Federal Court  Cour fédérale

Date: 20190305

Docket: IMM-2676-18

Citation: 2019 FC 270

Ottawa, Ontario, March 5, 2019

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ALI MOWLOUGHI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of a Pre-Removal Risk Assessment Officer [Officer] dated April 27, 2018 [Decision] which refused the Applicant's Pre-Removal Risk Assessment [PRRA] application.

II. BACKGROUND

[2] The Applicant, Ali Mowloughi, is a citizen of Iran. He alleges that he left Iran because he feared persecution as a result of his and his family's political activities.

[3] The Applicant claims that his father was a senior major in the Iranian army at the time of the Shah and that his brother was a supporter of the Mujahideen and is believed to have been killed. The Applicant also claims that his sisters have suffered mistreatment in Iran because of the family's political involvement.

[4] The Applicant says he was imprisoned by the police in Iran after having attended a political demonstration against former Iranian president Ahmadinejad. He alleges that he was detained for two days and was beaten by police while in custody and was then arrested shortly after being released. On that occasion, he was imprisoned for four days and only released after his wife paid a significant fine. The Applicant claims to have been arrested a third time in February 2010 by police in order to prevent him from attending a demonstration.

[5] The Applicant obtained a Temporary Resident Visa and travelled to Canada on May 17, 2010. On June 2, 2010, he made a claim for refugee protection. The Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] refused the Applicant's refugee claim on September 2, 2011, finding that he had failed to sufficiently document his claim and that he lacked credibility. Numerous discrepancies and major omissions in his testimony

were identified. On May 30, 2012, the Applicant's application for leave and judicial review of this decision was denied.

[6] The Applicant then applied for permanent residence on the basis of humanitarian and compassionate considerations, and was refused on January 23, 2013. The Applicant also applied for leave for judicial review of this decision, but leave was denied on May 21, 2014.

[7] The Applicant submitted his PRRA application in December 2013. In his application, he submitted that he would face a risk of persecution in Iran because of his perceived and actual opposition to the Iranian regime. He also submitted that his wife and children, who continue to live in Iran, have been subjected to harassment by Iranian authorities. Further, he submitted that both his wife and brother have been interrogated as to his whereabouts by Iranian authorities, and that his wife had been demoted from her teaching position. He also submitted that he faces an increased risk of detention, torture, and mistreatment because the judicial review of his RPD decision appears publicly online, and will be known to the Iranian authorities.

III. DECISION UNDER REVIEW

[8] The Officer rejected the application on April 27, 2018 on the basis that the Applicant had failed to establish that he would be subject to persecution, or a risk of torture, risk to life or risk of cruel and unusual treatment or punishment if he returned to Iran.

[9] The Officer considered whether to accept numerous pieces of evidence submitted by the Applicant with his PRRA application. The Officer found that some of these materials did not

constitute new evidence because they were readily available prior to the RPD decision, and the Applicant could have been reasonably expected to produce these documents before the RPD. Overall, the Officer found that the Applicant reiterated risks that had already been assessed by the RPD, and noted that the RPD's negative credibility findings concerning the Applicant had not been overturned by the Court.

[10] As to the new evidence that was admitted, the Officer assigned little probative value to a letter written by the Applicant's brother due to its brevity, lack of information, and self-serving nature. The Officer also found a series of text message exchanges to be of no probative value because it did not show that the Iranian authorities pose a threat to the Applicant, or that they have an interest in him. The Officer assigned little weight to a letter written by the Applicant's wife because it lacked significant details and was not corroborated by objective evidence. And, the Officer assigned no probative value to documents purporting to show that the Applicant's wife was demoted from her position.

[11] The Officer then went on to consider the medical reports for both the Applicant and his wife. The Officer found that the wife's anxiety and depression were not sufficiently shown to be linked to the allegations contained in the Applicant's claim. And, the Officer concluded that the Applicant had not sufficiently demonstrated that his mental health would represent a danger for him in Iran.

[12] The Officer held that the Applicant had failed to establish that he faced risk based on his opposition to the Iranian regime. In addition, he had not established that he is of particular

interest to the Iranian authorities, or that he had left the country illegally. The Officer emphasized the fact that the Applicant had been issued a passport by the Iranian government, which would likely not have been granted had he been of interest to the authorities.

