

Federal Court



Cour fédérale

Date: 20200325

Docket: IMM-4045-18

Citation: 2020 FC 424

Ottawa, Ontario, March 25, 2020

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

FARHAD DADASHPOURLANGEROUDI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Farhad Dadashpouurlangeroudi [the “Applicant”] applies for judicial review of a decision made on August 8, 2018 [“Decision”] by the Refugee Protection Division [“RPD”] in which two applications made by the Applicant seeking reinstatement of his withdrawn claim for refugee protection were dismissed.

[2] For the reasons that follow, the application is denied.

II. **Background Facts**

A. *The Applicant's claim*

[3] The Applicant is a 52 year old citizen of Iran. He claims to be a successful business person who was a political dissident in Iran. He says he funded numerous protest groups throughout Iran.

[4] On June 20, 2009, the Applicant took part in an anti-government demonstration in Tehran where he was arrested by security forces. He says he was held for one week at a detention centre during which time he was beaten and interrogated.

[5] In April 2017, the Applicant came to Canada to visit his girlfriend, intending to return to Iran after a few months. However, on September 5, 2017, his brother called and told him that the *Sepah* (the Islamic Revolutionary Guard Corps) had come to his house seeking to arrest him. During the search they seized his laptop and various business documents. His brother was taken to the *Sepah* station and interrogated. At that time, the brother was told that the Applicant was an anti-revolutionary.

[6] Fearing he would be harmed by the *Sepah* if he returned to Iran, the Applicant made a refugee claim in Canada on November 1, 2017.

B. *The withdrawal of the claim*

[7] On May 23, 2018, before his claim was heard, the Applicant received a telephone call from his brother and son in Iran. They asked him to return to Iran because the *Sepah* was threatening to imprison them if he did not.

[8] The next day, May 24, 2018, the Applicant decided to withdraw his claim so he could return to Iran. He received written notice of confirmation of his withdrawal on May 25, 2018.

[9] On May 27, 2018, however, the Applicant received another telephone call from his brother and son who told him they had gone into hiding. They alerted the Applicant that if he returned to Iran he would face immediate arrest and be jailed.

[10] The Applicant made two applications to reinstate his withdrawn claim. Both were denied.

C. *The first application to reinstate the claim*

[11] On May 28, 2018, the Applicant delivered a handwritten letter to the Immigration and Refugee Board ["IRB"] in which he asked the IRB to reinstate his refugee claim. His stated grounds were that when he submitted the withdrawal he was under a lot of pressure and stress and had family problems. He then realized he would be arrested at the airport if he returned to Iran.

[12] A few days later the IRB advised the Applicant that he had to make the application to reinstate his claim according to the Rules (being the *Refugee Protection Division Rules*, SOR/2012-256 "the Rules"), and he should use a lawyer.

[13] On or about June 11, 2018 the Applicant retained legal counsel for that purpose.

[14] The first application that was made in apparently proper form was submitted by the Applicant on June 12, 2018.

[15] On June 20, 2018, the RPD notified the Applicant that “evidence of compliance with the rules” was required because it did not appear that the application had been sent to the Minister as required by Rule 60(2). The RPD record of the matter indicates that counsel was notified to resubmit the application.

[16] On June 20, 2018, the application was re-submitted by fax to the RPD. It confirmed that originally it had inadvertently been sent by e-Post to the IRB and by fax to the Minister.

[17] On July 10, 2018 the application was refused by the RPD on the basis of four grounds:

1. The applicant’s contact information was missing;
2. The original application was not provided;
3. The original affidavit was not provided;
4. There was no written statement indicating how and when a copy of the application was provided to the Minister.

The form also contained the note “See RPD Rules, including 50(5)(b) and 60(2).”

D. *The second application to reinstate the claim*

[18] On July 11, 2018, the Applicant submitted a second application to re-instate his withdrawn claim. The application package contained proof of service on the IRB and the

Minister, an affidavit by the Applicant and submissions as to why the withdrawn claim ought to be reinstated.

