**Date: 20071017**

**Docket: IMM-2062-06**

**Citation: 2007 FC 1067**

**Ottawa, Ontario, October 17, 2007**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**ENSHAALLAH ZENDEH PIL**

**Applicant(s)**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent(s)**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Enshaallah Zendeh Pil challenging a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) which denied his claim to refugee protection.

### Background

[2] Mr. Pil is an Iranian citizen. He entered Canada with a visitor's visa in 2004 for the ostensible purpose of visiting his daughter. He was able to obtain a 6-month extension to his visa and, about 7 weeks after the visa expired, he applied for refugee protection.

[3] Mr. Pil's claim for protection was based, in part, on a history of wrongful detention in Iran beginning in 1980. At that time, he was an army officer. He was arrested in August, 1980, along with about 100 other officers on suspicion of plotting to overthrow the government. He claimed that he was initially held for about 45 days and, during that time, he was tortured. Other officers who had been arrested were hanged but he and many others were released to fight in the Iraq/Iran war. After a time at the front, he said that he was re-arrested, tried, convicted and sentenced to 15 years in prison. In 1982 his sentence was reduced to 5 years. He was released early in 1986.

[4] Mr. Pil claimed that following his release he was treated with suspicion by the authorities and told that he could not leave Iran. In 1997 he moved, within Iran, back to his place of birth. Shortly thereafter he was visited by two plain-clothes security officers. Otherwise, he was able to work and was largely left alone. He was also able to obtain a passport for the purpose of traveling to Malaysia in 1997 to visit his daughter. In his Personal Information Form (PIF), he said that although the authorities gave him permission to leave Iran for this visit, he was also told that subsequent trips abroad would require separate approvals. This did not prove to be a problem, as he also traveled to Malaysia in 1999 and again in 2000. In addition, he had apparently been given an exit visa to travel to the United Kingdom in 2003 - albeit that he did not go. He offered no evidence that he experienced any difficulties upon returning to Iran following his trips to Malaysia.

[5] Mr. Pil said that the Iranian officials who approved his trip to Canada in 2004 had required him to put up his family home as security to ensure that he would return to Iran. Surprisingly, this matter was not explored in any detail during his testimony and, in the result, the record does not

indicate why this security was demanded, whether it had been a stipulation for his earlier trips abroad or whether this was a common condition for obtaining an Iranian exit visa.

[6] Mr. Pil also testified that when the Iranian Ministry of Foreign Affairs granted him permission to come to Canada, he was questioned about whether he had any unfriendly political intentions. He gave assurances that he had no such motives but he was warned, nonetheless, that he would be watched in Canada.

[7] Mr. Pil claimed that when he did not return to Iran as required by the terms of his exit visa, the family home was confiscated. When he was asked what he thought would happen if he went back to Iran, he stated:

> **CLAIMANT:** Considering the situation of the house and all of the things that they have - - the threats that they've made then, if I go back, the same thing that happened to me when they arrested me and imprisoned me will happen again.
>
> …
>
> **RPO:** So what - - if you went back to Iran now, what is the charge against you?
>
> **CLAIMANT:** Delay of return and that's a big problem.
>
> **RPO:** Okay. So the charge is for delaying outside of Iran; correct?
>
> **CLAIMANT:** Yes.
>
> **RPO:** And what's the penalty for that?
>
> **CLAIMANT:** I don't know. They are not bound by any laws; why was I kept in prison for six years

> for something that I've never done.
> (Sobbing)
>
> All my life was destroyed because of a crime that I've never done. They took my life away; they took everything I had away and they destroyed it.

[8] During the hearing, Mr. Pil was also questioned about why he had re-availed to Iran from Malaysia on three occasions and delayed making a refugee claim in Canada for more than a year. He explained that he was told that Malaysia would not accept refugee claimants from Iran and that, while in Canada, he was conflicted about whether he should return home. It was only after the confiscation of his home and the visits by security officials to his wife that he made the decision to claim protection.