[13] The Officer also considered the Applicant's claim that he is at risk in Iran because the decision denying his refugee claim has been made publicly available on the internet. The Officer held that the Applicant has not established that his failed refugee claim would put him at risk if he were to return to Iran. The Officer considered evidence of other failed refugee claimants from Iran, and found that such individuals do not face a heightened risk if they left Iran legally and were not politically active. Generally, failed refugee claimants who were subsequently detained upon returning to Iran had committed crimes in Iran or left the country illegally. The Officer held that the Applicant had not established how his situation would affect him more than other Iranians in similar circumstances.

[14] In addition, the Officer found that the Applicant had not provided sufficient evidence to support his claim that he is at risk in Iran due to his father's past involvement in the military. Finally, the Officer held that the fact that the Applicant's family members had previously been granted refugee status was not a sufficient ground to mandate a positive decision in this case.

IV. ISSUES

[15] The issues to be determined in the present matter are the following:

1. What is the standard of review applicable to the Officer's Decision?
2. Did the Officer breach procedural fairness by not holding an oral hearing?

3. Was the Decision reasonable?

V. STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] A standard of reasonableness applies to a PRRA officer's findings of fact, determinations based on mixed fact and law, and consideration of evidence (*Selduz v Canada (Citizenship and Immigration)*, 2009 FC 361 at paras 9-10).

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47 and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]. Put another way, the Court should intervene only if the Decision was

unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[19] Courts have recently held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Khosa*, above, at paras 59 and 61).

[20] While an assessment of procedural fairness accords with recent jurisprudence, it is not a doctrinally sound approach. A better conclusion is that no standard of review at all is applicable to the question of procedural fairness. The Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 stated (at para 74) that the issue of procedural fairness,

> requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation.

VI. STATUTORY PROVISIONS

[21] The following provisions of the Act are relevant to this application for judicial review:

Enforceable removal order	**Mesure de renvoi**
48 (1) A removal order is enforceable if it has come into force and is not stayed.	**48** (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.

Effect	**Conséquence**
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.
Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

VII. ARGUMENT

A. *Applicant*

[22] The Applicant submits that the Officer unreasonably rejected several pieces of evidence which demonstrated the risk he faced due to his father's military service. It was also unreasonable for the Officer to reject the affidavits written by the Applicant's sisters who have

been granted refugee protection in Canada. Additionally, the Officer should have considered the photos of the Applicant's father in military uniform and country reports. It was unreasonable for the Officer to reject these pieces of evidence which demonstrate the risk posed to the Applicant due to his father's military service.

[23] The Applicant says that the Officer also unreasonably disregarded the successful refugee claims of his sisters. The Applicant's sisters faced similar circumstances while in Iran. It was therefore incumbent on the Officer to clearly explain why the Applicant should not receive similar protection. The Officer acted unreasonably by refusing to search departmental records for information about the Applicant's sisters' refugee claims.

[24] The Applicant further argues that the Officer breached procedural fairness by failing to conduct an oral hearing. This hearing was necessary in order to assess the credibility of the affidavits submitted as evidence. While the Officer purported to make evidentiary findings based upon sufficiency, these were actually credibility findings. The Applicant argues that the Officer also breached procedural fairness by relying on extrinsic evidence in the form of a country report without disclosing it to the Applicant for comment.

[25] The Applicant says that the Officer also unreasonably dismissed evidence which demonstrated his opposition to the Iranian government. The Applicant's participation in demonstrations caused him and his family members to be targeted by the regime. The Applicant submitted letters written by his brother and his wife, his wife's employment records, text

messages, and psychiatric evidence to confirm this central aspect of his claim. The Officer unreasonably discounted these pieces of evidence.

[26] The Applicant also argues that the Officer misconstrued the evidence that he was issued a passport before departing Iran. It was unreasonable for the Officer to determine that the issuance of a passport showed that the Applicant was not a person of interest to the Iranian authorities. To the contrary, the issuance of a passport could demonstrate that Iran simply wanted to get rid of a perceived opponent.

