Federal Court  Cour fédérale

Date: 20110630

Docket: IMM-6317-10

Citation: 2011 FC 809

Ottawa, Ontario, June 30, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MANSOUR DEHGHANI-ASHKEZARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of the decision made on October 8, 2010, of the Refugee Protection Division of the Immigration and Refugee Board in Montreal, Quebec wherein it was determined that the applicant was not a Convention refugee.

BACKGROUND

[2] The applicant is a 33 year-old citizen of Iran who alleges fear of persecution based on religious and political grounds as well as on his membership of a particular social group, namely the underground Christian community in Iran. He says his conversion to Christianity in the Islamic theocracy would be considered an act against the Islamic revolution and he would thus be personally subjected to a danger of torture if returned.

[3] Mr. Dehghani-Ashkezari was a Muslim who says he heard the voice of Jesus in September 2005. Since that time he began participating in Bible study sessions with three other participants, two of whom were also converts.

[4] On one occasion that the applicant was not at Bible study, the home where the group congregated was raided by a group of Iran's Islamic Basij militia. Several days later, the applicant learned that his parent's house had been raided by the same group. He claimed they were looking for the applicant who the Basij said was an "apostate, anti-Islam and anti-revolution". His brother was arrested and detained for two days and the head of the Bible study group was placed in detention.

[5] The applicant arrived in Montreal on September 4, 2006 by way of Turkey, Germany and Cuba. Upon arriving in Toronto, he joined the Persian Christian Fellowship Church.

DECISION UNDER REVIEW

[6] The Board found the applicant lacked credibility with respect to principal aspects of his narrative and thus concluded that he did not have a well-founded fear of persecution. It found inconsistencies and contradictions of a serious nature in comparing the Canada Border Services Agency (CBSA) notes with the contents of the applicant's first Personal Information Form (PIF), executed on October 2, 2006, as well as his second PIF, executed on January 9, 2007.

[7] Based on the portion of the applicant's evidence the Board did not reject, it found it implausible that the Iranian regime is actively seeking to arrest and persecute the claimant as being an apostate, anti-Islam and anti-revolution.

ISSUES

[8] The issues raised in this application are as follows:

1. Did the Board err in not putting its credibility concerns to the applicant?
2. Were the Board's credibility findings reasonable?
3. Was it reasonable for the Board to conclude that the applicant was not at risk in Iran?

ANALYSIS

Standard of Review

[9] This case essentially turns on the Board's credibility findings. It is trite law that the IRB is afforded deference to assess the credibility of an account and draw inferences as it sees fit: *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886. As such, the issues to be analysed herein are questions of mixed fact and law and must be reviewed on a reasonableness standard: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 53.

[10] Where procedural fairness is in question, the proper approach is to ask whether the requirements of natural justice in the particular circumstances of the case have been met. A standard of review analysis is not required: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392 at paras. 52 and 53. Deference to the decision-maker is not at issue. See: *Ontario (Commissioner Provincial Police) v. MacDonald*, 2009 ONCA 805, 3 Admin L.R. (5th) 278 at para. 37 and *Bowater Mersey Paper Co. v. Communications, Energy and Paperworkers Union of Canada, Local 141*, 2010 NSCA 19, 3 Admin L.R. (5th) 261 at paras. 30-32.

Did the Board err in not putting its credibility concerns to the applicant?

[11] Referencing *Gracielome v. Canada (Minister of Employment and Immigration) (F.C.A.)* (1989), 9 Imm. L.R. (2d) 237, [1989] F.C.J. No. 463 (QL), the applicant submits that the Board

erred by impugning the applicant's credibility based on contradictions and/or inconsistencies that were not put to him.

[12] This is not a fair accusation. The Board did put certain concerns it had to the applicant. For example, it asked him why, when he arrived in Montreal and was asked how many times a week he prayed, he responded that he did not pray. The Board also inquired as to why, in that same interview, he stated that he preferred Protestantism over Catholicism for the reason that Protestants were less strict than Catholics. The Board also put to the applicant the inconsistencies with respect to how long he served in the military. In oral testimony he said he served for 21 months; the military service card indicated 18 months. The applicant does not dispute that these inconsistencies were put to him at the hearing. He argues that the Board erred in not raising all of the contradictions it relied upon in its decision.

[13] The case at bar is distinguishable from *Gracielome*, above. *Gracielome* concerned a husband and wife from Haiti who claimed they were victims of threats and violence by the Haitian authorities. Based on three alleged contradictions in the evidence, the Board did not believe their story. The application was allowed. Justice Hugessen, writing for the majority, explained the error of the Board as follows:

> It is worth noting that in none of the three cases were the applicants confronted with the alleged contradictions or asked for explanations. On the contrary, it is apparent that each example was found by the majority [of the Board] after the fact, from a painstaking analysis of the transcripts of the evidence.

[14] There is nothing here to suggest that the contradictions in the applicant's evidence were uncovered by a painstaking analysis of the transcripts of the evidence. See: *Ayodele v. Canada*

(Minister of Citizenship and Immigration) (1997), 76 A.C.W.S. (3d) 994, [1997] F.C.J. No. 1833 (QL) at para. 17. The applicant had the opportunity to speak to what were clearly the Board's concerns and the applicant was represented by counsel: *Ayodele,* above. Counsel could have examined or re-examined his client on any inconsistencies that were obvious from the record. See also: *Taruvinga v. Canada (Minister of Citizenship and Immigration),* 2007 FC 1264 at para. 15.

