**Date: 20071121**

**Docket: IMM-1592-07**

**Citation: 2007 FC 1219**

**BETWEEN:**

**MASOUD BOROUMAND**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR ORDER

**GIBSON J.**

## INTRODUCTION

[1] These reasons follow the hearing at Toronto on the 25th of October, 2007, of an application for judicial review of a decision of a Minister's Delegate regarding the Pre-Removal Risk Assessment application of the Applicant. The decision under review is dated the 29th of March, 2007 and was communicated to the Applicant on the 16th of April, 2007. The substance of the decision is in the following terms:

> The pertinent objectives outlined in IRPA are as follows:
> 3.(1) The objectives of this Act with respect to Immigration are
> (h) to protect the health and safety of Canadians and to maintain the security of Canadian society;
> (i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and
> 3. (3) This Act is to be construed and applied in a manner that
> (a) furthers the domestic and international interests of Canada;

> After fully considering all aspects of this case, including the best interest of Mr. Boroumand's child, and the danger that Mr. Boroumand poses to the Canadian public, I am of the opinion that the best interests of the child does not outweigh the risk to the Canadian public. Considering the seriousness of the offences for which Mr. Boroumand has been convicted, I believe that the risk to the Canadian public outweighs any risk that he might face upon return to Iran. I therefore, find that Mr. Boroumand constitutes both a current and future danger to the public in Canada and his removal from Canada should not be stayed as a result.
>
> Finally, based on the material that I have reviewed, I am satisfied, on balance of probabilities, that Mr. Boroumand will not face any of the risks identified under section 97 of IRPA.

## THE LEGISLATIVE SCHEME AND THE "SURESH" DECISION

[2] The Applicant applied for a Pre-Removal Risk Assessment pursuant to subsection 112(1) of the *Immigration and Refugee Protection Act*[1] ("*IRPA*"). That subsection reads as follows:

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| **112.** (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1). | **112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1). |

[3] His eligibility to apply for protection was limited by subsection 320(5) of the *Immigration and Refugee Protection Regulations*[2], a transitional provision, which reads as follows:

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| 320. (5) A person who on the coming into force of this section had been determined to be inadmissible on the basis of paragraph 27(1)(*d*) of the former Act is<br>(*a*) inadmissible under the *Immigration and Refugee Protection Act* on grounds of serious criminality if the person was convicted of an offence and a term of imprisonment of more than six months has been imposed or a term of imprisonment of 10 years or more could have been | 320. 5) La personne qui, à l'entrée en vigueur du présent article, avait été jugée être visée à l'alinéa 27(1)*d*) de l'ancienne loi :<br><br>*a*) est interdite de territoire pour grande criminalité en vertu de la *Loi sur l'immigration et la protection des réfugiés* si elle a été déclarée coupable d'une infraction pour laquelle une peine d'emprisonnement de plus de six mois a été infligée ou une peine d'emprisonnement de dix |

[1] S.C. 2001, c. 27.
[2] SOR/202-227.

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| imposed; or<br>(*b*) inadmissible under the *Immigration and Refugee Protection Act* on grounds of criminality if the offence was punishable by a maximum term of imprisonment of five years or more but less than 10 years. | ans ou plus aurait pu être infligée;<br>*b*) est interdite de territoire pour criminalité en vertu de la *Loi sur l'immigration et la protection des réfugiés* si elle a été déclarée coupable d'une infraction punissable d'un emprisonnement maximal égal ou supérieur à cinq ans mais de moins de dix ans. |

and by paragraph 112(3)(b) of *IRPA* which reads as follows:

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| (3) Refugee protection may not result from an application for protection if the person<br>…<br>(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;<br>… | (3) L'asile ne peut être conféré au demandeur dans les cas suivants<br>…<br>*b*) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;<br>… |

[4] By virtue of these provisions, subparagraph 113(d)(i) of *IRPA* applied to the Applicant. The opening word of section 113, the opening words of paragraph 113(d) and subparagraph (i) of that paragraph read as follows:

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| **113.** Consideration of an application for protection shall be as follows:<br>… | **113.** Il est disposé de la demande comme il suit :<br>… |
| (*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and | *d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part : |
| (i) in the case of an applicant for protection who is | (i) soit du fait que le demandeur interdit de |