[27] The Applicant submits that the Officer unreasonably assessed his *sur place* risk which results from the publication of his refugee claim on the internet. The Officer failed to meaningfully consider the evidence which demonstrates that failed refugee claimants are exposed to serious harm upon return to Iran.

B. *Respondent*

[28] The Respondent argues that the Applicant disagrees with the Officer's weighing of the evidence, but has failed to demonstrate a reviewable error. It was reasonable for the Officer to reject several pieces of evidence because they were readily available prior to the RPD hearing. These pieces of evidence include photographs of the Applicant's father in uniform and the Applicant's sister's affidavit. The Officer considered the Applicant's explanation for failing to produce these documents at the RPD hearing. It was reasonable for the Officer to reject the Applicant's explanation that his counsel did not ask for this evidence.

[29] The Respondent argues that the Officer did not make a credibility finding by refusing to accept evidence which could have been submitted at the RPD hearing. Accordingly, there was no need to hold an oral hearing.

[30] The Respondent says that it was reasonable for the Officer to determine that there was insufficient evidence to establish a risk to the Applicant based on his father's involvement in the military. The Officer also reasonably weighed the evidence about the refugee claims of the Applicant's sisters, the letters written by the brother and the Applicant's wife, the text messages, the psychiatric evidence, and the issuance of the passport. The Respondent emphasizes that it is not the role of this Court to re-weigh the evidence that has been properly considered by the Officer.

[31] The Respondent says that the Officer reasonably assessed the Applicant's *sur place* claim. The Officer based this assessment on objective evidence which demonstrates that failed refugee claimants generally do not face a particular risk upon return to Iran.

VIII. ANALYSIS

A. *Introduction*

[32] As the Officer points out, the RPD had already rejected the Applicant's claim to be at risk in Iran because of his perceived or actual opposition to the Islamic regime and the Iranian authorities. In so finding, the RPD determined that the Applicant's story was not credible, that he had failed to demonstrate that the alleged incidents had taken place, and that his allegations

contained considerable omissions and numerous inconsistencies between what was said at the hearing and the information contained in his Personal Information Form.

[33] The Applicant may well disagree with the RPD decision, but it came before this Court and leave was denied on May 30, 2012. This means that the Applicant had not established an arguable case for reviewable error in the RPD decision.

[34] Before the Officer, the Applicant alleged the same basic risks that had already been reviewed and assessed by the RPD. He is, of course, quite at liberty to do this provided he can produce acceptable and admissible evidence. However, it is well-established that a PRRA assessment is neither an appeal or a re-hash of an RPD decision.

B. *Admissible Evidence*

[35] The Officer made a clear distinction between new evidence produced by the Applicant that was admissible in accordance with s 113(a) of the Act and evidence that was not.

[36] On this basis, the Officer excluded:

(a) Two copies of photographs showing a gentleman in uniform;

(b) An affidavit from the Applicant's sister, Mahvash Moloughi, and a copy of her record of landing in Canada;

(c) Identity documents from the Applicant's other sister, Ameneh Mologhi, and a copy of her record of landing in Canada;

(d) A copy of a record of landing for Ameneh's husband, Alireza Amin Tehran; and

(e) A letter and a driver's license from Habiballah Nazeri, a cousin of the Applicant's brother-in-law.

[37] The Applicant says that this evidence should not have been excluded because he provided a reasonable, uncontradicted explanation as to why he had not produced it before the RPD.

[38] The Officer, however, refers to the Applicant's explanation (that his previous counsel did not ask for them and so the Applicant did not know he would have to provide them) and finds it unreasonable and unacceptable:

> Given the importance of this information, which is related to the basis of his claim, I do not accept this explanation and find that he could have reasonably been expected to produce these documents at the time of his refugee hearing.

[39] The Applicant's bald assertion that this was unreasonable does not make it so. The Applicant is simply asking the Court to disagree with the Officer and accept his explanation as reasonable. But there is no ground upon which the Court can do this.

[40] The Applicant also asserts that the Officer ought to have invoked an oral hearing, in particular, to assess the credibility of his affidavit evidence.

