Federal Court Cour fédérale

Date: 20170418

Docket: IMM-3253-16

Citation: 2017 FC 368

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 18, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

AFSHIN NOROUZI

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Afshin Norouzi [Mr. Norouzi] is applying for judicial review of a decision rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada on June 22, 2016, ceasing Mr. Norouzi's refugee protection.

[2] Mr. Norouzi contests the reasonableness of the decision and raises constitutional issues with regard to sections 7, 12, and 15 of the Charter. For the following reasons, I would dismiss the application for judicial review.

II. Background

[3] The applicant, Afshin Norouzi, is a citizen of Iran.

[4] On July 17, 2001, Mr. Norouzi applied for refugee protection at the border at Saint-Bernard-de-Lacolle, coming from the United States. Shortly thereafter, the RPD recognized his refugee status, as the family of his ex-wife, with whom he had had sexual relations outside of marriage, had allegedly been threatening him. Mr. Norouzi obtained his permanent resident status on September 18, 2003.

[5] After receiving his permanent resident status, Mr. Norouzi returned to Iran seven times between 2003 and 2007, for a total duration of approximately eighteen months:

1. November 2003 to April 2004;
2. June to October 2004;
3. December 2004 to February 2005;
4. February 2006 to April 2006;
5. April 2006 to May 2006;
6. January 2007;
7. February 2007.

[6] Furthermore, these trips to Iran were made possible by the use of an Iranian passport. In fact, Mr. Norouzi had applied for a passport renewal and obtained it in February 2005. In 2009, he obtained a new Iranian passport.

[7] On July 4, 2013, the Minister of Public Safety and Emergency Preparedness [the Minister] filed an application for cessation of refugee protection under subsection 108(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act]. On August 17, 2015, Mr. Norouzi filed a notice of constitutional question; however, the RPD, in its decision on January 18, 2016, determined that it had no jurisdiction to address these matters.

[8] On June 22, 2016, the RPD allowed the Minister's application for cessation of refugee protection. Mr. Norouzi contests this decision.

III. Impugned decision

[9] The question before the RPD was to determine whether Mr. Norouzi, through his actions, had "voluntarily re-availed himself of the protection of Iran." To answer this question, the RPD first considered paragraph 1 of the United Nations High Commissioner for Refugees (UNHCR)'s 1951 Refugee Convention, which, along with the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* [Handbook], describes the conditions that must be met for cessation of refugee protection. There are three: (1) voluntariness; (2) intention; and (3) re-availment: the refugee must actually obtain such protection. The RPD then considered paragraphs 121–125 of the Handbook, which state that "[i]f a refugee applies for and obtains a national passport or its

renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality." Lastly, it considered the context and facts of Mr. Norouzi's case.

[10] The RPD made several relevant findings of fact:

> i. Mr. Norouzi made several trips to Iran, for a total duration of approximately eighteen months;
>
> ii. His mother's medical condition was unstable;
>
> iii. He made his entries into Iran with the help of a contact person; his trips ceased after he lost contact with this individual.

[11] The RPD concluded that Mr. Norouzi's "comings and goings," both before and after his Iranian passport was extended, evidenced his desire to return to Iran. The first criteria was therefore satisfied. The RPD was also of the opinion that extending his passport created a presumption of his intention to re-avail himself of the protection of Iran. Although the RPD believed Mr. Norouzi with regard to his mother's health problems, it clarified that this was insufficient to rebut this presumption. Indeed, there were several family members in Iran who could have taken care of his mother, and the RPD could not understand why "his presence was required for all of these visits and for such long stays." Rather, it was of the opinion that Mr. Norouzi's planned, numerous and lengthy trips were for reasons other than those presented to the tribunal. Lastly, the RPD concluded that Mr. Norouzi's passport extension, which allowed him to travel successfully in Iran, shows that the action was successful. The three Handbook conditions having been met, the RPD concluded that Mr. Norouzi had effectively voluntarily re-availed himself of the protection of Iran, his country of nationality.

IV. Relevant legislation

[12] Section 108 of the Act lists the circumstances under which a claim for refugee protection may be rejected or lost:

Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	**b)** il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	**d)** il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
(e) the reasons for which the person sought refugee protection have ceased to exist	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.
Cessation of refugee protection	**Perte de l'asile**
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	**(2)** L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

[13] Consequently, if Mr. Norouzi finds himself in any of the circumstances listed in subsection 108(1), he could lose his refugee status under subsection 108(2).

