

Federal Court



Cour fédérale

Date: 20221128

Docket: IMM-5662-21

Citation: 2022 FC 1637

Ottawa, Ontario, November 28, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHSEN KARIMI TABASI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Iran. His application under the Provincial Nominee Program was accepted by Prince Edward Island. On April 30, 2014, he applied for permanent residence under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Receiving no decision, in 2020, the Applicant applied for *mandamus*. That matter was discontinued on agreement that a procedural fairness letter would be sent to the Applicant.

[2] The procedural fairness letter was sent on December 12, 2020, and the Applicant responded through counsel on May 8, 2021. The officer's rejection of the application is the decision under review.

[3] In the procedural fairness letter the officer alleged that the Applicant was inadmissible on security grounds because of his membership in Yas Air (or Yas Toos Air or Yas Toos Airlines) which the officer stated was affiliated with the Islamic Revolutionary Guards Corps-Qods Force. The letter also alleged that the Applicant was inadmissible for misrepresentation for failing to disclose being a member of Yas Air or the Yasin Group on his application and for failing to disclose being a director of the Canadian company Pouyan Shahr Corporation.

[4] The officer described the basis for believing that there was a connection between the Applicant, Yas Air, and the Revolutionary Guards:

You are listed as the president of the Yasin Group of companies on an announcement from the Embassy of the Republic of Lithuania to the Republic of Turkey, which is the owner of Yas Toos Airlines (Yas Air) for which you were listed as the Chairman of the board of Directors in 2014 in an Article by the Islamic Republic News Agency. As a member of Yas Air and the Yas Group, there are reasonable grounds to believe you have/had affiliation to the Islamic Revolutionary Guards Corps-Qods Force and are inadmissible under 34(1)(f) of IRPA. By virtues [*sic*] of being a member of those organisations, there are also reasonable grounds to believe that you are a danger to the security of Canada and are inadmissible under 34(1)(d) of IRPA. [website references omitted]

[5] The Applicant's response to the procedural fairness letter denied that he was in any way involved in Yas Air.

[6] First, he provided an opinion letter from the Iranian attorney of Yas Seyr Sanabad Toos Air Travel and Tourism Company dated April 17, 2021, affirming that the Applicant had no involvement with Yas Air as alleged:

Pursuant to the minute of annual ordinary general assembly and on the strength of the documents posted by the registration department in the website of the Ministry of Justice and the official journal of the Islamic Republic of Iran, Mr. Mohsen Karimi Tabasi has had no connection with Yas Air Airlines and has had no position and responsibility at it.

[7] Second, the Applicant asserts that he is a travel agent and that he works for Yas Seyr Sanabad Toos Air Travel and Tourism Company, a travel agency, not the airline.

[8] Third, he addressed the “announcement” in a newspaper that is referenced in the procedural fairness letter reporting his connection to Yas Air. He points out to the officer that the newspaper has since corrected that story and he provides that correction with his response. The Islamic Republic News Agency [IRNA] provided a letter dated January 19, 2021, stating that “due to the similarity of the name of the air travel agency and the career position of Mr. Mohsen Karami Tabasi, the news No. 2740416 dd. October 9, 2014 was corrected and republished with the same news code and number in the official website of IRNA.” The corrected story refers to the Applicant as “Chairman of the board of directors of Iranian Yas Seir Sanabad Toos Air Travel Agency.”

[9] Lastly, the Applicant addresses the allegation of misrepresentation for failure to disclose his position in the Canadian corporation, Pouayn Shahr Inc., stating that the failure to mention it was inadvertent. He submits that this failure was immaterial because the company has been

inactive since its incorporation in 2015. Therefore, there was no work or “activity” conducted by the corporation or anybody in it, since it was established.

[10] Notwithstanding the response and documents submitted, the officer denied the application.

[11] First, the officer notes being aware that the Applicant indicated working for a travel agency but not Yas Seyr Sanabad Toos Travel Agency. The officer notes that this information does not appear on the Applicant’s permanent resident application nor on his résumé. Those documents state that the Applicant was working for Aseman Travels and Tours in Malaysia.

