

Federal Court



Cour fédérale

Date: 20151117

Docket: IMM-1668-15

Citation: 2015 FC 1285

Toronto, Ontario, November 17, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MONIR DARVISHPOUR HASSANKIADEH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of a Senior Immigration Officer [Officer], dated February 27, 2015, rejecting the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds [H&C Application].

II. Background

[2] The facts are identical to this Court's decision in IMM-1667-15.

[3] In addition, in October 2014, the Applicant filed her H&C Application in which she stated that her application is based on her establishment in Canada, the caring for her disabled daughter, Hanieh Gholami due to her daughter's detention, rape, and attempted suicide with cyanide in Iran which left the daughter disabled. The events in Iran which had occurred to the daughter are allegedly the very basis for which the daughter attempted to come to Canada in any way possible. The daughter's traumatic experiences are also the basis for the subsequent conversion to Christianity of the Applicant. The H&C application is based on consequences as to the hardship due to the Applicant's conversion from Islam to Christianity which the Applicant claims she would face in Iran; and, in addition the Applicant has stated that the best interests of her grandson are also a factor for her application. The H&C Officer rejected all of the grounds of the Applicant, in a decision dated February 27, 2015.

III. Decision under Review

[4] In his decision, the Officer relied, in part, on his findings in regard to the pre-removal risk assessment and the findings of the RPD in respect of sections 96 and 97 of the IRPA as to the assessment of hardship of the Applicant if she would be obliged to apply from abroad. The Officer also considered, in a broader context, the additional allegation of unusual and undeserved or disproportionate hardship as submitted by the Applicant. The Officer determined that the Applicant did not demonstrate that she is a "genuine" Christian; and, that, even she is, he did not

consider her to be at risk due to insufficient evidence that the Applicant would be personally discriminated or persecuted because of her religious beliefs. The Officer also assessed the best interests of the Applicant's child; and, found insufficient humanitarian and compassionate considerations to warrant granting an exemption to the normal process.

IV. Analysis and Conclusion

[5] Given the Court's detailed analysis of the substantive subjective and objective evidence in respect of IMM-1667-15, the Officer erred in his assessment of the risk of persecution and consequences therefrom if the Applicant is made to return to Iran. Therefore, a different officer will have to assess the hardship that the Applicant may face, if her H&C application is rejected due to the potential peril to the Applicant's life and limb as a result of the Applicant having converted from Islam to Christianity. Substantive affidavit evidence from several clergy men in Canada in respect of the Applicant's genuine practice of Christianity and objective Country Condition evidence thereon point to the inherent potential danger to the Applicant if she is made to return to Iran.

[6] As a result, this application for judicial review is granted on the basis of the analysis that the H&C Officer relied almost exclusively on the PRRA Officer's determination; and furthermore, did not consider the significant substantial evidence as to the consequences of the Applicant's conversion from Islam to Christianity as is described in the analysis of IMM-1667-15, both in the subjective and objective evidence if she was made to return to Iran. In addition the Applicant would be subject to a situation of serious, usual and undeserved or disproportionate hardship if she attempted to apply for H&C from Iran.

[7] It is also recognized by the Court, the Applicant has put forward in her H&C application the need to care for her disabled daughter due to the trauma which her daughter had undergone as a result of her daughter's detention, rape, and attempted suicide with cyanide in Iran which the Applicant would provide for her outside of Iran due to the trauma which had occurred in Iran due to circumstances therein.

[8] Therefore, for all of the above reasons the judicial review application is granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be granted.

The file be sent back to a different agency officer who will determine the matter anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1668-15

STYLE OF CAUSE: MONIR DARVISHPOUR HASSANKIADEH v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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