**Board Decision**

[9] The Board's determinative finding was that Mr. Pil's asserted fear of persecution by Iranian authorities was not well-founded. Although the Board accepted his evidence of persecution during the time of his detention ending in 1986, it observed that he had experienced no significant problems with the state during the following 18 years. The Board noted that he had obtained permission to leave Iran at least four times between 1997 and 2004 and, therefore, was unlikely to have been perceived as a political threat. This was consistent with some of the country condition evidence cited by the Board which indicated that political opponents of the regime are usually denied exit visas. The Board also found that Mr. Pil was not a political opponent of the Iranian government and had not engaged in any anti-regime activity during his time in Canada. Against

this history, the Board found that the authorities had no interest in Mr. Pil and would not have placed him under surveillance.

[10] The Board also found that Mr. Pil had failed to establish a subjective fear of persecution. That conclusion was drawn from his triple re-availment to Iran, from his delay in seeking protection and from his own equivocation about whether he wanted to claim refugee protection in Canada.

**Issues**

[11] (a) What is the standard of review for the issues raised on this application?

(b) Did the Board commit any reviewable errors in its analysis of the evidence?

**Analysis**

[12] All of the issues raised on behalf of Mr. Pil on this application are evidence-based and therefore, the standard of review is patent unreasonableness: see *Perera v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1069, [2005] F.C.J. No. 1337 at para. 14.

[13] The principal argument advanced on behalf of Mr. Pil concerned the Board's failure to fully consider the risk implications arising from the confiscation of his family home. The only mention of this issue in the Board’s decision is the observation that when Mr. Pil applied for an extension to his Canadian visitor's visa he knew that his delayed return to Iran could lead to the confiscation of his property.

[14] Mr. Pil contends that the conduct of the state in realizing upon the security he had posted was critical and highly relevant evidence of the risk he faced if he returned to Iran and that the Board erred by failing to give it any consideration and weight.

[15] I do not agree that the Board overlooked Mr. Pil's evidence on this issue. What is apparent from the decision is that the Board did not accept Mr. Pil's view of the significance of this event to the assessment of future risk. The fact that the state realized upon the security that Mr. Pil had posted after he apparently breached the obligation to return to Iran carried minimal probative weight in determining his future risk in that country. Even Mr. Pil conceded that he was not aware of the penalties, if any, for exceeding the terms of an exit visa. It was also noted by the Board that no evidence was tendered on his behalf to establish how the authorities might react to his return beyond what they had already done.

[16] Presumably, it would have been a simple task for Mr. Pil to have asked for an extension to his exit visa when he applied to extend his Canadian visa. It is therefore somewhat incongruous to now assert that his refugee claim ought to be enhanced by his failure to seek permission to extend his exit visa thereby putting his home at risk. The further argument that the Iranian regime is unpredictable and, therefore, the Board ought to have assumed the worst for his return, is also untenable. Mr. Pil had the burden of proving that he faced a real risk in Iran. That burden could not be satisfied by speculation about what the authorities might do or by asserting that he might simply be perceived as a political threat notwithstanding the absence of any evidence to that effect.

[17] The Board had good reason to expect to see some evidence about how returning Iranians had been treated in like circumstances. If such citizens had experienced arrest and persecution, one could reasonably expect to find some documentary verification but, here, none was tendered. The Board raised this as an issue during argument but nothing was done to address it. In my view, the Board was not obliged to give any greater consideration to the evidence concerning Mr. Pil's home than what is reflected in its decision. The authorities simply executed on the security they held and, in the absence of any other evidence, no reasonable inference could be drawn that further adverse consequences would await Mr. Pil upon his return to Iran.

[18] Counsel for Mr. Pil argued that the Board also erred in its treatment of the evidence dealing with the issues of re-availment and delay. He pointed to Mr. Pil's explanations for failing to seek refugee protection in Malaysia and for his 14-month delay in seeking refugee protection in Canada. He contended with some justification that Mr. Pil's explanations were reasonable. He maintained, therefore, that Mr. Pil's explanations should have been accepted. While I agree that it was reasonably open to the Board to accept Mr. Pil's evidence on these issues, the fact remains that it did not. The Board's review of this evidence is comprehensive and its conclusion is reasonable. That conclusion is contained in the following passage:

> The fact that the claimant left and returned to Iran on three previous occasions, delayed leaving Iran for eleven years after he was released from prison, failed to claim protection in Malaysia while there on three occasions between 1997 and 2000, and failed to claim protection at the Port of Entry or for fourteen months thereafter, lead me to conclude that the claimant does not, subjectively, fear serious harm in Iran. Each of these facts is significant when considering the claimants' subjective fear. Although the presence of any one of them may not necessarily be determinative, I find that these instances, when accumulated, are determinative.