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| inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or | territoire pour grande criminalité constitue un danger pour le public au Canada, |
| … | … |

[5] In addition to the foregoing provisions of *IRPA* and the Regulations, the following provisions of law are relevant to, and are referred to in, the decision under review. The opening words of subsection 3(1) and paragraphs (h) and (i) of that subsection read as follows:

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| **3.** (1) The objectives of this Act with respect to immigration are | **3.** (1) En matière d'immigration, la présente loi a pour objet : |
| … | … |
| (*h*) to protect the health and safety of Canadians and to maintain the security of Canadian society; | *h*) de protéger la santé des Canadiens et de garantir leur sécurité; |
| (*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; | *i*) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité; |
| … | ... |

[6] Paragraph 3(3)(a) of *IRPA* reads as follows:

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| 3. (3) This Act is to be construed and applied in a manner that | 3. (3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet : |
| (*a*) furthers the domestic and international interests of Canada; | *a*) de promouvoir les intérêts du Canada sur les plans intérieur et international; |
| … | … |

Paragraph 3(3)(f) if *IRPA* is, I am satisfied, also relevant. More will be said about this later in these reasons and paragraph 3(3)(f) will there be quoted.

[7] Subsection 6(1) of *IRPA* reads as follows:

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| **6.** (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated. | **6.** (1) Le ministre désigne, individuellement ou par catégorie, les personnes qu'il charge, à titre d'agent, de l'application de tout ou partie des dispositions de la présente loi et précise les attributions attachées à leurs fonctions. |

[8] Paragraph 36(1)(a) of *IRPA* reads as follows:

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| **36.1** (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for | **36.1** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants : |
| *(a)* having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; | *a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé; |
| … | … |

[9] Section 97 of *IRPA* reads as follows:

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| **97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally | **97**.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : |
| (*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or | *a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; |
| (*b*) to a risk to their life or to a risk of cruel and unusual treatment or | *b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels |

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| punishment if | et inusités dans le cas suivant : |
| (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, |
| (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, | (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats |
| (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. | (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. |

[10] Finally, paragraph F(c) of Article 1 of the United Nations Convention relating to the status of refugees, which is scheduled to *IRPA*, reads as follows:

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| F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that | F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser : |
| … | … |
| (*c*) he has been guilty of acts contrary to the purposes and principles of the United Nations. | *c*) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies. |

[11] The opening paragraph of the decision under review is introductory in nature. In particular, it identifies the authority under which the Minister's Delegate made the decision as being a designation under subsection 6(1) of *IRPA*. That paragraph reads as follows:

> These are the reasons for decision in response in response to your application for protection under section 112(3) of the *Immigration and Refugee Protection Act* (*IRPA*). Because you have been determined to be inadmissible on g rounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years, you are a person described under s. 112(3)(b), and in accordance with s. 113(d), I have considered your application for protection on the basis of the risk factors set out in section 97 and whether you are a danger to the public in Canada. A decision to allow your application has the effect of staying your removal order. I have been designated by the Minister of Citizenship and Immigration Canada pursuant to subsection 6(1) of *IRPA* as having the authority to make such a determination.
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> [emphasis added]

[12] There was evidence on the record before the Minister's Delegate and before the Court that the Applicant was a person described in paragraph 112(3)(b) of *IRPA*. In the result, his application for protection was, by virtue of subparagraph 113(d)(i), considered on the basis of the factors set out in section 97 of *IRPA* only, those factors being whether the Applicant, if removed to his country of nationality, would be subject personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture* or to a risk to his life or to a risk of cruel and unusual treatment or punishment.

[13] By reason of the Applicant's particular circumstances, the Minister's Delegate was obliged to take into account the determination by the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*[3] "...that, barring extraordinary circumstances, deportation [from Canada] to torture will generally violate the principles of fundamental justice protected by s. 7 of the Charter…" and therefore cannot be condoned except for the possibility that, "in exceptional

[3] [2002] 1 S.C.R. 3, at paragraphs 77 and 78.

circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s. 7 of the Charter or under s. 1."