[12] Second, the officer notes the newspaper correction now describes the Applicant as Chairman of the Board of Yas Seir Sanabad Toos Travel Agency [*sic*] and notes that the officer conducted an internet search of that name and that it links to Yasinbooking.com which is connected to Yas Air. He writes:

Yasinbooking.com is for Yas Toos (Airlines) which is a flight search website but there is no introduction or any other information about the company at this time, and was the website found for Yas Toos Airlines or Yas Air which are the same company (both incorporated in 2008 and with website <https://yasinbooking.com>). The Yasin Group is listed as the owner of the website for Yas Toos Airlines: <https://yasinbooking.com> also known as Yas Air. The Yas Seir Sanabad Toos Air Travel Agency appears therefore to be owned by the Yasin group as is Yas Air and share the same internet domain so may in fact be the same company. I note that the email address provided for the Yasin group on this article <https://tr.mfa.lt/tr/en/news/first-ever-lithuanian-consulatc-in-iran> is Karimi@yasinbooking.com with an address in Teheran when applicant indicated working and residing in Malaysia at the time.

[13] Further, the officer noted the email provided for the Applicant as Lithuanian Honorary Consul on the 2017 article titled “First ever Lithuanian Consulate in Iran” to be Karimi@yasinbooking.com with an address in Tehran when the Applicant purported to be working and residing in Malaysia.

[14] The officer noted that although the Iranian lawyer in response to the procedural fairness letter provided information on the directors of Yas Air, none was provided for 2014.

[15] The officer gave little weight to the change in the newspaper article of IRNA because of the “association of the applicant with the Yasin group owner of Yas Air and Yas Seir Sanabad Toos Air Travel Agency, and the fact the applicant did not disclose his affiliation with the Yasin group or to Yas Air and Yas Seir Sanabad Toos Air Travel Agency on either this application or his PR application, companies that link to the same internet domain, and given the IRNA is affiliated with the Iranian government and is not an independent media.”

[16] The officer states that he believes the Applicant may still be the president of the Yasin Group and that there are reasonable grounds to believe he was a part of Yas Air at the time the article was published.

[17] The officer states that the Applicant failed to address his role as chair of the Yasin Group, owner of Yas Air, in his response to the procedural fairness letter. The officer further notes that the Applicant is listed as the president of the Yasin Group on an announcement from the Embassy of Lithuania to Turkey. The announcement indicates that the Applicant was “appointed

as a Lithuania Honorary Consul in Tehran where his company's office is located." This information is missing from his application, and there is no indication of business or residence in Tehran.

[18] The officer found the Applicant's failure to declare participation in the Canadian corporation Pouayn Shahrs Inc. as material to his admissibility assessment. The officer found that the Applicant's partner in the corporation, Masoud Feiz, appeared "to be a suspect in a major drug smuggling operation in 2011." This was based on information provided to the officer in a 12-page brief provided by Canada Border Services Agency [CBSA]. The officer states that this may or may not be the same person but it demonstrates that disclosing the Canadian corporation ownership is material to the assessment of admissibility.

[19] The officer determined that the Applicant is inadmissible on security grounds under paragraph 34(1)(f) of *IRPA* for being a member of an organization that engages, has engaged or will engage in terrorism. In so concluding, the officer found that the Applicant is a member of the Yasin Group, and most likely a member of the board of directors of Yas Air in 2014 as it "is doubtful that the Islamic Republic News Agency would have confused one of its major airlines with a travel agency (unless those are one and only company, which may very much be the case as they share the same internet domain)." The officer's decision is based on Yas Air being affiliated with Islamic Revolutionary Guards Corps [IRGC]-Qods Force.

[20] The officer also found the Applicant inadmissible under paragraph 40(1)(a) of *IRPA* because he failed to report significant parts of his employment history, including being a member

of Yas Air, the Travel Agency, the president of the Yasin Group and his role as Honorary Consul of Lithuania. He also failed to disclose being a director of the Canadian corporation and his business interests and residence in Iran.

[21] In this application, the Applicant raises the following issues:

1. What is the standard of review?
2. Did the officer breach natural justice by considering extrinsic evidence?
3. Was the officer's decision that the Applicant was inadmissible under section 34(1) reasonable because the officer failed to consider the evidence before him?
4. Was the officer's decision that the Applicant was inadmissible for misrepresentation reasonable given the fact that the officer erred in finding that the Applicant withheld material information?

[22] A finding that the officer breached the Applicant's right to procedural fairness by considering extrinsic evidence is a reviewable error and sufficient to grant this application.

