**Date: 20070920**

**Docket: IMM-892-07**

**Citation: 2007 FC 939**

**Ottawa, Ontario, September 20th 2007**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**ASHRAF EBADI GHAVIDEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] This is a judicial review of the February 22, 2007 decision of the Pre-Removal Risk Assessment Officer (the Officer) A. Bremner, wherein the Officer refused the applicant's application for a Pre-Removal Risk Assessment (PRRA). The applicant applied for a stay of her removal on March 6, 2007, but her application was dismissed on April 17, 2007. As a result, the applicant was removed from Canada on April 29, 2007.

[2] Having carefully reviewed the records submitted by the parties and considered their written and oral submissions, I conclude that this application for judicial review should be dismissed for the following reasons.

**FACTS**

[3] Ms. Ghavidel is a citizen of Iran who came to Canada on a visitor visa in September of 2002 to visit her son. She made a refugee claim on February 14, 2003, approximately one month before her visitor visa expired, alleging that she was at risk in Iran because of her son's political activities and on the basis that she was a woman who owned a hair salon. The Refugee Protection Division (the RPD) rejected her claim in January of 2005, and her application for leave and judicial review of that decision was dismissed by the Federal Court on April 15, 2005. The RPD found that Ms. Ghavidel was not credible and did not belong to a particular social group. The RPD also noted that there were no allegations of domestic abuse and that her husband had assisted her in coming to Canada.

[4] Ms. Ghavidel then applied for her first PRRA on June 14, 2005, based on the same reasons she had raised before the RPD, and also because of her involvement with a Christian church during her time in Canada. On December 28, 2006, the applicant's PRRA was rejected, on the ground that the risks alleged by the applicant had already been assessed by the RPD. As to her involvement with a Christian church, the PRRA Officer dismissed her application since it was found she did not have more than a general interest in that religion. The applicant had, in fact, been baptized on November

26, 2006, but had not made further submissions to the PRRA Officer in that respect because of erroneous information she received from Citizenship and Immigration Canada.

[5] The applicant then filed a second PRRA application on February 13, 2007, based on her conversion to Christianity and her fear of her abusive husband. In a decision dated February 22, 2007, the Officer rejected her application.

**THE IMPUGNED DECISION**

[6] Regarding the allegation of domestic abuse, the Officer found that the issue had been considered by the RPD, and that no new evidence had been presented in the context of the PRRA application. He, therefore, found that there was no basis to come to a conclusion different from that of the RPD. This finding has not been challenged by the applicant.

[7] As to the alleged risk faced by the applicant as a result of her conversion to Christianity, the Officer made two findings: first, that the degree of risk to Christian converts in Iran extends only to those who are public about their conversion, and second, that the applicant does not fall into such a category of individuals as she will not be public about her faith.

[8] On the first point, the Officer conducted a lengthy and detailed review of objective country condition documentation to support her conclusion that only Christian converts who proselytize, are leaders or engage in evangelical outreach would be at risk in Iran. Having conducted an eight-page review of the documentary evidence submitted by the applicant, the Officer reviewed the objective

country condition documentation with a focus on the situation faced by Christians in Iran. It is on the basis of this extensive review that the Officer found that the main risk factors were the following: 1) Apostate who converted to Christianity from a Muslim background and who is public about conversion especially if is also a Pastor; 2) Leader of House Church Movement; 3) Evangelical church membership; and 4) Proselytizer.

[9] On the second point, the Officer considered the evidence particular to the applicant, her own statements with respect to how she practices her faith, as well as her Pastor's sworn statement as to her religious involvement. She found that Ms. Ghavidel does not fall within the recognized ambit or risk for Christian converts in Iran. She summed up her assessment in the following paragraph:

> The Applicant has been converted by a Church that is a member of an evangelical alliance. The Church has been successful in achieving its goal of converting her. The Applicant herself has not put before me evidence that would cause me to find that she is personally evangelical and has taken on the role in her Church that would cause her to go out and find others in a public and zealous way, in order to convert them to her new religion. There is nothing before me to demonstrate that she has been identified as a godly leader by her Church. Her Pastor did not state that she is required to proselytize upon her return to Iran, or even in Canada. Everything here is personal to this Applicant, who was given the opportunity to make the case that she is at risk if she returns to Iran. I have read her statement that she has spoken to her neighbour and would speak about her faith in Iran. The evidence before me is that this Applicant is a quiet woman with a quiet faith. I do not find that this Applicant would make a public display in Iran of her religious conversion, demonstrating crusading zeal that would cause her to come to the attention of the authorities in the event that she was to return to Iran. With respect to the fact of being a Muslim convert, the evidence shows that such people are at risk if they are public about their conversion. This Applicant has not provided evidence that demonstrates that she will make a public display of her conversion.