**THE BACKGROUND**

[14] The Applicant is a forty-five (45) year old citizen of Iran who came to Canada in 1988 using a false Spanish passport and without a visa. In 1990, U.S. Immigration Officials apprehended the Applicant for entering the U.S. illegally. He was returned to Canada.

[15] In September of 1992, the Applicant was convicted in Canada of three (3) drug trafficking offences. The drug at issue was heroin. The Applicant was sentenced to four (4) years imprisonment. He was paroled on the 30th of January, 1994.

[16] In February of 1993, while the Applicant was still imprisoned, he was ordered deported.

[17] Five (5) years after his arrival in Canada, that is to say, in April of 1993, the Applicant claimed refugee protection. By a decision dated the 17th of December, 1993 the Applicant was determined to be excluded from refugee protection as a person described in Article 1F(c) of the *United Nations Convention Relating to the Status of Refugees*. Article 1F(c), quoted in paragraph [10] of these reasons, excludes from refugee protection persons with respect to whom there are serious reasons for considering that he or she has been guilty of acts contrary to the purposes and principles of the United Nations.

[18] The exclusion decision was challenged on judicial review before this Court. Leave to pursue the challenge was denied on the 8th of September, 1994.

[19] In February of 1995, the Applicant's Post Determination Refugee Claimant in Canada Class application was refused. He was found not to be at risk if returned to Iran. Judicial review of that decision was not sought.

[20] In July of 1995, the Applicant married a Canadian citizen. He was scheduled for removal on the 23rd of August, 1995. Instead, he left the province of Ontario and moved to British Columbia where he took on the identity of his brother. A warrant was issued for the Applicant's arrest based on his failure to appear for removal and on violation of the terms of his parole.

[21] More than seven (7) years later, in December 2002, the Applicant was arrested. He was recommitted for violating his parole and then held in immigration detention until October of 2004. At that time, he was released from detention on posting of a significant cash bond and a much more significant performance bond.

[22] In August of 2003, the Applicant and his spouse submitted an application for landing of the Applicant from within Canada on humanitarian and compassionate grounds. That application was refused in December of 2003. Judicial review of that decision was sought. Leave to pursue the judicial review application was denied on the 3rd of March, 2004.

[23] In the years that the Applicant has been in Canada, apart from the September 30, 1992 conviction on three (3) charges of trafficking heroin, the Applicant has only been convicted on one (1) other occasion. On the 10th of February, 2004 he was convicted of wilful obstruction of a peace officer arising out of his impersonation of his brother. For that conviction, the Applicant was sentenced to three (3) months time served.

[24] The Applicant and his wife have a son born the 30th of November, 2000. The son, having been born in Canada, is a Canadian citizen. In addition to the Applicant's wife and son, his parents, two (2) brothers and a sister are all Canadian citizens.

**MATERIAL THAT WAS BEFORE THE MINISTER'S DELEGATE**

**a) The Pre-Removal Risk Assessment**

[25] The Minister's Delegate had before him an opinion of a Pre-Removal Risk Assessment Officer dated the 4th of October, 2004. The "Notes to file" concluding with the Officer's opinion extend to some twenty (20) pages. The Officer notes that the Applicant identified the following risks if he were to return to Iran:

- states he came to the attention of authorities when he distributed political tracts at University
- states he has been labelled as a Bahai sympathizer and is a police target because he intervened to save a Bahai faith friend
- states he deserted the Iranian army and fled to Turkey; states he is wanted for desertion
- states he has been convicted in absentia and sentenced to death by hanging; letter of 1987
- has submitted a Notice Sheet and Judgment from Iran in support of conviction in absentia handed down in April 2003
- states that Canadian authorities have been contacting relatives in Iran and advising them of his drug trafficking conviction and deportation which has increased risk
- states that he will instantly come to attention of authorities in Iran due to lack of current travel documentation
- states that Immigration Department of Canada has provided the Iranian government with information about his conviction and refugee claim by way of his 1995 travel document application, which was submitted in 2003

[26] The Officer considered each of the risks identified by the Applicant.

[27] With respect to the concern regarding the Applicant's distribution of political tracts during his time at university, the Officer concluded:

> Based upon the information provided by the Applicant, it is my opinion that the Applicant would not likely face risk of torture, risk to life, or risk of cruel and unusual treatment or punishment upon return to Iran for distributing political tracts at University because it does not appear the Applicant was deeply immersed in his political activities such that his activities would bring about heightened level of attention to cause risk.