[14] Once refugee status is lost under subsection 108(2), section 40.1 and subsection 46(1) of the Act bring about, respectively, inadmissibility and loss of permanent residence:

Cessation of refugee protection — foreign national	**Perte de l'asile — étranger**
40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.	**40.1 (1)** La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.
Permanent resident	**Résident permanent**
46 (1) A person loses permanent resident status	**46 (1)** Emportent perte du statut de résident permanent les faits suivants :
[…]	…
(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);	**c.1)** la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile.

[15] When a foreign national is inadmissible, section 44 of the Act allows an officer to prepare a report for the Minister (subsection 44(1)). Then, the Minister or the Minister's representative must decide whether the report is well-founded and whether the matter should be referred to the Immigration Division for investigation. According to section 45, the Immigration Division may make the following decisions:

Decision	**Décision**
(a) recognize the right to enter Canada of a Canadian citizen within the meaning of the *Citizenship Act*, a person registered as an Indian under	**a)** reconnaître le droit d'entrer au Canada au citoyen canadien au sens de la *Loi sur la citoyenneté*, à la personne inscrite comme Indien au

the *Indian Act or* a permanent resident;	sens de la *Loi sur les Indiens* et au résident permanent;
(b) grant permanent resident status or temporary resident status to a foreign national if it is satisfied that the foreign national meets the requirements of this Act;	**b)** octroyer à l'étranger le statut de résident permanent ou temporaire sur preuve qu'il se conforme à la présente loi;
(c) authorize a permanent resident or a foreign national, with or without conditions, to enter Canada for further examination; or	**c)** autoriser le résident permanent ou l'étranger à entrer, avec ou sans conditions, au Canada pour contrôle complémentaire;
(d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.	**d)** prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

[16] Yet, according to subsection 228(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], if the Minister finds that the report is well-founded, but the reason for inadmissibility is under subsection 40.1(1) of the Act (cessation of refugee protection), the matter shall not be referred to the Immigration Division and the removal order shall be a departure order.

V. Issues

[17] The appellant puts forth two issues in dispute, the second of which deals with constitutional questions:

1. Was the RPD's decision reasonable?

2. Does the cumulative effect of sections 40.1, 46(1)(c.1), and 108(1) of the Act contravene sections 7, 12, and 15 of the *Canadian Charter of Rights and Freedoms*?

VI. Standard of review

[18] With regard to the first question, the applicable standard of review is the standard of reasonableness. The reviewing court determines whether the decision and its justification possess the attributes of reasonableness. Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick,* 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47).

VII. Analysis

A. *Reasonableness of the decision*

[19] Mr. Norouzi maintains that, at the hearing, the RPD failed to consider the following evidence that shows a lack of intention to avail himself of the protection of Iran:

a) Mr. Norouzi returned to Iran for purposes related to his divorce that he could no longer manage from within Canada;

b) Mr. Norouzi returned to Iran because his brother was arrested by the police and his mother asked him to come and look for his brother;

c) His trips back to Iran were made under extreme caution, with the help of a facilitator to pass through customs;

d) The family home had been relocated to a new neighbourhood, far away from his ex-wife's family.

[20] He cites *Yuan v. Canada*, 2015 FC 923 [*Yuan*], [2015] FCJ no 919, in which Justice Boswell undertook a contextual analysis to determine whether the refugee had re-availed himself of the protection of his country of origin. Justice Boswell first addressed the presumption related to acquisition of a passport. He noted that this presumption was documented in the Handbook, received court approval, and concluded that "[i]t was reasonable for the RPD to rely on this presumption," (*Yuan,* above, at paragraph 31, citing *Nsende v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at paragraph 14, [2009] 1 FCR 49; *Canada (Public Safety and Emergency Preparedness) v. Bashir*, 2015 FC 51 at paragraph 59, [2015] FCJ no 36; *Li v. Canada (Citizenship and Immigration)*, 2015 FC 459 at paragraph 42, [2015] FCJ no 448). Although he accepted the RPD's conclusion that the applicant had indeed re-availed himself of the protection of China, he clarified that this finding contradicted the RPD's other findings of fact and, consequently, was unreasonable. Unfortunately, this is not the case for Mr. Norouzi.