[23] The Applicant submits that the applicable standard of review of questions of procedural fairness and natural justice is correctness: see *Weng v Canada (Minister of Immigration, Refugees and Citizenship)*, 2020 FC 151 at paras 18-19.

[24] Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19, described the standard in the following manner:

Questions of procedural fairness require an approach resembling the correctness standard of review that inquires “whether the

procedure was fair having regard to all of the circumstances” (Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54 [Canadian Pacific]; Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited, 2021 FCA 26 at para 107). As noted in Canadian Pacific at paragraph 56, “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond”, and at paragraph 54, “[a] reviewing court... asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed”.

[25] Applying this standard, I must ask whether the Applicant “knew the case to meet and had a full and fair chance to respond.” The Applicant submits that he did not know the case he had to meet and was denied procedural fairness.

[26] The Applicant was provided with a procedural fairness letter and given an opportunity to respond to the officer’s concern that he was a member of Yas Air. The letter specifically detailed the concerns regarding the relationship between Yas Air and the Islamic Revolutionary Guards Corps-Qods Force, and pointed out that an announcement from the Lithuanian Embassy listed him as the president of the Yasin Group, which is the owner of Yas Air. It further disclosed that he was listed as the Chairman of the Board of Directors of Yas Air in 2014 in an article by the IRNA. Because of the Applicant’s affiliation with the Yasin Group and Yasin Air, the Officer expressed concern that the Applicant was inadmissible under paragraph 34(1)(f) of *IRPA*.

[27] Further, the letter stated that contrary to paragraph 40(1)(a) of *IRPA*, the Applicant failed to declare being a director of Pouyan Shahr Inc, an organization listed on the Government of Canada’s Federal Corporation website.

[28] Despite the procedural fairness letter, there are multiple documents the officer relies on that were extrinsic evidence and the Applicant was not informed of the intent to rely on this evidence nor given the opportunity to respond to it.

[29] The officer did not disclose the CBSA brief that contained a FINTRAC document and allegations related to the Applicant's business partner being charged with drug trafficking. The officer stated that he was not relying on the drug trafficking charges to demonstrate that the Applicant is associated with financing terrorism; rather, in the officer's view, it demonstrates "that disclosure of Canadian corporation ownership and participation is material to the assessment on one's admissibility."

[30] The Applicant filed an affidavit from Masoud Feiz in which he attests that although he had been charged with drug trafficking, it was a case of mistaken identity and the charges were withdrawn. Had the Applicant been informed of the officer's concern, he would have provided this response.

[31] The Court notes that the officer's concerns were not restricted to the alleged drug trafficking and that the officer was of the view that a complete assessment of an applicant's business interests and employment are always material to an admissibility assessment.

The applicant's representative indicates that the failure to declare participation in the Canadian corporation Pouayn Shahr is immaterial and that the company has been inactive. A complete assessment of the applicant's business interest and employment history are material to the assessment of the applicant's admissibility. On this application, the representative provided a CRA document showing incorporation for Canadian company Pouyan Shahr Inc in 2015 with Masoud Feiz as partner and contact

person with address 222 Finch Ave West unit 214 North York ON. Masoud Feiz (or Masoud Feizabadi) is also listed as director of Borderless Brokers, Artopia Gallery and Jaam Exchange. This individual is also the owner of World Wide Immigration Services located at the same address 222 Finch Ave West North York. Masoud Feizabadi appears to be a suspect in a major drug smuggling operation in 2011 <https://nationalpost.com/posted-toronto/suspected-smuggling-ring-leaders-arrested>. This may or may not be the same individual but this demonstrates that disclosure of Canadian corporation ownership and participation is material to the assessment on one's admissibility. It is widely known that drug trafficking is associated to financing terrorism as per open source information: see <https://www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html>, or <https://iranuprising.org.wordpress.com/2021/06/02/iran-regime-uses-drugs-to-fund-terrorism/>. [emphasis added]

[32] Although the officer holds the view that a complete disclosure of business interests is material to an assessment of admissibility, the Court is unable to find that his view might not have been tempered had the officer been aware of the alleged misidentification of the Applicant's partner in the Canadian corporation. This is particularly true given the officer's comments about the proceeds of drug trafficking being used to finance terrorism. This FINTRAC information ought to have been disclosed and the Applicant provided with an opportunity to respond to it.