[28] With respect to the Applicant's alleged identity as a Bahai sympathizer, the Officer concluded:

> I consider that the Applicant may have assisted his Bahai friend which resulted in him receiving a harsh punishment. I also consider that the Applicant was punished for his actions, released on conditions, and abided by the conditions of his release for about one month. As risk is forward looking, I do not find it likely that the Applicant will likely be punished a second time upon return to Iran for events that occurred in Iran in 1986. While the Iranian authorities may suspect the Applicant to be a Bahai sympathizer, the documentary evidence indicates that the Applicant can denounce Bahaism. I do not find that the Applicant's profile as a Bahai sympathizer would likely lead to risk of torture, risk to life or risk of cruel and unusual treatment or punishment.

[29] With respect to the Applicant's concern by reason of his alleged desertion from the Iranian army, the Officer concluded:

> Considering that military service is a general requirement in Iran, I do not find that the Applicant's allegations of military desertion constitute a personalized risk. The documentary evidence also shows that the Iranian government has become more lenient with military deserters and it is now possible to buy out one's military service or sentence for desertion. As such, it is my opinion that the Applicant would not likely be at risk of torture, risk to life, or risk of cruel and unusual treatment or punishment upon return to Iran for military desertion.

[30] With regard to the Applicant's concern flowing from an alleged conviction in absentia and sentence of death by hanging in 1987, the Officer, after citing from what is apparently a transcript of the Officer's oral hearing with the Applicant that was held on the 15th of September, 2004, concluded:

> I have assigned the 1987 court documents little weight. In assigning little weight to this evidence, I have considered the Applicant's PRRA hearing statements in conjunction with his PIF and PDRCC application. I have also considered the Statutory Declaration of Masih Bourmand [sic] and the publicly available objective research findings. As such, I do not find that the Applicant will likely face risk of torture, risk to life, or risk of cruel and unusual treatment or punishment upon return to Iran as alleged in the 1987 court documents.

[31] With respect to the Notice Sheet and Judgment from Iran in support of a conviction in absentia handed down in April, 2003, the Officer concluded:

> Having considered the Applicant's PRRA hearing statements, Masih Bouramand's Statutory Declaration, and the publicly available, objective research, I have assigned the 2003 court documents little weight. As such, I do not find, on a balance of probabilities, that the Applicant will not [sic?] likely face risk of torture, risk to life or risk of cruel and unusual treatment or punishment upon return to Iran.

[32] With respect to the Applicant's allegation of risk flowing from contacts by Canadian authorities with his relatives in Iran and advising them of his drug trafficking conviction and anticipated deportation which has increased risk, the Officer, after once again citing from apparently a transcript of the hearing conducted by him with the Applicant, concluded:

> In sum, I do not find that the Applicant will likely face risk of torture, risk to life, or risk of cruel or unusual treatment or punishment on the basis that Canadian authorities have contacted his relatives in Iran and hired a lawyer to assist in obtaining the Applicant's identification. The Applicant's allegations that these actions have increased the risk faced by him and have come to the attention of Iranian authorities appears to be based on speculation.

[33] With respect to the Applicant's fear arising from his lack of a current travel document and the "inevitable" result, as the Applicant would describe it, that he would come to the attention of

Iranian authorities as a failed refugee claimant immediately upon being returned to Iran and that thus his refugee claim would be connected to him, the Officer concluded:

> In light of the objective research findings, I am of the opinion that, on a balance of probabilities, the Applicant would not face risk of torture, risk to life, or risk of cruel and unusual treatment or punishment for returning to Iran simply because he is a failed refugee claimant.

