

Federal Court



Cour fédérale

Date: 20141120

Docket: IMM-5101-13

Citation: 2014 FC 1097

Toronto, Ontario, November 20, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JABOR NAZARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Jabor Nazari's claim for refugee protection was dismissed on credibility grounds. The Board was not persuaded that Mr. Nazari had a well-founded fear of persecution in Afghanistan because of his connection to the death of an Afghani drug dealer in Greece while Mr. Nazari was himself living in Greece.

[2] In his memorandum of fact and law, Mr. Nazari argues that the Board erred in its assessment of his credibility by fixating on minor inconsistencies in his evidence rather than

having regard to the totality of his evidence. I have not, however, been persuaded that the Board erred as alleged.

[3] Mr. Nazari raised numerous additional arguments at the hearing of his application. Not only was it unfair to the respondent to raise these arguments for the first time at the hearing, but as will be explained below, the arguments were also largely unsupported by any evidence or were otherwise flawed.

[4] As a consequence, Mr. Nazari's application will be dismissed.

I. Background

[5] Mr. Nazari is an Afghan citizen who spent several years living in Greece. While there, Mr. Nazari says that he worked as an interpreter for the police department and the public prosecutor's office in the city of Patra. Mr. Nazari says that his work led to him becoming well-known to Afghan refugees involved in drug dealing in Greece. Mr. Nazari also says that he developed something of a public profile, having appeared on television when reporters attended crime scenes and questioned witnesses.

[6] According to Mr. Nazari, many Afghans living in Greece were involved in drug dealing. He says that one such individual was a distant cousin of his named Amir Ali. Amir allegedly died in the course of a drug raid in 2011, and Mr. Nazari claims that some of Amir's relatives in Greece began to threaten him, accusing him of having informed the police that Amir was drug dealer.

[7] Mr. Nazari further claims that relatives of Amir living in Afghanistan began to threaten members of Mr. Nazari's family who were still in Afghanistan, and that his family was forced to

flee to Pakistan in order to secure their safety. Mr. Nazari says that he would himself be at risk in Afghanistan from the members of Amir's family.

II. Mr. Nazari's New Arguments

[8] As mentioned earlier, Mr. Nazari advanced a number of new arguments at the hearing of this application, none of which were mentioned in his memorandum of fact and law. For the following reasons, I give no effect to any of these arguments which were:

- Mr. Nazari's claim that the Board failed to properly consider his "personal medical situation". There was, however, no evidence before the Board that Mr. Nazari had a medical condition that could affect his ability to testify. Moreover, Mr. Nazari specifically denied suffering from any medical condition that could have affected his ability to testify.
- Mr. Nazari's claim that the Board denied him a fair hearing by constantly cutting him off, thus preventing him from getting his story out. This was a general assertion made by counsel, with no specific examples having been provided. Mr. Nazari's claim is, moreover, not borne out by a review of the transcript. Nor does Mr. Nazari's affidavit identify any evidence that he could have provided to the Board in support of his claim but had been unable to adduce because of the Board's conduct.
- Mr. Nazari's allegations of incompetence on the part of counsel representing him before the Board. Not only did Mr. Nazari fail to raise this argument in his memorandum of fact and law, he has also failed to comply with this Court's

“Procedural Protocol” regarding allegations against counsel in immigration cases. In particular, Mr. Nazari has not provided any evidence that he notified previous counsel of these allegations or that he filed a complaint on this matter to the Law Society of Upper Canada.

- Mr. Nazari’s allegation that the interpretation of his testimony was inadequate. This Court’s jurisprudence has, however, established that concerns with respect to the adequacy of interpretation must be raised at the earliest possible moment: *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para. 19, [2001] 4 F.C. 85. Current counsel advised the Court that Mr. Nazari’s previous counsel spoke Dari – Mr. Nazari’s language. Mr. Nazari’s previous counsel also spoke English and would have thus been in a position to determine whether Mr. Nazari’s testimony was being accurately interpreted. Neither Mr. Nazari nor his counsel expressed any concern at Mr. Nazari’s refugee hearing as to the adequacy of the interpretation. There is, moreover, no evidence before this Court to support the claim that the quality of the interpretation was inadequate.

III. The Reasonableness of the Board’s Credibility Assessment

[9] The Board accepted that a drug dealer died in Greece in mid-2011, but was not persuaded that the death had any link to Mr. Nazari. The Board’s finding that Mr. Nazari’s story was not credible was based, to a large extent, on inconsistencies in his story regarding the events surrounding the drug dealer’s death. Contrary to counsel’s assertion, what went on in Greece was

not irrelevant to Mr. Nazari's claim, but was central to it. This is because the risk that Mr. Nazari allegedly faced in Afghanistan was based entirely upon events that allegedly occurred in Greece.

[10] It was reasonable for the Board to be concerned about the inconsistencies in Mr. Nazari's evidence. The Board routinely looks at the consistency of a claimant's evidence in assessing whether the story is credible, and it is not unreasonable for it to do.

[11] In an attempt to explain away the inconsistencies in Mr. Nazari's story, counsel made a bald assertion regarding cultural differences between western and Afghani cultures with respect to the importance of dates. "Cultural differences" are frequently offered as an explanation for frailties in an applicant's story. A bald assertion there are such differences will not, however, ordinarily be enough. If an applicant wants to rely on cultural differences to explain his or her conduct or testimony, specific evidence of the cultural practice or norm in question should be provided.

[12] Mr. Nazari also asserts that the Board's reasons were inadequate because they do not specifically mention his claim that they were forced to relocate to Pakistan. The Board is, however, presumed to have weighed and considered all of the evidence before it: *Florea v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 598 at para. 1, (F.C.A.). Moreover, "perfection is not the standard". Reasons do not need to address all of the evidence and arguments, and the Board is not required to make explicit findings on each constituent element leading to its final conclusion: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras. 14-18, [2011] 3 S.C.R. 708.

[13] Mr. Nazari took particular issue with the Board's finding that there was an inconsistency regarding the date of the drug raid. Mr. Nazari testified that the raid took place on June 16, 2011, whereas the English version of a letter written in Greek by a lawyer in Greece stated that the raid took place on July 16, 2011. The transcript shows that when the Board expressed a concern about this apparent inconsistency at the hearing, Mr. Nazari's counsel stated that he had noted the difference in dates before the hearing and had drawn it to Mr. Nazari's attention before the hearing, indicating that it was "a mistake".

[14] Mr. Nazari produced new evidence on this application from the individual who translated the lawyer's letter from Greek to English. This evidence confirms that the translator made an error, and that the original letter stated that the raid occurred on June 16, 2011, and not July 16. Mr. Nazari submits that there was thus no inconsistency in this regard.

[15] Even if I accept that there was such an error in translation, the Board had numerous other reasons for disbelieving Mr. Nazari's story which have not been shown to be unreasonable. Consequently, the application for judicial review is dismissed. I agree with counsel that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5101-13

STYLE OF CAUSE: JABOR NAZARI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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