[33] Second, the Applicant complains that although the procedural fairness letter referred him to information about the Lithuanian Embassy and an article about Yas Air, it did not refer to any other material relevant to the allegations of the Applicant's connections to Yas Air. However, in the decision, the officer relies on an internet search of the Applicant's travel agency to conclude that it is linked to Yasinbooking.com from which the officer concludes that Yas Air and the travel agency are the same company. The officer states:

When searching Yas Seir Sanabad Toos Air Travel Agency it links to Yasinbooking.com <https://domainbigdata.com/yasinbooking.com>. Yasinbooking.com is for Yas Toos (Airlines) which is a flight search website but there is no introduction or any other information about the company at this time, and was the website found for Yas Toos Airlines or Yas Air which are the same company (both incorporated in 2008 and with website <https://yasinbooking.com>). The Yasin Group is listed as the owner of the website for Yas Toos Airlines: <https://yasinbooking.com> also known as Yas Air. The Yas Seir Sanabad Toos Air Travel Agency appears therefore to be owned by the Yasin group as is Yas Air and share the same internet domain so may in fact be the same company.

[34] The officer further relies on the internet search to support that the Applicant was most likely a member of the board of directors of Yas Air in 2014, and therefore, affiliated with the Islamic Revolutionary Guards Corps-Qods Force. The officer states:

I have assessed that the applicant is inadmissible to Canada under section 34(1)(f) for 34(1)(c) of IRPA for being a member of the Yasin Group owner of Yas Toos Airlines (or Yas Air), and was most likely a member of the board of director of Yar Air in 2014 as it is doubtful that the Islamic Republic News Agency would have confused one of its major airlines with a travel agency (unless those are one and only company, which may very much be the case as they share the same internet domain). Yas Air is affiliated to the Islamic Revolutionary Guards Corps(IRGC)-Qods Force.
[emphasis added]

[35] In response, the Respondent correctly notes that the procedural fairness letter sent to the Applicant outlined the officer's concerns regarding the Applicant's connections with Yas Air, Yas Toos Airlines, and the Yasin Group of companies, which is the owner of Yas Air.

[36] The Respondent further submits that the findings of the officer were based on open source information from the internet and readily available to the public. It cites this Court's decisions in *Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67

[*Sinnasamy*] at paras 39-40 and *Pizarro Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 623 [*Pizarro Gutierrez*] at para 46 for the proposition that publically available documents are not considered extrinsic.

[37] I agree with the Applicant that both of those decisions are distinguishable. In both *Sinnasamy* and *Pizarro Gutierrez*, the documents at issue were general country condition documents. This Court in *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 824 at paras 37-38 held that there is a material difference between relying on country condition documents that have not been disclosed and other internet research:

... I do not agree with the Respondent that such materials are not extrinsic evidence merely because they are publicly available on the internet. Extrinsic evidence, in the context of an H&C decision, is evidence that does not form a part of the submissions of the Applicant nor of the immigration record of the Respondent concerning the Applicant and the disclosed tribunal record which includes online national documentation packages (NDP), addressed further below.

The internet provides instant access to a vast amount of information on any given subject, some of this information is accurate, and some of it is not. In my view, even if the information were not to be considered as extrinsic because it can be found on the internet, then there would also have to be some obvious connection to the information, and the use intended to be made of it by an officer, such that an applicant could reasonably expect that such information would be accessed and utilized in the context of the particular decision being made by the officer. That is not the situation in this case.

[38] Here, there is information used by the officer that this Applicant could not reasonably expect would be accessed and utilized in the context of the permanent resident decision being made by the Officer. This includes the search of the travel agency disclosing a link to

yasinbookings.com and the CBSA report and the CBSA allegations of a drug smuggling charge against the Applicant's partner.

[39] For these reasons, I find that the Applicant's rights to procedural fairness were breached and the decision must be set aside and the application considered anew by a different officer. That finding is made notwithstanding that there are serious questions about the Applicant's interests and history disclosed in the record. They do not, however, mitigate the Applicant's right to be treated fairly in the decision-making process.

[40] No question was posed for certification.

JUDGMENT in IMM-5662-21

THIS COURT'S JUDGMENT is that this application is allowed and the decision denying the application for permanent residency is set aside, the application is to be determined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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