> The claimant testified that he was "conflicted" as to what he should do. He was concerned for his family in Iran as well as his daughter here in Canada, who if he claimed would suffer some unspecified problems. I find that if the claimant had "conflict of the mind" as to what he should do, that, in itself, is an indication that the claimant lacks a subjective fear. When one fears for one's life, one is not concerned about one's property or whether it might discomfit one's offspring. Nevertheless, the claimant asked Immigration Canada for an extension on his visa, knowing his wife and son remained in Iran, knowing that the regime might confiscate his home held by way of a bond.
>
> I do not accept his explanations as to why the claimant re-availed to Iran thrice, delayed in leaving and delayed in claiming once here. The claimant is well educated, an accountant and an entrepreneur. He has two sons who have claimed asylum in the UK and a son-in-law who successfully claimed refugee protection from Canada. I find, on balance, that the claimant has not provided sufficient credible or trustworthy evidence to establish he has the requisite subjective fear for accepting his claim for protection.

[19] It is not the function of this Court to reweigh the evidence or to substitute its views for those of the Board provided that there is evidence which reasonably supports the Board's findings. On these issues, the Board's conclusion had ample evidentiary support and, therefore, cannot be impeached. For this, I adopt the views of my colleague Justice Richard Mosley in *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1595, [2005] F.C.J. No. 1965 at paragraph 17:

> The applicant submits that the Board erred in concluding that her evidence as to why she did not make a claim in the United States was vague and asserts that she provided plausible explanations for the delay. It is well settled that delay in making a refugee claim is an important factor which the Board may consider in weighing a claim for refugee protection: *Heer v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No. 330 (QL). In this case, a delay of over four years suggests a lack of a subjective fear of persecution and

> it was open to the Board to reject the applicant's explanations. The applicant, in effect, is asking the Court to make its own assessment of her reasons and substitute its opinion for that of the Board. Unless the finding was patently unreasonable, which I do not find, there is no basis for the Court's intervention.

[20] Mr. Pil complains that the Board ignored documentary evidence submitted by his counsel after the hearing. He says that this was material evidence that should not have been overlooked.

[21] I do not agree that this evidence was material or that it was overlooked. During argument, the member noted that there was no evidence before him to establish that returning Iranians who had overstayed the terms of their exit visas were punitively treated by the authorities. Mr. Pil expressed a concern that the authorities would assume that he had been involved in anti-government activities during his time abroad and that he would be subjected to persecution. The Board then asked if Mr. Pil had evidence that he had been engaged in such activities during his time in Canada. In response to this inquiry, Mr. Pil's counsel tendered a 1999 internet editorial authored by the International Federation of Iranian Refugees in Canada dealing with the opening of an Iranian cultural center in Ottawa. That article speculated that this institution was intended to be an "officially backed center for assassination and spying plots" with a true purpose of threatening Iranian dissidents in Canada.

[22] It is clear from a reading of this article that it was completely non-responsive to the Board's stated concern about the risk faced generally by returning Iranians and, also, whether Mr. Pil had been engaged in anti-government activities in Canada which might have become known to the

Iranian authorities. The Board noted this article but only by pointing out that it was older than the country condition evidence already before it from 2005.

[23] Quite apart from the fact that this document offered nothing more than a speculative opinion about the presence of Iranians spying in Canada, it had no probative value in addressing the Board's stated concerns and it was irrelevant to the risk that he claimed to face in Iran. It was, therefore, not an error for the Board to decline to refer to it in the context of its risk analysis.

[24] Neither party proposed a certified question and no issue of general importance arises on this record.

[25] This application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ADJUDGES that** this application for judicial review is dismissed.

" R. L. Barnes "
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2062-06 |
| **STYLE OF CAUSE:** | Pil<br>v.<br>MCI |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | October 3, 2007 |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | Mr. Justice Barnes |
| **DATED:** | October 17, 2007 |

**APPEARANCES:**

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| Alexis Singer | FOR THE RESPONDENT(S) |

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