[34] The Officer reached a different conclusion with respect to the Applicant's fear by reason of the fact that Canadian government officials have provided the Iranian government with information about his conviction and refugee claim by way of his 1995 travel document application, which was submitted in 2003. The Officer wrote:

> I am of the opinion that the Applicant will likely face risk of torture, risk to life, and risk of cruel and unusual treatment or punishment upon return to Iran due to his drug trafficking conviction in Canada. On 30 September 1992, the Applicant was convicted in Canada of three counts of trafficking narcotics and was sentenced to four years imprisonment (PRRA Application). The Applicant's sentence is listed on the 1995 travel document application, and he has indicated that he served time in prison. The travel document application was completed and signed by the Applicant. As per the IRB Transcript of Proceedings…, the Iranian Embassy confirmed receipt of the travel document application and thus, I am of the opinion that the Iranian Government is aware of this punishment. I note that while the Applicant did not indicate the type of crime committed, it is my opinion that knowledge of the punishment alone would likely raise questions.
>
> The Iranian Government does have access to Canadian criminal history records. …Iran is a member of the Interpol Network. Requests from Iranian authorities are treated the same as requests made by other countries. A constable at the Interpol office of the Royal Canadian Mounted Police indicates that Iranian police officials have access to Canadian criminal history records through normal Interpol procedures. The Directorate further reports that police forces across the world have access to Interpol night and day and may access information online in seconds.
>
> [emphasis added, one date and one citation omitted]

[35] The Officer consulted Country Report on Iran (UK IND, April 2004), the UNHCR/ACCORD and quoted from that document to the following effect:

> "Iran has a very strict policy with regard to drug offences. .. The Iranian authorities have regularly declared that Iranians who were convicted outside of Iran for crimes punishable under Islamic Law, could still be prosecuted upon return. However, UNHCR has not been able to find any jurisprudence confirming sentences for

> persons convicted of drug-related crimes abroad. UNHCR also does not possess any information on the degree of double conviction upon return for persons convicted of drug-related crimes outside of Iran." The Country Report further states that Amnesty International has learned of one case of double conviction whereby an Iranian national was caught in Spain while smuggling drugs. The Amnesty International Secretariate in London indicated that the Iranian person would be at risk of double prosecution in principle however, it was dependant upon the documentation that existed with respect to the person's case. The AI Secretariate reported that the person could return to Iran without problems by stating that he was trying to immigrate to Spain.

[36] With regard to this concern of the Applicant, the Officer concluded:

> On the specific case of the Applicant, I note that the Iranian Government has already been made aware that the Applicant has a conviction in Canada, by means of his 1995 travel document application. As such, in the Applicant's particular case, I find it unlikely that he would be able to enter Iran without being further examined or questioned about his sentence in Canada.
>
> In another IRB document,… it is reported, as per a Professor of Political Science who specializes in Iran, that a person having been convicted outside of Iran of selling 75 grams of heroin and having served a prison sentence outside of Iran is not liable to be tried or punished in Iran. However, if the person concerned is an Iranian interest, the rules of double jeopardy do not apply and the person may be tried for the same offences. I note that I have assigned little weight to the Applicant's court documents and I found that he will not be at risk for being a failed refugee claimant. As such, on these grounds, I do not find that he would be of interest to the Iranian Government. However, the Applicant may be of interest considering that the Iranian Government has learned of his conviction and sentence in Canada
>
> An Iranian lawyer in London…indicates that the issue of double jeopardy is not clear. Article 3(4) of the previous Penal Code of Iran specifically identified that an Iranian who committed an offence outside of Iran and is found in Iran would be punished as per the Iranian Penal Laws provided the person has not been tried and acquitted, or the punishment has not been enforced. The current Islamic Penal Code does not contain such a provision. However, Article 7 specifies that an Iranian who commits a crime outside of Iran and is found in Iran shall be punished according to the Penal Code. The Iranian lawyer in London also indicates that Article 15 of the Penal Code contains provisions that, in his opinion, would not give the Iranian Courts jurisdiction over matters that occurred outside of Iran. I note that the interpretation of Article 15 with respect to the Iranian Courts not having jurisdiction over such matters, is the opinion of one Iranian lawyer. I note that little documentary evidence is available regarding the legal position of the Islamic Republic of Iran, with respect to double jeopardy and drug-related offences.
>
> The Applicant has been convicted in Canada of drug trafficking. He was sentenced to four years imprisonment, of which he served some time in prison and some time on parole. The Applicant's sentence in Canada has become known to the Iranian Government by means of his 1995 travel document application. The sources consulted, as cited above, indicate that Iran has access to Canadian criminal history