[21] On this point, the RPD concluded that Mr. Norouzi's actions had "created in the respondent a presumption of intention to re-avail himself of the protection of Iran," and that he had failed to rebut this presumption. I am of the opinion that the RPD carried out a contextual analysis to arrive at this conclusion: it took into account the fact that Mr. Norouzi had renewed his Iranian passport, as well as his mother's precarious health condition (which was incidentally not refuted by the RPD), and the fact that he had family members in Iran who could have taken care of his mother. The RPD is justified in giving more weight to these points than to those mentioned by Mr. Norouzi at paragraph 19 above (points that were taken into account by the RPD in paragraph 28 of its decision). Furthermore, this presumption is particularly strong where

a refugee uses his national passport to travel to his country of nationality (*Abadi v. Canada (Citizenship and Immigration)*, 2016 FC 29 at paragraph 16, [2016] FCJ no 33 [*Abadi*]).

[22] Consequently, I am of the opinion that the RPD's decision was reasonable and satisfies the criteria set out in *Dunsmuir*, above.

B. *Section 7 of the Charter*

[23] Section 7 of the Charter guarantees the "right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." An analysis of the constitutionality of a statute under section 7 occurs in two steps: firstly, the claimant must prove that there has been or could be a deprivation of the right to life, liberty and security of the person. Secondly, the claimant must prove that the deprivation was not or would not be in accordance with the principles of fundamental justice (*Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paragraph 12, [2007] 1 SCR 350). Yet, before proceeding with an analysis under section 7, it must be determined whether section 7 applies in the circumstances.

[24] Mr. Norouzi maintains that the application of section 7 is triggered by the seriousness of the consequences that Mr. Norouzi would have faced if he had been forced to return to Iran—namely threats to his life and the supposedly imminent threat of persecution. Mr. Norouzi cites *Charkaoui v. Canada*, 2008 SCC 38, [2008] 2 SCR 326, wherein the Supreme Court of Canada states the following at paragraphs 53 and 54:

> [53] But whether or not the constitutional guarantees of s. 7 of the Charter apply does not turn on a formal distinction between the different areas of law. Rather, it depends on the severity of the consequences of the state's actions for the individual's fundamental interests of liberty and security and, in some cases, the right to life. By its very nature, the security certificate procedure can place these rights in serious jeopardy, as the Court recognized in Charkaoui. To protect them, it becomes necessary to recognize a duty to disclose evidence based on s. 7.
>
> [54] Investigations by CSIS play a central role in the decision on the issuance of a security certificate and the consequent removal order. The consequences of security certificates are often more severe than those of many criminal charges. For instance, the possible repercussions of the process range from detention for an indeterminate period to removal from Canada, and sometimes to a risk of persecution, infringement of the right to integrity of the person, or even death.

[25] Mr. Norouzi also maintains that section 7 of the Charter protects his physical integrity, his psychological integrity, and protects family ties, but he does not explain how this is the case.

[26] By contrast, the Minister maintains that section 7 does not apply in this case because (i) the facts do not allow for an analysis of the constitutionality of the sections; and (ii) the issue is premature as Mr. Norouzi has not yet reached the stage at which he would be removed from Canada. I agree with the Minister on this point.

[27] It is well established that non-citizens have no absolute right to re-enter or to remain in Canada, and that removal in itself does not trigger the application of section 7 of the Charter (*Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539). Mr. Norouzi returned to Canada and obtained his refugee status in 2002, and he became a permanent resident in 2003. It was only after the RPD's ruling on June 22, 2016, (which I have

found to be reasonable) that Mr. Norouzi lost his refugee status and became inadmissible. Although section 44 of the Act creates the *possibility* that an officer could prepare a report to be sent to the Minister, this has not yet been the case for Mr. Norouzi. Furthermore, the Minister must uphold the soundness of the report before subsection 228(1) and the removal order can even come into play. Thus, there are several steps that would need to be taken before Mr. Norouzi could actually be removed from Canada and returned to Iran—steps that have not yet taken place.

[28] The respondent cites *B010 v. Canada*, 2015 SCC 58 (CanLII), [2015] 3 SCR 704, [*B010*] and *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 SCR 431, [*Febles*], in which the Supreme Court of Canada ruled that section 7 is not triggered by a ruling of inadmissibility. In *B010*, the chief justice writes the following:

> [74] The appellants argue in the alternative that s. 37(1)(b) of the IRPA unconstitutionally violates s. 7 of the Charter on the basis that s. 37(1)(b) is overbroad in catching migrants mutually aiding one another and humanitarian workers. […]
>
> [75] The argument is of no assistance in any event, as s. 7 of the Charter is not engaged at the stage of determining admissibility to Canada under s. 37(1). This Court recently held in *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68 (CanLII), [2014] 3 S.C.R. 431, that a determination of exclusion from refugee protection under the IRPA did not engage s. 7, because "even if excluded from refugee protection, the appellant is able to apply for a stay of removal to a place if he would face death, torture or cruel and unusual treatment or punishment if removed to that place" (para. 67).
>
> [My emphasis.]

[29] Mr. Norouzi has not provided any evidence indicating that he is subject to a removal order; section 7 of the Charter therefore does not apply in this case.

[30] As noted by the respondent, that which Mr. Norouzi appears to be contesting is the 12-month waiting period between the date of the RPD's decision and the application for pre-removal risk assessment [PRRA]. Mr. Norouzi also maintains that the cumulative effect of the Act's provisions is to allow removal without an assessment of the risks in the country of origin, which, in his opinion, goes against the protections in the Constitution. In his written arguments, Mr. Norouzi emphasizes the fact that he will not have access to a PRRA for twelve months. He cites *Canada (Minister of Citizenship and Immigration) v. Farhadi,* 2000 CanLII 15491 (FCA), [2000] FCJ no 646, in which Judge Strayer ruled that "a risk assessment and determination conducted in accordance with the principles of fundamental justice is a condition precedent to a valid determination to remove an individual from this country." With regard to this argument, I make the following observations:

[31] Firstly, as previously mentioned, Mr. Norouzi is not yet the subject of a removal order. A removal order is only one *possibility* allowed under the legislative regime of the Act. Secondly, even though Mr. Norouzi must wait until June 22, 2017, before he can make a PRRA application, there are several options available to him if a removal order is made against him: he can apply for deferral of removal, challenge an enforcement officer’s refusal to defer by way of an application for leave and judicial review in the Federal Court, and may bring a motion for a stay of removal pending the outcome of their application for judicial review (*Atawnah v. Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 at paragraph17, [2016] FCJ no 481; *Peter v. Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1073 at paragraph 167, [2014] FCJ no 1132).

[32] Mr. Norouzi is not eligible to apply for a PRRA for twelve months under paragraph 112(2)(*b.1*) of the Act; the same applies to all refugees whose refugee protection claims have been denied by the RPD. The Federal Court of Appeal ruled in *Atawnah* that paragraph 112(2)(*b.1*) of the Act does not contravene the guarantees under section 7 of the Charter.

C. *Section 12 of the Charter*

[33] Mr. Norouzi also maintains that the cumulative effect of sections 40.1, 46(1)(*c.1*), and 108(1) of the Act constitutes a violation of the rights guaranteed in section 12 of the Charter. Section 12 reads as follows:

> 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[34] He cites *Canadian Doctors for Refugee Care v. Canada (Attorney general)*, 2014 FC 651, [2014] FCJ no 679 [*Canadian Doctors*], but offers no explanation as to the reasons justifying his position. In *Canadian Doctors*, Justice Mactavish ruled that certain changes to the Interim Federal Health Program violated section 12 of the Charter, as they had the impact of subjecting a group of vulnerable, poor and disadvantaged individuals to adverse treatment. Before going into her analysis under section 12, the Justice stated that cruel and unusual treatment or punishment is that which is “so excessive as to outrage [our] standards of decency” (*Canadian Doctors*, above, at paragraph 613). I do not see how this ruling is relevant to Mr. Norouzi's argument, since, as established during the analysis under section 7, he has not yet reached the point of being removed to Iran.

[35] The respondent cites *Barrera v. Canada*, [1993] F.C.J. no 146 [*Barrera*], according to which an applicant cannot invoke section 12 of the Charter before the final stage of deportation:

> The issue as to the effect of section 12 on the refoulement of Convention refugees being still open, the next question is whether it ought to be dealt with on this appeal. My view is that it should not, since I agree with the Board that the appellant's argument is brought prematurely, against the wrong decision maker at the wrong stage.
>
> …
>
> [...] it is only a return to Chile which could conceivably put the appellant in any section 12 danger, and it is only the Minister who has the statutory power to subject him to that danger. The Minister cannot even make a decision as to the country of removal until the issue of deportation is settled by the Board.

[36] Of course, even if the statutory regime in *Barrera* is not the same as that in the Act, the principles still apply. In this case, subsection 228(1) of the Regulations cannot take effect until after an officer prepares a report under section 44, which, again, is only a possibility. Mr. Norouzi's arguments to this effect are premature (*Santana v. Canada (Public Safety and Emergency Preparedness)*, 2013 FC 477 at paragraph 14, [2013] FCJ no 525.