[19] A complete copy of the previous application including the supporting affidavit of the Applicant was also submitted. An affidavit from counsel explained that the e-post service had been an inadvertent error which caused no unreasonable delay as the prior application had actually been received by the RPD.

[20] It was submitted that it was in the interests of natural justice to allow the application and reinstate the claim for refugee protection.

[21] The Applicant's second application to reinstate his claim, which is the decision under review, was dismissed by the RPD on August 8, 2018.

III. The relevant legislation

[22] Rule 60 of the *Rules* sets out the process to be followed when submitting an application to reinstate a withdrawn claim and indicates the factors the RPD must consider in determining whether to reinstate a claim:

**Application to reinstate
withdrawn claim**

60 (1) A person may make an application to the Division to reinstate a claim that was made by the person and was withdrawn.

**Form and content of
application**

(2) The person must make the

**Demande de rétablissement
d'une demande d'asile
retirée**

60 (1) Toute personne peut demander à la Section de rétablir une demande d'asile qu'elle a faite et ensuite retirée.

**Forme et contenu de la
demande**

(2) La personne fait sa

application in accordance with rule 50, include in the application their contact information and, if represented by counsel, their counsel's contact information and any limitations on counsel's retainer, and provide a copy of the application to the Minister.

Factors

(3) The Division must not allow the application unless it is established that there was a failure to observe a principle of natural justice or it is otherwise in the interests of justice to allow the application.

Factors

(4) In deciding the application, the Division must consider any relevant factors, including whether the application was made in a timely manner and the justification for any delay.

Subsequent application

(5) If the person made a previous application to reinstate that was denied, the Division must consider the reasons for the denial and must not allow the subsequent application unless there are exceptional circumstances supported by new evidence

demande conformément à la règle 50, elle y indique ses coordonnées et, si elle est représentée par un conseil, les coordonnées de celui-ci et toute restriction à son mandat et en transmet une copie au ministre.

Éléments à considérer

(3) La Section ne peut accueillir la demande que si un manquement à un principe de justice naturelle est établi ou qu'il est par ailleurs dans l'intérêt de la justice de le faire.

Éléments à considérer

(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment le fait que la demande a été faite en temps opportun et, le cas échéant, la justification du retard.

Demande subséquente

(5) Si la personne a déjà présenté une demande de rétablissement qui a été refusée, la Section prend en considération les motifs du refus et ne peut accueillir la demande subséquente, sauf en cas de circonstances exceptionnelles fondées sur l'existence de nouveaux éléments de preuve.

[23] Rule 50, which is referred to in Rule 60(2), establishes that an application must be made in writing and that it must state the decision sought as well as give the reasons why it should be

made. It provides that any evidence to be considered by the RPD must be given in an accompanying affidavit. Rule 50(5), which is mentioned in the Decision, provides that the party making an application must provide a copy of the application and any affidavit to the other party and provide the originals of each to the RPD, together with a written statement of how and when a copy was provided to the other party.

IV. **Issue and Standard of Review**

[24] The only issue to be determined is whether the RPD erred in deciding not to reinstate the Applicant's claim.

[25] The standard of review presumptively is reasonableness as the RPD was considering its home statute, and the nature of the matter being considered was one of mixed fact and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*].

[26] The presumption of reasonableness is not rebutted on these facts.

V. **Analysis of the Decision**

[27] The Decision addresses both: (1) the reasons for the denial of the first application to reinstate and (2) the reasons that the second application to reinstate was denied.

A. *Reasons for denying the first application*

[28] In the first part of the Decision, the RPD notes that the first application was refused on July 10, 2018 because the form and content of the application did not meet the procedural requirements set out in Rule 50(5)(b) and Rule 60(2). However, after considering the subsequent evidence, including screenshots showing service on the Respondent, the RPD found that the original application was in fact properly served on June 12, 2018.

[29] The RPD also noted that there was no reasonable explanation for the original errors, the failure to provide proof of service and the failure to provide originals of the application and the affidavit. The RPD called these “careless errors”.

