I knew have been arrested. I risk being arrested, tortured or killed by the authorities for my political ideas”. In the narrative attached to his BOC Form, Mr. Mirkarimi states, among other things, that he was arrested three times by the Iranian regime, most recently in July 2011. He was released after six months of detention and required to appear

every month for two years to sign an attendance sheet. During the detention, he was accused of being a PMOI sympathiser.

[5] On July 2, 2014, an inadmissibility report was issued against Mr. Mirkarimi under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. On July 8, 2014, the Minister's delegate referred the matter to the Immigration Division (ID) for investigation under subsection 44(2) of the Act, and, on the same day, the Refugee Protection Division (RPD) suspended the processing of Mr. Mirkarimi's refugee protection claim. On September 15, 2015, the ID found Mr. Mirkarimi to be inadmissible under paragraphs 34(1)(c) and (f) of the Act, and a removal order in the form of deportation was made against him. In its decision, the ID concluded that there were reasonable grounds to believe that PMOI is an organization for the purposes of paragraph 34(1)(c) of the Act and that there were reasonable grounds to believe that Mr. Mirkarimi was a member of PMOI. On January 12, 2016, the Court dismissed Mr. Mirkarimi's application for leave and for judicial review of the ID decision. As set out in paragraph 101(1)(f) of the Act, Mr. Mirkarimi's refugee protection claim then became inadmissible and could no longer be considered.

[6] On October 26, 2016, CIC informed Mr. Mirkarimi that he could make a PRRA application. Since Mr. Mirkarimi had been found inadmissible on security grounds under paragraphs 34(1)(c) and (f) of the Act, his PRRA application could be considered only on the basis of factors set out in section 97, in accordance with subsection 113(d) of the Act.

[7] On October 29, 2018, the Officer rendered his decision. The Officer specified that the assessment of the alleged risks was limited to that described in section 97 of the Act, agreed with the ID's conclusion that Mr. Mirkarimi was a member of PMOI and noted that Mr. Mirkarimi filed only his January 2014 BOC Form in support of his fear allegations. The Officer also noted that Mr. Mirkarimi described in his BOC Form that he was arrested three times in Iran and accused of being a PMOI sympathiser the third time he was arrested, and that he did not demonstrate that he was charged with or convicted of a crime. The Officer also indicated that, at the time of his third arrest and after three months of detention, Mr. Mirkarimi was offered to be released in exchange for a sum of money, that his family paid the money and that he was released at the end of six months of detention. The officer concluded that Mr. Mirkarimi did not demonstrate that he remained a person of interest to the Iranian authorities since his release and therefore did not assign any weight to the BOC Form in support of his risk allegations.

[8] The Officer then analyzed the documentary evidence in the National Documentation Package and additionally concluded that Mr. Mirkarimi had not demonstrated on the basis of objective evidence (1) that he fit the profile described in the documentation; (2) that Iran was aware of his past participation in the activities of PMOI; and (3) that Iran had remained interested in his activities and his movements since his detention in 2011. The Officer concluded that Mr. Mirkarimi had not demonstrated, on a balance of probabilities, that he would face a danger of torture, a risk to his life or a risk of cruel and unusual treatment as provided in paragraphs 97(1)(a) or (b) of the Act.

[9] Finally, the Officer concluded that a hearing was not required in the file since Mr. Mirkarimi did not meet all the factors set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[10] That decision was not, however, communicated to Mr. Mirkarimi, and on January 28, 2019, Mr. Mirkarimi's counsel sent another letter to CIC in order to update the PRRA application. She reiterated that Mr. Mirkarimi never had a hearing before the RPD and that his credibility was not assessed and submitted that he should be heard at a hearing if questions of credibility were raised in the file. Mr. Mirkarimi's counsel added a new risk factor, namely, that, in Canada, Mr. Mirkarimi was very involved in activities challenging the Iranian regime and that he frequently took part in public activities aimed at denouncing the violations committed by the Iranian regime. She also indicated that she enclosed with her letter photographs of the applicant, found on the Internet. She submitted that it was clear that authorities monitor the activities of opponents abroad, that Mr. Mirkarimi is known to and identified by Iranian authorities and that, as such, he would be in danger should he return to Iran. Regarding this, she referred to two documents from the documentary evidence on Iran.