[15] Moreover, as noted by Justice James Russell in *Awolaja v. Canada (Minister of Citizenship and Immigration),* 2010 FC 1240, 93 Imm. L.R. (3d) 296 at paras. 44-45, and referring to Justice Francis Muldoon's reasons in *Tanase v. Canada (Minister of Citizenship and Immigration)* (2000), 181 F.T.R. 111, 3 Imm. L.R. (3d) 308, the law surrounding the duty of a tribunal to provide an applicant with notice of its concerns and an opportunity to explain is not settled law. As such, it continues to be a case-by-case analysis, based on the facts of that particular circumstance. In this case, I cannot find that the Board erred in how it conducted itself with respect to the obvious concerns that it had with the applicant's story.

Were the Board's credibility findings reasonable?

The Board's credibility findings were based on the following:

- In the CBSA interview, and in his first PIF, the applicant stated that he attended 4 or 6 Bible study sessions. In his second PIF he stated that he attended sessions every two weeks which adds up to 19-20 sessions. At the hearing, the applicant testified that he attended between 30 and 40 sessions;

- In the CBSA interview, the applicant stated that he was not officially a Christian and that he just attended Bible study sessions. In the first narrative there is no assertion of conversion. In the second narrative the applicant speaks of his conversion;

- In the applicant's narrative he described his family as being moderate Muslims. In the second narrative he stated that his parents were not practicing Muslims;

- Inconsistencies between whether the applicant contacted his friend Akbar or whether Akbar contacted him with respect to the raid;

- In the CBSA interview, the applicant stated that he decided to leave Iran around July 15, 2006, a few days after his house was raided. In his first narrative, he said the incident occurred on August 3, 2006 and he left thereafter. In the second narrative, he left after the incident which he described as having occurred on July 15;

- In the first PIF, the applicant stated that he left Iran on July 28, 2006 whereas in question 7 of the PIF he stated that he was self-employed in Tehran until September 2006;

- In the CBSA interview, the applicant refers to one raid on July 15, 2006; in the first narrative, he mentions the raid on his shop; and in the second narrative, he adds that there were three additional raids on his parent's home, as well as the raid on his shop.

[16] The Board concluded that the applicant did not attend more than six Bible study sessions, never officially considered himself a Christian or converted to Christianity while in Iran, never prayed as a Christian or attended a religious service and offered no cogent evidence concerning the alleged raid on the home where they engaged in religious study, nor on the subsequent raids on his family home.

[17] The applicant further submits that the Board erred in relying on the CBSA notes as these were put to him during his 25-day detention in Montreal when he was scared and anxious as he had never previously been detained. The first PIF was submitted without proper translation and after the applicant had only met with his counsel for half an hour.

[18] At the Board hearing, the applicant tried to disavow certain of the responses he gave when he arrived in Montreal, attributing the way he answered to stress, misunderstanding and/or

translation issues. The Board considered the applicant's explanation but noted that the translator was a certified interpreter and properly translated all the other questions. It was open to the Board not to accept the applicant's explanation with respect to how he answered certain questions.

Was it reasonable for the Board to conclude that the applicant was not at risk in Iran?

[19] The applicant relies on the documentary evidence to assert that Christians are being persecuted in Iran. He says a return would mean he would face a threat and risk to his life. He submits that part of the Board's finding that the applicant was not at risk of harm was because the Board found he could return to Iran without a well-founded fear of persecution if he simply hides his conversion to Christianity from the authorities and the general population. Alternatively, he could declare, four times before a Muslim judge, that he is not Christian but rather Muslim.

[20] As the respondent correctly notes, the Board does not state that the applicant can avoid a conviction for being an apostate by stating that he is Muslim. This portion of the Board's reasons was simply a discussion of the documentary evidence and what would be required in Iran in relation to the charge of apostasy. It was not a suggestion to the applicant as to how he might conduct himself; the Board was referring to this evidence as part of its implausibility findings used in its ultimate credibility findings.

[21] With respect to the risk, the Board found that the more recent documentary evidence suggested that Christians who converted would be treated as those born to Christian parents. As for all Christians in Iran, this would mean having to behave discretely, allowing religious practice to

take place within the religious community and treating it as a private matter. The Board concluded that if the applicant were to return to Iran, he could continue to engage in his religion as before he left.

[22] The Board did acknowledge the risk of persecution should the applicant choose to proselytize but did not believe that the applicant was credible in his assertion that he feels compelled to do so. He had stated that he does not believe in the religious aspects of Christianity. The Board may have misinterpreted the evidence of whether the applicant has brought other people to worship at the Persian Christian Fellowship Church. The Pastor thought that there were more but could recall at least one person. But the Board's finding that the applicant had failed to demonstrate a commitment to proselytize was reasonable on the evidence as a whole. As such, the Board found the risk of persecution was not a real threat.

[23] Had the Board found the applicant to be credible, and had the member believed that the applicant was truly committed to his religion, the Board's conclusion on the scope of freedom of religion and the risk due to proselytizing would require more scrupulous examination by the Court. Indeed, freedom of religion includes the right to be able to practice openly in society. However, the Board's analysis on this point cannot be divorced from its negative credibility findings. The Board reasonably concluded that the applicant was not credible, not an adherent Christian and thus not at risk of facing persecution if returned to Iran.

[24] The applicant proposed that I certify the following question as a serious question of general importance:

> Is it open to the Board once the threshold issue of the genuiness of the religious faith is established to dictate how a person is to practise their religious faith?

[25] I have found that the Board in this case did not dictate how the applicant is to practise his religious faith if returned to Iran. Thus, an answer to this question would not be dispositive of an appeal in this case and the question will not, therefore, be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MANSOUR DEHGHANI-ASHKEZARI and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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