

Federal Court



Cour fédérale

Date: 20110623

Docket: IMM-5825-10

Citation: 2011 FC 755

Ottawa, Ontario, June 23, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

ARASH LATIFI BENMARAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Court is asked to judicially review what were essentially credibility findings. These findings led the Immigration Refugee Board (IRB) Member to deny the Applicant's claim for asylum, as he was not deemed to be a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, LC 2001, c 27 (IRPA). The

Applicant claims he was a journalist in Iran who had denounced the government, thereby being summoned to Court.

[2] The following elements formed the core of the IRB's findings in regards to the Applicant's lack of credibility of his asylum claim:

- a. The Applicant had filed an asylum claim in the United Kingdom, which was denied. The letter provided in support indicated that reasons were attached. These were not provided and the Applicant's explanations were not deemed satisfactory. The IRB did not believe that his claim was denied because he had entered on a student visa, only to later be summoned to Court.
- b. The IRB believed that the Applicant had worked for *Soureh Cinema* as a graphic artist. He was not believed to have a career in journalism.
- c. The information pertaining to the Applicant's education was not consistent in all the documentary evidence provided. The diplomas provided even related attendance to a university which was never mentioned. The dates of studies were also contradictory.
- d. The discrepancies in the dates of attendance of various institutions were not explained satisfactorily. For example, the IRB did not believe it would take up to two years for a school to issue a transcript, much less one that would have different dates of attendance than those alleged.
- e. The documentary evidence never indicated part-time work at *Soureh Cinema* before July 2004. The letter provided by *Soureh Cinema* only stated work as a graphic artist, not a journalist.
- f. The Applicant did not provide his accreditation card as a journalist, and the omission was not adequately explained. The press card provided referred to the Applicant's nickname. The IRB found that, with his admitted knowledge in computer graphic design, he could easily produce a fake version of these documents.
- g. No copy of the alleged articles written was provided. More precisely, the article denouncing the disappearance of two journalists was not provided. The descriptions of the contents of these articles were not adequate.
- h. The IRB did not believe that the Applicant could submit an article directly to the Internet, without any editorial approval.
- i. Hence, as there were credibility concerns, the fact that no extrinsic documentation was provided by the Applicant was reproached by the IRB.

[3] The Applicant alleges that the IRB breached the presumption of truthfulness of refugee claimants set out in *Maldonado v Canada (Employment and Immigration)*, [1980] 2 CF 302 (FCA).

Explanations were provided in regards to the omission to bring forth documents, but it is argued that the IRB omitted to consider the explanations in respect to many aspects of the negative inferences made by the IRB. The discrepancies in the dates are downplayed, as the Applicant provided the right information in the end. The IRB's alleged overzealousness is reproached. The Applicant also restates as true his version of the facts, namely in regards to his work. The Applicant argues that it was unreasonable to expect that he could provide copies of the articles written, as these were withdrawn from the internet by the authorities. The Applicant states that the IRB wrongly omitted his explanations. Furthermore, the IRB could not contest the validity of official documents, as this was not within its area of expertise.

[4] The Respondent contends that the decision's credibility findings are reasonable. The omission to provide the reasons for refusal from the United Kingdom is determinative, and allows the IRB to make negative inferences from other discrepancies and omissions, as credibility was a central issue. The IRB's findings fall within the range of outcomes defensible in fact and law, and should not be reviewed.

Analysis

[5] The IRB's appreciation of a claimant's credibility is a finding of fact. As such, it is to be reviewed by the Court on the standard of reasonableness (*Dr. Q. v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19; *Dunsmuir v New Brunswick*, 2008 SCC 9; *Byaje v Canada (Citizenship and Immigration)*, 2010 FC 90; *Singh Nijjer v Canada (Citizenship and Immigration)*, 2009 FC 1259). It is well established that the Court must assess whether the decision falls within the range of acceptable outcomes defensible in fact and law, and that deference must be

shown towards the IRB in regards to credibility findings, so long as these are reasonable, find basis in the evidence and do not omit important elements of the evidence. Furthermore, the assessment of an applicant's credibility can be assisted by a lack of documentary corroboration (*Alonso v Canada (Citizenship and Immigration)*, 2008 FC 683).

[6] In the case at bar, three determinative elements were central to the credibility concerns of the IRB. The IRB's findings in respect to these elements are reasonable.

[7] Firstly, the Applicant's omission to provide the reasons for the refusal of asylum in the United Kingdom was impugned. It was not unreasonable for the IRB to require documentary corroboration of his failed asylum claimed, especially as the reasons apparently were 25-pages long and the Applicant only provided superficial comments as to their contents. In light of the credibility concerns arising from many aspects of the case, it was reasonable for the IRB to make a negative inference from this fact (see *Byaje*, above and *Sinnathamby v Canada (Citizenship and Immigration)*, 2001 FCT 473 (FC)). The IRB might have even been justifiably able to go further in this respect: it is curious that the applicant would have the letter relating the negative decision, but not its reasons.

[8] Secondly, the Applicant could not provide the articles he had allegedly written. While this may not have been fatal, the IRB was not satisfied with the Applicant's description, or lack thereof, of the articles' contents. Rather, the IRB took a negative inference from both the omission to produce them and the omission to speak meaningfully about their contents. The Applicant's efforts to find the documentation were not deemed sufficient, as were the explanations given. It is well

established that a lack of corroboratory documentation is relevant in assessing credibility, and there is nothing in this case that the IRB's assessment was outside the range of acceptable findings that could have been made.

[9] The credibility concerns are further compounded by the Applicant's lack of credibility in regards to his alleged work as a journalist. He had omitted to indicate part-time work with *Soureh Cinema*. His own documentary evidence did not support his assertion of part-time work. There were discrepancies in the dates of his work as a journalist, and even when he wrote his first article. Furthermore, the documentary evidence finally provided in regards to his education runs counter to the dates indicated in the information provided. The explanation pertaining to delays in obtaining the diplomas is not reasonable: surely delays may occur, but these would not presumably lead to different dates of enrolment being confirmed. It was reasonable for the IRB to reproach these facts in its assessment of the Applicant's credibility.

[10] A reading of the transcript further indicates the appropriateness of these negative credibility findings.

[11] The IRB omitted to mention the validity of the summons issued to the Applicant. It did question the *probative value* of the arrest warrant. However, because the IRB did not believe that the Applicant was a journalist, it was reasonable for the IRB to not give any weight to the arrest warrant. The omission to refer to the summons is not determinative, as the conclusion would presumably be the same. This is consistent with the presumption of validity of foreign documents highlighted in *Ramalingam v Canada (Citizenship and Immigration)*, [1998] FCJ no 10 (FCTD). In

effect, the IRB's decision in respect to the arrest warrant is not similar to the case in *Azziz v Canada (Citizenship and Immigration)*, 2010 FC 663, as the documents in question are not documents of civil status, and can be distinguished with those in *Azziz*.

[12] Taken as a whole, the IRB's decision is reasonable: it considered the contradictory and lack of documentary evidence; it relied upon its expertise as a trier of fact; and made credibility findings which were reasonable.

[13] The application for judicial review is denied. No question is certified and none was suggested by the Parties.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied. No question is certified.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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