[11] On February 1, 2019, the Officer added an addendum to his decision to deal with the additional evidence submitted by counsel for Mr. Mirkarimi. The Officer noted Mr. Mirkarimi's additional allegations, then reviewed each piece of evidence filed by Mr. Mirkarimi's counsel with her letter dated January 28, 2018, and concluded that Mr. Mirkarimi still did not demonstrate that he had the profile of a person known for his political or anti-government activities or who would be of interest to Iranian authorities, and that Mr. Mirkarimi did not

demonstrate that he was facing a personalized risk as described in paragraphs 97(1)(a) or (b) of the Act. On March 14, 2019, the Court stayed Mr. Mirkarimi's removal to Iran.

### III. ISSUES

[12] Based on Mr. Mirkarimi's factum, the Court must determine (1) whether the Officer breached the rules of procedural fairness in rendering his decision without a hearing, and (2) whether the Officer rendered an unreasonable decision in not taking the evidence on the record into consideration. However, only one issue is needed in order to dispose of the application.

### IV. UNREASONABLENESS OF THE DECISION

[13] The Officer's decision should be assessed on the reasonableness standard. Thus, the Court must consider whether the process and outcome at issue fit comfortably with the principles of justification, transparency and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9). The Officer's decision is unreasonable.

[14] Mr. Mirkarimi submits that the Officer denied his application without considering all of the evidence on the record. Thus, he submits that (1) the Officer had to acknowledge the applicant's involvement in the organization and the problems he had had with the Iranian authorities; (2) the Officer ignored an important aspect of the evidence, namely, that the applicant was released after payment of a large bail amount on the condition of appearing before the authorities every month for two years; (3) Mr. Mirkarimi's testimony filed in his BOC Form before the Immigration Division and in the PRRA file could not be ignored; (4) the Officer had

no ground to reject the photographs; and (5) the Officer refused to retain his statements and the evidence that the Iranians monitor those types of events.

[15] The Minister submits that the PRRA officer's decision is reasonable. He cites *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305, to the effect that the PRRA officer can decide to give little or no weight to evidence and conclude that the standard of proof is sufficient. The presumption of truth or reliability of statements made by refugee claimants cannot be equated with a presumption of sufficiency of evidence. The Minister adds that the Officer reviewed the BOC Form. He noted that Mr. Mirkarimi was incarcerated three times and was released after six months of detention in 2011, but that Mr. Mirkarimi failed to establish that he was still a person of interest to the Iranian authorities eight years later. The Minister submits that the Officer was correct in not assigning weight to those allegations. The Minister submits that the officer acted reasonably in not giving any weight to the undated and unsigned narrative, photographs, letter from the NCRI, messages and text messages.

[16] In this case, I agree with Mr. Mirkarimi's position. Indeed, the Officer specifically acknowledged the applicant's involvement in PMOI in Iran and his arrest for that reason, but he nonetheless concluded that the Iranian authorities did not know about his past activities. That position is not intelligible and is a fatal error.

**JUDGMENT in IMM-1078-19**

**THE COURT'S JUDGMENT IS THAT:**

- (1) The application for judicial review is allowed, and the matter is referred to a different officer for redetermination;
- (2) No question is certified.

“Martine St-Louis”

---

Judge

Certified true translation  
This 19th day of November, 2019

Margarita Gorbounova, Translator



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

**DOCKET:** IMM-1078-19

**STYLE OF CAUSE:** SAEID MIRKARIMI v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 21, 2019

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** NOVEMBER 12, 2019

**APPEARANCES:**

STÉPHANIE VALOIS

FOR THE APPLICANT

JESSICA PIZZONI

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stéphanie Valois  
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT