

Date: 20070905

Docket: IMM-4906-06

Citation: 2007 FC 886

Ottawa, Ontario, September 5, 2007

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**MOHAMMAD REZA ASHOFTEH YAZDI
MARYAM ASHOFTEH YAZDI
KIMIA ASHOFTEH YAZDI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants, Mohammad Reza Ashofteh Yazdi, his wife Mary Ashofteh Yazdi and their daughter Kimia, are citizens of Iran. They seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board dated August 9, 2006, wherein the presiding member found that they are not Convention refugees or persons in need of protection. For the reasons below, I find that there are no grounds to interfere with that decision and the application is dismissed.

[2] As described by the member in her reasons, the applicants claimed to fear persecution from Iranian authorities “due to attributed immoral behaviour as landlords of students who misbehaved in the absence of the landlords, but, for whose behaviour [they were] held responsible.” The applicants were occupying a large house owned by a distant relative who lived in Germany. To generate income they rented rooms to students, initially only girls, but from 2002 on, to young men as well.

[3] While the applicants were away for a week in 2004, the young people, as youth are wont to do, held a party. The police were called by the neighbours and they allegedly found some compromising material suggesting activities of a sexual nature had taken place on the premises. The applicants were accused of operating a brothel and were advised by a lawyer to flee Iran. They made their way to a port, and from there by cargo ship to Canada. The applicants claimed not to have known the name of the ship, where it stopped from time to time over the 42 days of the voyage or where it was going until they disembarked in secret at night at Vancouver on March 15, 2005.

DECISION:

[4] The member found that there was insufficient credible evidence to establish the claims. In particular, she found that there was no documentary evidence to place the applicants in Iran in 2004 and insufficient evidence to prove that the alleged incident involving the students and the police took place. There was no documentary evidence to confirm when the applicants had left Iran. The member did not believe that the applicants had travelled to Canada in the manner they described. She found it implausible that the applicants would not have been able to provide information that

one would reasonably expect to have about the boat trip if they were describing a lived experience as opposed to a fabricated one.

ISSUES:

[5] The sole issue is whether the tribunal erred in its assessment of the applicants' credibility.

ANALYSIS:

[6] Findings of credibility are "quintessentially findings of fact": see *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226 at paragraph 38. The standard of review is therefore patent unreasonableness: *Chowdhury v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 139 at para. 12.

[7] The applicants submit that the credibility findings based on their inability to provide documents from Iran are patently unreasonable. The member was required to consider the totality of the evidence. She failed to properly consider the applicants' explanations for their inability to provide Iranian documentation and focussed on peripheral issues such as the presence of Mrs. Yazdi's parents in the United States and the implausibility of their description of the boat trip.

[8] It is clear from the member's reasons that she didn't believe that the incident involving the students had taken place and was the cause of their flight from Iran. Where a central incident is not believed, and that finding is not patently unreasonable, any other alleged error made by the tribunal

is of little consequence: *Yang v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 121 (QL)

[9] In my view, the member's credibility findings were open to her on the evidence. The applicants were unable to provide sufficient documentary evidence in support of their claim that they were in Iran at the relevant time. The principal applicant had no identification documents dated beyond 2001. A letter from his former workplace, dated October 7, 2004, states that he "has been" working at the company. At best that is ambiguous as to when the employment terminated.

[10] A letter had been obtained, at the tribunal's request, from the owner of the house resident in Germany. The owner confirmed that he gave the applicants permission to rent his rooms in 2000 but does not indicate that he paid a fine to the Iranian authorities because of the students' misbehaviour to recover his property, as claimed by the applicants. He had been requested to provide any bills that had been paid on the Iranian property but none were received, nor was the omission explained. The applicants had stated that all bills for utilities and taxes were in the owner's name and that they had paid them on his behalf but they had no records to establish that. They had no photographs of themselves in the home.

[11] The member noted that the letter from the home owner was not sworn nor was the author available for cross-examination. The applicants submit that these factors do not entitle the tribunal to disregard the evidence: *Fajardo v. Canada (Minister of Employment and Immigration)* 1993 FCJ 915. But that is not what the member did. She took the letter into consideration and assessed what it contained and did not contain. The weight to be given to that evidence was well within the

tribunal's discretionary decision-making power, and the Court should not reweigh the evidence:

Suresh v. Canada (Minister of Citizenship and Immigration), 2002 SCC 1 at para. 39.

[12] Accordingly, I find that the decision is not patently unreasonable and the application is dismissed. No serious questions of general importance were proposed and none will be certified.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4906-06

STYLE OF CAUSE: MOHAMMAD REZA ASHOFTEH YAZDI,
MARYAM ASHOFTEH YAZDI,
KIMIA ASHOFTEH YAZDI

AND

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 29, 2007

REASONS FOR JUDGMENT: MOSLEY J.

DATED: September 5, 2007

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