[41] If the Applicant means the excluded affidavit of Mahvash Moloughi then there is no requirement for the Officer to assess the credibility of inadmissible evidence. If the Applicant

means affidavit evidence that was not excluded, then, as the Decision makes clear, this evidence was assessed for sufficiency and not credibility, and the Applicant has not convinced me that the sufficiency findings were, in fact, credibility findings in disguise.

[42] The RPD had already found that the Applicant's story was not credible. As Chief Justice Lufty, as he then was, pointed out in *Saadatkhani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 614:

> [5] It would be incongruous if, in the absence of any new evidence concerning the substance of the applicant's refugee claim, the PRRA officer could reach a conclusion inconsistent with the credibility finding made by the Convention Refugee Determination Division and confirmed in strong terms by a judge of this Court on judicial review.

[43] The role of the Officer was to determine whether there was admissible new evidence sufficient to overcome these credibility concerns, or to support new risk that the RPD had not addressed. The Applicant's PRRA application was, in essence, an attempt to demonstrate that, notwithstanding the RPD's decision, he was at risk in Iran because of his family associations and his own activism. The Officer determined that there was insufficient evidence to support the Applicant's allegations.

C. *Grants of Refugee Protection to the Applicant's family in Canada*

[44] The Applicant says that the Officer unreasonably discounted the significance of the grants of refugee protection in Canada to members of the Applicant's family.

[45] The evidence from his sisters on their situation was reasonably excluded under s 113(a) of the Act but, as the Officer makes clear in the Decision, the real problem here was "the fact that the Applicant's relatives were granted refugee protection does not in itself mandate a positive decision" because "the basis for these positive determinations has not been demonstrated."

[46] In written submissions, the Applicant concedes that "they did not have the underlying documents confirming the basis of their claims, due to the passage of time…." However, he says that he "requested in submissions for the officer to assess the information from departmental records."

[47] There is no indication in the Decision whether the Officer either did this, or would have been able to do it. The Applicant says that the "department's own policy requires that PRRA officers assist in the fact-finding process in a PRRA determination" and there is "no indication that the officer made any effort to seek this information, or even to turn his/her mind to this."

[48] The Respondent's answers to these assertions is that the "Applicant has pointed to no authority for this argument, and has not shown that 'conducting research' on publically accessible websites is the same as accessing personal records without authorization."

[49] What the Applicant has omitted to address in his written submissions, and he had no persuasive answer when the matter was raised at the oral hearing before me in Toronto, is that the Officer says in the Decision that "the evidence to this effect will not be considered in the

assessment of this application." In other words, this suggests that this evidence was excluded under s 113(a) because it could have been provided and entered before the RPD. What is problematic, however, is that the Officer then goes on to assess this evidence on the basis that "the fact that the applicant's relatives were granted refugee protection does not in itself mandate a positive decision in his PRRA application," and "the basis for those positive determinations has not been presented" so that "this evidence is insufficient to establish that the applicant was targeted because of his family's opposition to the Iranian regime." The problem here is that evidence that is non-admissible evidence does not need to be excluded as insufficient. And this suggests that, although the Officer says the evidence was excluded, he then went on to assess it and his findings counted against the Applicant. The problem is exacerbated by the fact that this evidence is not specifically excluded in the list of excluded documents and the Officer says that "All remaining evidence will be considered in my analysis below." If the Officer did use this evidence, or its unavailability, as a ground to deny the claim then this gives rise to further problems.

[50] It may be, of course, that the family files were not accessible to the Officer but, if this was the case, then he should have said so in response to the Applicant's request. And if the Officer simply needed "authorization" to access the information, then there is no indication that he ever considered asking for it.

[51] The Respondent has produced no evidence to explain why the Officer was either unwilling or unable to access these records in the way requested by the Applicant, except that they were inadmissible evidence, which is problematic for reasons given above.

[52] The fact that these records were not reviewed means that the Officer never made any comparison between the Applicant's situation and that of his siblings who had already been granted refugee protection on what he says were similar grounds to his own case, and so the Officer never had to explain why a contrary result was reached. See *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at para 26.

[53] The Officer's apparent use of this evidence (Was it excluded, or was it admitted and considered?) is problematic but, as I explain below, I think there are sufficient other reasons why the Decision is unreasonable and should be returned for reconsideration.