**THE ISSUES**

[10] The applicant has raised four issues, which I have rephrased in the following way:

- Did the Officer err in his assessment of the objective evidence with respect to the situation of Christian converts in Iran?
- Did the Officer misinterpret the evidence in concluding that the applicant will not come to the attention of the Iranian authorities as she does not fall within the categories of converts at risk?
- Did the Officer err in not granting the applicant an interview?
- Did the Officer err in not providing reasons with respect to the applicant's request for an interview?

**ANALYSIS**

[11] It is well established in the jurisprudence that a PRRA Officer's decision must be assessed, on the whole, on a standard of reasonableness *simpliciter*: see, for example, *Figurado v. Canada (Solicitor General)*, 2005 FC 347; *Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1193; *Aivani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1231. That being said, each particular finding must be distinguished and will be subject to the relevant standard depending on whether it raises questions of facts, law or mixed questions of fact and law: see *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437. When an applicant disagrees with the factual findings and conclusions of the PRRA Officer, this Court will not substitute its own assessment for that of the PRRA Officer unless it has been shown that these findings of fact were made in a perverse or capricious manner or without regard to the evidence. Accordingly, the two first issues outlined above must be reviewed against a standard of patent unreasonableness.

[12] On the other hand, the remaining two arguments raised by the applicant do not call for a pragmatic and functional analysis, as they relate to procedural fairness. When such issues are raised, the task of this Court is to determine whether the process followed satisfies the requirements of procedural fairness, taking into consideration the relevant factors outlined by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817: see *Sketchley v. Canada (Attorney General)*, 2005 FCA 404. As my colleague Justice Dawson said, commenting on the standard of review to be used when an applicant contends that a hearing should have been held by a PRRA Officer:

> [5] With respect to these arguments, the content of the duty of fairness is a matter for this Court to decide. No standard of review determined by a pragmatic and functional analysis is applicable. See: *Ha v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 195 (F.C.A.) at paragraphs 42 through 44. The proper interpretation and application of section 167 of the Regulations is a question of law, reviewable on the standard of correctness.
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> See: *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284 [*Demirovic*].

**A) The situation of Christian converts in Iran and the personal situation of the applicant**

[13] The Officer's decision rests on two separate findings: first, she concludes that the degree of risk to Christian converts in Iran extends only to those who are public about their conversion, and second, she determines that the applicant would not be at risk as she would not be public about her faith if returned to Iran.

[14] There is not much disagreement between the parties on the first point. The analysis conducted by the Officer is thorough, and she was entitled to place the greatest weight on objective

country condition documentation: see *Sedarat v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 805. Indeed, this Court has recently found that the risk of being punished for apostasy in Iran extends only to Christian converts who proselytize or engage in activities that will bring them to the attention of the Iranian authorities: see, for example, *Saiedy v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1367; *Kazemian v. Canada (Solicitor General)*, 2004 FC 874.

[15] The focus of the disagreement between the parties is the Officer's finding that the applicant would not be at risk because she would not be public about her conversion and would not proselytize. In coming to that conclusion, the Officer considered the following factors: a) the applicant stated that she has spoken about her faith to a neighbour who is now attending some Christian services and that she will continue to share her faith; b) the applicant had not adduced any evidence that she proselytizes; c) the applicant had not indicated that she has attempted to proselytize to those closest to her in Canada: her son and brother; d) her pastor, in his affidavit, stated that he fears for the applicant's safety in Iran due to "persecution of Christians presently in motion in Iran, especially those from a Muslim background", not due to her proselytizing activities; e) her pastor, in his affidavit, did not state that the applicant is required to proselytize her faith and ahs not stated that she will do so upon her return to Iran.

[16] The applicant challenges this finding as being insensitive to the larger human rights situation in Iran, and claims that the Officer erred in relying on the dictionary definitions of "proselytization" and "evangelism" to determine that the applicant's activities could not be considered to put her at

risk in Iran. She also disagrees with the Officer's assessment that she is a "quiet woman", arguing that this finding is baseless and in disregard to the fact that she has been publicly baptised and that she would be sharing her faith with others.

[17] While it is no doubt true that the notions of proselytism and of being public about one's faith may be differently interpreted in Iran and in Canada, the applicant provided at best limited evidence of active and overt manifestations of her new faith while in Canada. The only evidence provided to show that she shares her faith with others is the fact that she discussed Christianity with a neighbour. Similarly, she disputes the negative inference drawn by the Officer from the failure of the pastor to mention that the applicant would proselytize upon her return, and counters with the assumption that "for a pastor who is a member of an evangelical church, proselytizing is required to be a committed Christian".