D. *Section 15 of the Charter*

[37] Lastly, Mr. Norouzi maintains that the cumulative effect of sections 40.1, 46(1)(*c.1*), and 108(1) of the Act constitutes a violation of the rights guaranteed in section 15 of the Charter, namely equality before the law, equal protection and equal benefit of the law. More specifically, he maintains that these sections create a regime that discriminates between permanent residents of Canada: while some permanent residents of Canada can travel "without worry" to their country of origin, he maintains that section 108 of the Act has the discriminatory effect of

placing permanent residents who are *refugees* at risk of losing their permanent residence by travelling to their country of origin.

[38] The two parties agree on how to determine whether section 15 of the Charter has been violated. A two-stage analysis must be undertaken (*Kahkewistahaw First Nation v. Taypotat*), 2015 SCC 30 at paragraphs 16–21, [2015] ACS no 30 [*First Nation*]; *Withler v. Canada*, 2011 SCC 12 at paragraphs 61–66, [2011] 1 SCR 396). The first stage involves analyzing whether the law creates a distinction based on an enumerated or analogous ground. The grounds listed are race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Mr. Norouzi contests the constitutional validity of the Act on the basis of his refugee status; therefore, it must first be analyzed whether refugee status was recognized, or should have been recognized, as a ground analogous to those listed in section 15. He quotes the following as a definition of an analogous ground: “a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity”(*First Nation,* above, at paragraph 33).

[39] By its very nature, refugee status is not an immutable characteristic. The statutory regime of the Act provides that, under certain circumstances (like those described in section 108), a permanent resident who is also a refugee may lose their refugee status. The difference in how permanent residents are treated as compared to permanent residents who are also refugees is therefore not a ground that is analagous to those listed in section 15.

[40] Since Mr. Norouzi was not able to establish the first prong of the analysis, namely that the Act has a disproportionate impact on him based on the fact that he belongs to the group of

permanent residents who are also refugees, I cannot conclude that the Act violates section 15 of the Charter.

VIII. Questions for certification

[41] At the hearing, Mr. Norouzi proposed six questions to be certified for the Federal Court of Appeal. I asked the parties to make submissions with respect to these six questions. The first question, whose certification was not contested by the respondent, is as follows:

> When called upon to decide if it will allow or deny an application to cease refugee protection presented by the minister, pursuant to paragraph 108(1)a) of the Act and based on past actions, can the Board allow the minister's application without reviewing it, at the cessation hearing, if the individual would be exposed to a risk of persecution upon their return to their country of nationality?

[42] The respondent maintains that the case law on this issue is not contentious, and cites, among others, *Balouch v. Canada (Public Safety and Emergency Preparedness)*, 2015 FC 765, [2015] FCJ no 751. In this decision, Justice Heneghan concluded as follows:

> While I acknowledge that the existence of risk is a primary concern when protection is sought, I am not persuaded that the issue of risk is relevant in a cessation hearing.

[43] Yet, Justice Heneghan certified the same question as that proposed by Mr. Norouzi. The respondent also cites *Abadi*, above, wherein Justice Fothergill interpreted *Balouch* as saying that the risk of persecution is not a relevant factor in a cessation hearing. However, this was not done in a contextual vacuum, as he clarified that "[p]ending clarification by the Federal Court of Appeal, the RPD cannot be faulted for not assessing Mr. Shamsi’s risk of persecution in Iran."

[44] I am of the opinion that only this question among the six proposed by Mr. Norouzi is a question of general importance and transcends the interests of the parties in the present case. Due to the fact that it was ultimately not appealed in the *Balouch* decision, and since the respondent does not oppose its certification, I will certify the first question posed by Mr. Norouzi for the Federal Court of Appeal.

IX. Conclusion

[45] The RPD's decision was reasonable. For the above-mentioned reasons, the cumulative effect of sections 40.1, 46(1)(c.1), and 108(1) of the Act does not violate sections 7, 12, and 15 of the Charter. The application for judicial review is dismissed and the following question is certified:

> When called upon to decide if it will allow or deny an application to cease refugee protection presented by the minister, pursuant to paragraph 108(1)a) of the Act and based on past actions, can the Board allow the minister's application without reviewing it, at the cessation hearing, if the individual would be exposed to a risk of persecution upon their return to their country of nationality?

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The following question is certified:

   When called upon to decide if it will allow or deny an application to cease refugee protection presented by the minister, pursuant to paragraph 108(1)a) of the Act and based on past actions, can the Board allow the minister's application without reviewing it, at the cessation hearing, if the individual would be exposed to a risk of persecution upon their return to their country of nationality?

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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