D. *Unreasonable Dismissal of Risk to Applicant*

[54] For various reasons, the Applicant says that the Officer unreasonably dismissed the risk he faces due to his own opposition to the Iranian regime.

(1) Letter from the Applicant's brother

[55] The Applicant says that it was unreasonable of the Officer to dismiss the letter from his brother, Amir Mowloughi, as having "little probative weight." In the letter, Amir explains that he has been questioned by the Iranian authorities about the Applicant's whereabouts on several occasions when entering Iran.

[56] The Officer's treatment of this letter in the Decision reads as follows:

> The applicant claims that he faces a risk of return because of the perception of the Iranian authorities that he opposed them, and

> because he publicly stated this when he was in Iran. The applicant submitted a letter from his brother Amir Mowloughi, dated 12 January 2014, who declares living in Finland. The brother states that he returned to Iran to visit and he was questioned about the applicant's whereabouts and if he had sought refugee protection in Canada. His brother states that these interrogations occurred frequently. The letter itself is brief, and lacks important information such as the dates the interrogations occurred. Furthermore, I find that this letter is self-serving in nature since it was drafted in support of the applicant's PRRA application shortly after the applicant's removal order came into force. For these reasons I give little probative value to this letter.

[57] The fact that the letter is "brief" is not itself a reason to dismiss this evidence and, besides the dates of interrogation, the Officer does not say what other "important information" he has in mind, so the Applicant cannot challenge this finding and the Court cannot review it. This is also one of the instances in the Decision where the Officer's failure to deal with the Applicant's own affidavit evidence is unreasonable, because the Applicant provided the dates of his brother's return as being June 2012 and April and December 2013.

[58] Besides the "dates the interrogation occurred," it is not clear what other "important information" the Officer has in mind, so that it is not possible to tell whether this is a reasonable objection. However, in any event, the treatment is unreasonable because it isn't clear whether the two grounds are separate or cumulative, and the second "self-serving" ground is unreasonable. As Justice Tremblay-Lamer made clear in *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210:

> [12] Jurisprudence has repeatedly informed CIC officers that they may not disregard evidence or give it a low probative value merely because the evidence is found to be self-serving (*LOTM v Canada (Minister of Citizenship & Immigration)*, 2013 FC 957, at para. 27-29, citing *SMD v Canada (Minister of Citizenship & Immigration)*, 2010 FC 319, *Ugalde v Canada (Minister of Public*

> *Safety & Emergency Preparedness)*, 2011 FC 458, and *Ahmed v Canada (Minister of Citizenship & Immigration)*, 2004 FC 226). An applicant will necessarily produce evidence that is beneficial to their case. In all the cases cited by the respondent to refute this point, there were significant other reasons to dismiss the evidence. In the case at bar, the officer simply notes that it is "self-serving and unverifiable" without further explanation.

[59] In the present case, the Officer gives other reasons such as brevity, dates of interrogation and "lacks important information" but, as I have said, these reasons are not reasonable.

(2) Text Message from Applicant's Friend

[60] The Applicant requested that his friend, Majid, provide a letter confirming that the Applicant's spouse was being harassed by the Iranian authorities. Majid replied in text messages that he had been informed by a friend who works for a state official who had warned him that text and other communications are monitored by the state.

[61] The Officer deals with this evidence as follows in the Decision:

> I also took into consideration a copy and an affidavit of translation of a text message exchange between the applicant and a friend. I note that the texts were translated by his sister who does not demonstrate being an official translator. The copy of the original text messages do not contain the dates of when the text messages were exchanged, however the translation of the texts includes the date; January 13, 2014. The texts state that a person who works for the Iranian government informed his friend that all communication through websites and chat applications are controlled and monitored by the government. I find that this submission bears no probative value since it is not indicative of any threat or danger towards the applicant. It does not demonstrate that the Iranian authorities have an interest in the applicant or are monitoring his communications in Canada.