> records via Interpol. It is also objectively documented that Iran has strict policies with respect to drug-related offences and that the judiciary has had a "free hand" to deal with drug traffickers. As per the Anti Narcotic Drugs Law of Iran, drug related offences include punishments of lashing and death, which I find are imposed in disregard of accepted international standards. Having considered the documentary evidence with respect to drug traffickers and the punishments imposed upon drug traffickers in Iran, in conjunction with the uncertainty of Iran's legal position and jurisdiction with respect to drug related offences having occurred abroad, I am of the opinion that the Applicant is likely to face prosecution and that the sentence imposed upon the Applicant upon return to Iran would likely be in disregard of accepted international standards. As such, I am of the opinion that the Applicant will likely face risk of torture, risk to life, and risk of cruel and unusual treatment or punishment upon return to Iran.
>
> [citations omitted, emphasis added]

[37] It is to be noted from the foregoing that the PRRA Officer's assessment of the risk faced by the Applicant if returned to Iran is extensive and detailed. The Applicant identified eight (8) separate sources of risk for consideration by the Officer. The Officer reviewed each of the eight (8) identified sources independently. She rejected seven (7) of them but, in concluding that the eighth was genuine and well founded, she interrelated her analysis of that risk with several of the others that she had rejected, that is to say, she took into account the cumulative impact of all the Applicant's bases for concern.

**b) The restriction assessment**

[38] By contrast with the Pre-Removal Risk Assessment, the restriction assessment that was before the Minister's Delegate is brief. It consists of two and a half pages, the first of which, together with a portion of the second page, is background material elaborating to some extent on an earlier portion of these reasons. The assessment was prepared by an Analyst, Case Review in the Case Management Branch and was concurred in by an Acting Senior Analyst in the same Branch.

[39] The assessment notes that, on the 3rd of September, 2003, a constable in the RCMP Criminal Intelligence Section, Integrated Persian Intelligence Section, was a witness on behalf of the Respondent at a detention review hearing conducted in relation to the Applicant. He testified as to a "suspect criminal organization" allegedly engaged in importing and trafficking in cocaine and opium, telemarketing fraud, and laundering of proceeds of the importing, trafficking and fraud crimes. He testified that in mid 2002, reports were received that the Applicant was involved with the suspect criminal organization, apparently as a "runner" of drugs, mainly between Toronto and Vancouver. The Applicant was also said to be involved in telemarketing fraud for the same organization. The report indicates that, while the Applicant was confined in 2002 and 2003, he was visited by members of the suspect criminal organization, including the suspected head of that organization. Those who visited him from the organization, with one exception, had criminal records. The narrative portion of the assessment concludes with a report from a named individual, who is otherwise unidentified, to the effect that in April of 2004, the Applicant remained a member of the "inner circle" of the suspect criminal organization.

[40] The Applicant was represented by counsel at the detention review hearing. A review of the transcript of the hearing indicates counsel took an active part in the hearing on behalf of his client.

[41] The assessment concludes with the following brief paragraph:

> Mr. Boroumand was convicted of very serious crimes of trafficking in heroin which endangers the lives of others and there is credible police information that he continues to be involved in the drug trade. In addition, the information shows that he associates with known criminals. He violated his parole and was at large for over 7 years, took on his brother's identity, and did not report for removal. He was also deceitful with U.S. Immigration officials. This leads me to the conclusion that Mr. Boroumand is a present and future danger to the public of Canada.

**c) Submissions of Counsel for the Applicant**

[42] The Minister's Delegate had before him submissions from counsel for the Applicant dated the 19th of August, 2005. Those submissions were extensive. In addition, the Applicant was invited by letter dated the 11th of July, 2006 to make final submissions with regard to certain concerns identified by the Minister's Delegate in the process of review of the material before her. Counsel for the Applicant responded with further submissions and supporting material dated the 3rd of August, 2006.