[30] However, the RPD took into account that the substance of the application to reinstate and the reasons put forward in support of it had not been considered when it was first refused by another member of the RPD. The RPD accepted the proof of service was new evidence to be taken into account and determined that, in the interests of natural justice under Rule 60(3), it would consider the merits of the two applications.

[31] One aspect of a reasonable decision is that the administrative tribunal considered the applicable legislation when rendering the decision being reviewed. In denying the first application to reinstate, the RPD recognized the factors set out in Rule 60(3) applied:

Taking into account the circumstances under which the claim was withdrawn, and the reason sought by the applicant for the claim to reinstated [sic], I do not find that there was any failure to observe the principles of natural justice, in denying the application for reinstatement. I do not find that it is in the interests of natural justice to allow the application.

[32] Three reasons were given by the RPD as to why the Applicant's first application to reinstate his claim was dismissed.

[33] The RPD found that despite being under stress and pressure, there was no indication that the Applicant was coerced into withdrawing his claim. Rather, it concluded, after looking over the application and reviewing the Applicant's affidavit, that he had made a personal and voluntary decision to withdraw his claim. The RPD noted as well that the Applicant had the option to consult his previous legal counsel and the opportunity to seek legal advice about whether to withdraw his claim.

[34] The RPD noted that according to his Basis of Claim form filed November 1, 2017, the Applicant alleged he was already being sought by the Iranian police long before his family was allegedly threatened.

[35] The RPD found it was unclear why the Applicant did not recognize the continued danger he would face if he withdrew his refugee claim nor why he needed his family to remind him that he would be arrested if he returned to Iran.

[36] The RPD identified the factors set out in Rule 60(3) then provided clear, cogent reasons for finding that they were not met. The facts considered in the reasons leave no doubt as to how and why the RPD decided to deny the first application to reinstate. The underlying record supports that outcome.

[37] A reasonable decision is one in which the reasons provided are both rational and logical, without any fatal flaws along the way. Taking into account the underlying record, the analysis should reasonably lead from the evidence to the conclusion: *Vavilov* at paras 102 -103.

[38] I am satisfied that the reasons provided by the RPD for denying the first application to reinstate meet the *Vavilov* criteria set out above. In that respect, the denial of the first application to reinstate was reasonable.

B. *Reasons for denying the second application*

[39] The RPD noted that under Rule 60(5) a subsequent application for reinstatement of a withdrawn claim is only allowed where there are exceptional circumstances.

[40] Citing from the decision by Mr. Justice Phelan in *Ohanyan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1078 [*Ohanyan*], the RPD stated that reinstatement is the exception, not the norm. It is not designed to protect applicants from the consequences of their freely chosen course of conduct.

[41] In considering whether the Applicant freely chose his course of conduct when he withdrew his claim the RPD found that no evidence was provided to indicate that the Applicant's state of mind would have led him to make an irrational decision at that time.

[42] The RPD reiterated that the Applicant made a personal and voluntary decision to withdraw his claim and he was not coerced to do so. He had legal counsel available to him. He

was fully and personally aware of Iran's country conditions at the time he chose to withdraw his claim.

[43] The RPD then concluded that it weighed all the circumstances in their totality in deciding to dismiss the second application to reinstate the withdrawn claim.

[44] Once again, I find no fault with the reasons provided by the RPD for denying the second application. They are rational and logical, clear and cogent, and are supported by the underlying record. The Decision meets the criteria of reasonableness as set out in *Vavilov*.

[45] The Applicant may well have made a rash decision that he subsequently regretted. But, as stated in *Ohanyan* and found by the RPD on the facts, it was a freely chosen course of conduct consequences of which the *Rules* are not designed to protect.

VI. **Conclusion**

[46] For all the foregoing reasons, the application is denied, without costs.

[47] There is no question for certification arising on these facts nor was one proposed.

JUDGMENT IN IMM-4045-18

THIS COURT'S JUDGMENT is that application is denied, without costs. There is no serious question of general importance for certification on these facts.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4045-18

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