[62] In the affidavit in his PRRA application, the Applicant explained his purpose in providing this information to be as follows:

> 17. Otherwise, I cannot obtain other evidence. In particular, I cannot obtain the following:
>
> (a) A medical report for my treatment in Iran. A primary concern of the Member in my refugee claim was that I did not have medical evidence from Iran to confirm my medical treatment there following my mistreatment by authorities. In fact, my wife advises me and I believe that she has spoken to the doctor, but he has refused to provide a letter because he is afraid that this will cause him political problems.
>
> (b) Other witness statements from Iran. I have asked friends in Iran who are aware of my situation to write letters of support, but they have indicated that they are too afraid to do so, since Iran monitors correspondence out of the country. This is confirmed by my friend Majod Sepheri[.]

[63] It would seem, then, that the Officer overlooks or misunderstands the Applicant's purpose in providing this evidence. It may not indicate "any threat or danger towards the applicant" but it does corroborate the Applicant's difficulties in obtaining further statements from witnesses in Iran to support the state's persecution of the Applicant and his family. It was unreasonable for the Officer to suggest that this evidence had no probative value at all for the Applicant's case given the reasons why it was submitted.

(3) Letter from Spouse and Employment Records

[64] The Applicant asserted that, since his RPD hearing, his wife has been harassed by the state on several occasions and she has been demoted in her job. To support this assertion, the Applicant produced a letter from his spouse and employment records. The Officer deals with this evidence as follows:

> The applicant submitted an undated letter from his wife along with an affidavit of translation dated 29 January 2014, along with employment records and a medical assessment. In the letter, his wife writes that she continues to be harassed by Iranian authorities and is being asked to go to court to be interrogated and to sign documents in order to provide information about her husband's whereabouts. Firstly, this letter was translated by his sister Mahvash Moloughi, who does not demonstrate being a certified translator. Therefore, the accuracy of the translation cannot be established. Secondly, the original letter and the translation itself are missing important details such as the name of the author and the date it was written. In addition, the facts and events related to the harassment she suffered at the hands of the Iranian authorities such as a summons to appear in court has not been corroborated with objective evidence. For these reasons, I give little probative value to these submissions.
>
> In relation to the applicant's wife being demoted due to his situation, the documentary evidence submitted to that effect does not corroborate this claim. The 2 records of employment submitted, dated 2008 and 2013 respectively, contain information such as his wife's name, date of birth, and occupation, as well as other job related information. On one document, the salary is clearly indicated, the other one does not contain any details about her salary. I find that they do not contain information which suggests that she was demoted or that her change in position was directly linked to her husband's situation. Consequently, I give no probative value to these submissions.

[65] I agree with the Applicant that the Officer's reasons for giving this evidence little probative value are unreasonable because:

(a) Mahvash may not be a certified translator but the Officer overlooks that she swore an uncontradicted affidavit of translation and that she is fluent in both English and Farsi;

(b) While there is no name in the translation, there is a signature in the original;

(c) It is unclear what possible "objective evidence" the Officer might think would be available to support the harassment details, and the letter itself indicates that the spouse

was arrested "with no warrant or official papers." As Justice Rennie pointed out in *Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849:

> [6] Negative inferences cannot be drawn solely from the failure to produce corroborating documents: *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12. While it is possible that the Board sought to frame its analysis within the exception to this principle, namely that a failure to produce corroborative documentation is a proper consideration where it does not accept the applicant's explanation for failing to produce that evidence when it would reasonably be expected to be available. If that was the case, precision was required as to the nature of the documentation expected and a finding made to that effect.

(d) The spouse's employment record from 2008 indicates that she was a "teacher" at that time, while the 2013 record indicates that she was a "technology deputy" at that time. This is certainly some indication of demotion even if there is no overt link to her husband, and this is another instance where the Officer's failure to assess the Applicant's own affidavit evidence on point becomes problematic and unreasonable.

[66] All in all, this is not a fair or reasonable appraisal of this evidence.

(4) Psychiatric Reports

[67] The Officer gives little weight to the psychiatric evidence related to the Applicant's spouse and his own mental condition on the grounds that such evidence is based upon the Applicant's statements and the doctors have no first-hand knowledge of the events the Applicant says occurred in Iran.

[68] Once again, the Officer misses the point of this evidence. It is corroborative of the Applicant's story because the symptoms are consistent with people who have suffered what the Applicant says he and his wife have suffered. For example, Dr. Lisa Andermann finds that the Applicant suffers from Post-Traumatic Stress Disorder symptoms that are "consistent with… someone who has been beaten and tortured." And the Iranian doctor indicates that the Applicant's spouse suffers from anxiety and depression, which is consistent with her evidence of harassment by the authorities.