[18] Nevertheless, the assumptions upon which the applicant relies are not supported by the evidence. The Officer's failure to accept the assumptions of fact proposed by the applicant does not constitute a reviewable error. Indeed, the pastor says nothing about prosetilyzing activities in his affidavit, despite the details he gives about the applicant. It was not patently unreasonable for the Officer, on the basis of the evidence that was before her, to conclude that sharing one's faith with neighbours does not imply the kind of activities that would put the applicant at risk in Iran, even when taking into consideration the dire situation of human rights in that country and the precarious fate of religious minorities and particularly of Muslim converts to Christianity.

**B) The requirements of procedural fairness and the absence of an oral hearing**

[19] The decision to hold an oral interview under section 113 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 is left to the discretion of the Minister. Subparagraph (b) of that section provides:

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| **113.** Consideration of an application for protection shall be as follows:<br><br>(…)<br><br>(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required. | **113.** Il est disposé de la demande comme il suit :<br><br>(…)<br><br>b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires; |

[20] The factors to be taken into consideration by the PRRA Officer when making such a determination are found in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *IRPR*):

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| **167.** For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:<br><br>(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; | **167.** Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :<br><br>a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité |

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| (b) whether the evidence is central to the decision with respect to the application for protection; and | du demandeur; |
| (c) whether the evidence, if accepted, would justify allowing the application for protection. | b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; |
| | c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection. |

[21] I agree with the respondent that the Officer's conclusion, that the applicant has not established that she will be at risk if she returns to Iran, does not turn on an adverse credibility finding. Indeed, the Officer accepts both the genuineness of the applicant's conversion and her evidence as to how she expresses her faith. But she refuses to infer from these findings of fact that the applicant would be at risk in Iran. This conclusion is not based on credibility. While it may be true, as the applicant argued, that she would have been accepted had the Officer believed that she would practice her faith publicly and would attempt to convert others upon her return to Iran, this is an assumption that was not supported out by the evidence before the Officer. The applicant never stated that she would attempt to convert and recruit others upon her return to Iran, or that she would ostensibly preach her new faith or even try to play an official role within her church. She only said she would share her faith with others in Iran. The Officer believed her, but did not consider this was sufficient to put her at risk on the basis of the objective documentary evidence.

[22] The applicant also suggests that she was entitled to an oral interview since the issues raised on her PRRA were not issues that were considered by the RPD. In my view, this is not sufficient to create an entitlement to an oral interview. It is not one of the criteria listed in section 167 of the *IRPR*, which is the legislative codification of the common law duty of fairness: see, by analogy, *Demirovic*.

[23] Was the applicant entitled to an explanation as to why she was not granted an oral interview, despite her repeated requests to obtain one? The applicant believed she was, and relied heavily on the decision of my colleague Justice Kelen in *Zokai v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1103 [*Zokai*], where he stated:

> [11] I agree with the applicant that a breach of procedural fairness arises on the facts of this case. The applicant made a detailed request in his PRRA application for an oral hearing, with specific reference to the factors set out in section 167 of the Regulations. However, the PRRA Officer makes no reference to these factors, or to any other factors that led to the decision not to hold an oral hearing, despite the written request for one. In fact, there is no evidence that the Officer turned his mind to the appropriateness of holding an oral hearing.

[24] I believe this case is distinguishable from *Zokai*, as Justice Kelen's finding was predicated not only on the fact that a request for an oral hearing had been made, but also on the fact that credibility was central to the outcome of the decision. Such is not the case here. The applicant herself appears to have requested an oral hearing out of concern that the Officer would take issue with her credibility. In her PRRA submissions, she wrote: "If the officer finds that there are concerns with Ms. Ebadi Ghavidel's credibility, the applicant is requesting that an oral interview be

scheduled to permit her to be able to respond to any concerns directly". Her concerns, contingent as they were on credibility concerns, were therefore not triggered.

[25] It would undoubtedly have been preferable to explain why an oral hearing was not provided, for the numerous reasons outlined in the decision of the Federal Court of Appeal in *Via Rail Canada Inc. v. Lemonde*, [2000] F.C.J. No. 1685 (QL), at paras. 16-22. However, I hesitate making it compulsory and therefore adding to the already heavy burden of PRRA Officers, especially when a careful reading of the reasons makes it clear that credibility was not an issue. In any event, I do not think the failure to provide reasons in this specific case warrants the quashing of the decision and its remittance to another PRRA Officer, as the end result would not be affected by the fulfillment of such a requirement.

[26] For all of the above reasons, I would dismiss this application for judicial review. Neither party has suggested a question for certification, nor does none arise here in any event.

## ORDER

**THIS COURT ORDERS that:** The application for judicial review is dismissed.

"Yves de Montigny"
Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-892-07 |
| **STYLE OF CAUSE:** | ASHRAF EBADI GHAVIDEL<br>v.<br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
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| **REASONS FOR ORDER AND ORDER BY:** | Justice de Montigny |
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