

Federal Court



Cour fédérale

**Date: 20161104**

**Docket: IMM-1182-16**

**Citation: 2016 FC 1226**

**Toronto, Ontario, November 4, 2016**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**MAHMOOD MANOOCHEHRI**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant has applied for judicial review of a decision of a Canada Border Services Agency Enforcement Officer (the Officer) dated March 21, 2016 in which the Officer refused to defer the Applicant's removal from Canada (the Decision). This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

[2] The Applicant is a 34 year old male citizen of Iran. However he was born in the United Arab Emirates (the UAE) and has lived there for his entire life. He has only visited Iran 6 or 7 times and the visits lasted no more than three weeks.

[3] The Applicant was a Shia Muslim by birth, but he converted and became a Sunni in order to marry his first wife in 2002. He later divorced and married his second wife, who is also Sunni. They had two children. However, there were problems in the marriage, and the Applicant left the UAE and came to Canada as a visitor on February 22, 2013. The Applicant's second wife has since told him that she has divorced him and has cancelled his resident status in the UAE which apparently depended on the marriage.

[4] On January 7, 2014, the Applicant made an inland refugee claim, but on August 14, 2014, his claim was denied. Thereafter, on April 15, 2015, his appeal to the Refugee Appeal Division was denied as was his application for leave to apply for judicial review of the RAD Decision. Removal to Iran was arranged. A deferral of removal was requested and refused on March 25, 2016. Thereafter, a stay of removal was granted pending the outcome of this judicial review.

I. The Deferral Request

[5] The Applicant was involved in a workplace accident in August 2014 and a car accident in August 2015. At the time of the deferral request he had three ongoing or pending legal claims arising from these accidents (the Legal Matters). One was an appeal before the Workplace Safety Insurance Appeals Tribunal (WSIAT), the second was a claim for benefits against his insurer;

and the third was a potential civil suit against the “at fault” driver in the car accident. This lawsuit had not been started at the time the Officer considered the deferral request.

[6] The deferral of removal was requested on the basis that:

- a) His Legal Matters could not be resolved unless he was present in Canada;
- b) He needed ongoing medical care and treatment for his addiction to Percocet;
- c) He had a new partner and they did not want to be separated;
- d) He would be at risk of persecution and human rights abuses in Iran as a Sunni Muslim and as a drug addict.

## II. The Decision

[7] The Officer acknowledged that the Applicant’s counsel in the Legal Matters had submitted a letter saying that the Applicant “will not be able to continue his claims if he is not in Canada, as he is required to appear for court dates, or be available to be assessed for treatment by the Insurance Agency.”

[8] However, the Officer decided that a deferral was not warranted for the Legal Matters because insufficient evidence had been presented to indicate why the Applicant could not make a written appeal to the WSIAT. The Officer also noted that the status of the Legal Matters was uncertain in that it was not clear when the civil suit would be launched and when any of the matters would be concluded.

[9] The Officer acknowledged that the Applicant is suffering from chronic pain, dizziness, nausea, heartburn and acid, sleeping problems, anxiety and depression; that he is addicted to Percocet and that he has been referred for a colonoscopy.

[10] The Officer acknowledged that the Applicant had begun a three month treatment plan through Mt. Sinai Hospital, was seeing a doctor for his psychological concerns, and was scheduled to start drug addiction counselling on March 30, 2016. The Officer concluded that he was fit to fly and, while the removal would cause a disruption in his treatment, insufficient evidence had been provided to show that he could not continue with treatments for all his ailments on his return to Iran.

[11] The Officer noted that none of the documentary evidence presented regarding the treatment of criminals involved in the drug trade in Iran applied to the Applicant because he is addicted to a medically prescribed medication, rather than an illegal street drug. The Officer noted that the Applicant was willing to seek treatment and concluded that the Applicant would be able to enlist his brothers' help to seek treatment in Iran.

[12] At the time of the Decision the Applicant had been living with a woman for about four months. They had been married according to their religious beliefs, but were not yet legally married. The Officer acknowledged that the Applicant's removal would lead to their separation, which would possibly be permanent. However, the Officer noted that this was an ordinary, yet unfortunate, consequence of removal and did not warrant a deferral.

III. Discussion and Conclusions

[13] In my opinion, the Decision is reasonable. While there is no doubt that the Applicant suffers from medical issues and that his care will be disrupted, his removal does not create an imminent risk and there is no evidence to indicate that he will not be able to arrange the necessary treatment in Iran.

[14] As well, while Sunnis face discrimination in employment, education and housing, the prospect of discrimination is not a compelling circumstance which justifies a stay of removal.

[15] In *Phillips v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1499, Mr. Justice Simon Noël relied on the Federal Court of Appeal's decision in *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 80 to conclude that an indeterminate deferral is not within an Officer's power. Accordingly, the refusal to defer due to the Legal Matters was reasonable.

[16] The documentary evidence shows that Iran is harsh in its treatment of criminals in the drug trade but there is no evidence to suggest that a person seeking treatment for an addiction to prescription drugs is at risk.

[17] The documentary evidence also shows that journalists, human rights advocates, trade unionists and students and women's rights advocates are victims of human rights abuses.

However, since the Applicant is not a member of any of these groups, it was reasonable for the Officer to decline to defer removal.

[18] Finally, it was reasonable of the Officer to conclude that a newly established relationship was not a compelling circumstance which justified a deferral.

IV. Certification

[19] No question was posed for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1182-16

**STYLE OF CAUSE:** MAHMOOD MANOOCHERI v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 31, 2016

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** NOVEMBER 4, 2016

**APPEARANCES:**

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