[69] The Officer gives this evidence little weight because the doctors have no first-hand knowledge of what the Iranian authorities have done to the Applicant and his wife. But the evidence was not produced to prove first-hand knowledge. The medical opinions of these doctors are valid circumstantial evidence which corroborates the Applicant's account. The Officer seems to be indicating that he will only accept and assess direct evidence which, as the Supreme Court of Canada pointed out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*], is unreasonable:

> And while the Officer did not "dispute the psychological report presented", she found that the medical opinion "rest[ed] mainly on hearsay" because the psychologist was "not a witness of the events that led to the anxiety experienced by the applicant". This disregards the unavoidable reality that psychological reports like the one in this case will necessarily be based to some degree on "hearsay". Only rarely will a mental health professional personally witness the events for which a patient seeks professional assistance. To suggest that applicants for relief on humanitarian and compassionate grounds may only file expert reports from professionals who have witnessed the facts or events underlying their findings, is unrealistic and results in the absence of significant evidence. In any event, a psychologist need not be an expert on country conditions in a particular country to provide expert information about the probable psychological effect of removal from Canada.

[70] The Supreme Court was, of course, dealing with a humanitarian and compassionate application in *Kanthasamy*, but similar considerations must surely apply to the present case.

(5) Issuance of Passport

[71] The Officer says that the Applicant has not demonstrated that he fits the profile of a person who would be considered as an opponent of the Iranian regime and "he hasn't demonstrated that he is of particular interest to the Iranian authorities, nor has he indicated that he left Iran illegally."

[72] In coming to this conclusion, the Officer points to the following:

> On the contrary, I note that the Applicant was issued a passport in November 2009, after the alleged facts or events. According to the documents I have consulted, if he was of interest to the Iranian authorities, it would have been difficult for him to have a passport issued and be allowed to leave the country. For these reasons, I find that, on a balance of probabilities, that applicant could [*sic*] not be perceived as an opponent of Iran.

[73] The Officer appears to be relying upon a country report in the Applicant's Record, pp 329-417 (found at link provided in PRRA and reasons, Applicant's Record, p 16). However, at 6.2 of the same report, it says:

> While the law does not permit a person to leave the country through official channels if there is a criminal case pending, in practice, since 2009, the authorities have appeared to lift such restrictions in order to allow such individuals to leave Iran.
>
> On whether a person who had participated in demonstrations would be able to leave the country, a Western embassy (3) stated that there could be examples of cases involving prominent demonstrators being able to exit the country legally and that this could be the case if the authorities just want to be rid of them.

[74] The Officer simply ignores this possibility which suggests the opposite of his own conclusions. This is a reviewable error. See *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1998] FCJ No 1425, at para 17.

[75] Also, in relying upon this report, the Officer was not acting in a procedurally fair way. The report relied upon appears to be something that the Officer unilaterally accessed from the internet.

[76] In *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, this Court held as follows:

> 8 First, the PRRA officer violated the applicant's right to procedural fairness in the determination of his application for protection. The principles mentioned by the Federal Court of Appeal in *Mancia v. Canada (Minister of Citizenship & Immigration)*, [1998] 3 F.C. 461 (Fed. C.A.) at para. 27, are applicable here. It is apparent that the PRRA officer consulted relevant documentary extrinsic evidence found on the internet, upon which the applicant was never given an opportunity to comment. Such unilateral use of the internet is unfair (*Zamora v. Canada (Minister of Citizenship & Immigration)* (2004), 260 F.T.R. 155, 2004 FC 1414 (F.C.) at paras. 17-18).

E. *Sur Place Claim*

[77] The Applicant also raises issues with the Officer's analysis of his *sur place* claim. I agree with the Applicant's position but, given the errors I have already identified above, it is clear to me that this Decision is unsafe and unreasonable and should be returned for reconsideration by a different officer even without errors in the *sur place* analysis.

IX. CERTIFICATION

[78] The parties agree there is no question for certification and I concur.

JUDGMENT IN IMM-2676-18

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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