**THE DECISION UNDER REVIEW**

[43] The decision under review extends to some fifteen (15) pages. Following the introductory paragraph which is quoted in paragraph [11] of these reasons, the decision is divided under the following headings: Relevant Sections of *IRPA*; Part I – Facts; Summary of Criminality; Part II Inadmissible on Grounds of Serious Criminality; Part III – Danger Considerations which heading is followed by a summary of the submissions of counsel for the Applicant, by a summary of related file material and then by a sub-heading: Conclusion on Danger; Part IV – Risk of Return to Iran Assessment, once again followed by a summary of the submissions from counsel for the Applicant and then by an Analysis of Risk Submissions and Risk Assessment; Part V – Conclusions on Risk; Part VI – Humanitarian and Compassionate considerations and Best Interests of the Child; Part VII – Decision; and finally, Part VIII – Material Considered.

[44] The Minister's Delegate's Conclusion on Danger is in the following terms:

Pursuant to paragraph 113(d)(i) of *IRPA*, in the case of an applicant for protection who is inadmissible on grounds of serious criminality, I am to determine whether the applicant constitutes "a danger to the public" which has been interpreted to mean "a present or future danger to the public". Thus, I am required to turn my mind to the particular circumstances of an applicant for protection, such as Mr. Boroumand, in order to determine whether there is sufficient evidence on which to formulate the opinion that he is a potential re-offender, whose presence in Canada posses [sic] an unacceptable risk to the public.

Based on the totality of the information before me, I find that Mr. Boroumand's offences leading to his deportation order for serious criminality are particularly serious. His first convictions in Canada were for three counts of trafficking in heroin. This is a deadly substance that has a significant negative impact on the victims as well as on the community as a whole. For these offences he received a long sentence and also, as a result, he was excluded from the refugee determination system.

After Mr. Boroumand was paroled out of jail after serving his sentences for heroin trafficking, he left the province, contrary to the terms and conditions of his parole. He also did not report to immigration as required. He travelled to the province of British Columbia, eventually settling in Vancouver and formed a close association with Omid Tahvili, who an RCMP report alleges is the head of a criminal organization. During this time Mr. Boroumand used his brother's identification to avoid detection. He obtained a BC driver's licence under his brother's name. According to information in police reports, the criminal organization is alleged to have been actively involved in the distribution of cocaine and opium in the Vancouver area. The credibility of the police report in conjunction with the other information before me, satisfies me, on a balance of probabilities, that the group is organized for the purpose of unlawful drug trafficking. There is also credible evidence before me that satisfies me, on balance, that Mr. Boroumand was a member of that group and was involved in the drug trade. Mr. Boroumond showed a complete lack of regard for Canada's laws by not only impersonating his brother to avoid detection but more importantly by involving himself with a criminal organization for the distribution of illegal drugs.

In my opinion, the evidence, on balance of probabilities, leads me to conclude that Mr. Boroumand is not rehabilitated. His first legal transgression was in October 1990 when he was apprehended by U.S. Immigration…for entering the US at a place other than a port of entry. He stated that he had refugee status in Canada and was awaiting approval of his landed immigrant status. Neither of these statements was correct. US authorities returned him to Canada. It was not long after this event that he was charged and convicted with three counts of trafficking heroin. He was incarcerated and then paroled with terms and conditions. He did not abide by those conditions. In July 1995, Mr. Boroumand was sent a letter advising him that his removal was scheduled for August 23, 1995. He failed to report for this removal. He later stated that he went to British Columbia in August 1995 to avoid deportation to Iran. As explained earlier, Mr. Boroumand was again taken into custody for violating his parole. Again in 2004 he was convicted of wilfully obstructing a peace office [sic]. Dating back to the early 1990s, Mr. Boroumand's actions reveal a consistent pattern of disrespect for the law, which includes a number of serious criminal convictions and a propensity to take whatever steps are necessary in the circumstances to avoid detection and apprehension by both criminal and immigration law enforcement authorities.

> Based on my appreciation of this information, it is my opinion that Mr. Boroumand is not integrated into society and is not rehabilitated. Rather, Mr. Boroumand's actions demonstrate a lack of respect for Canadian laws and a failure on his part to take positive steps to try and integrate as a law abiding and productive member of Canadian society.
>
> There is little evidence of support on file from family or members of the community. The lack of support from family and community groups further bolsters my conclusion that Mr. Boroumand's prospects for successful rehabilitation and establishment as a productive member of Canadian society are bleak.
>
> In conclusion, based on Mr. Boroumand's voluntary association and active participation in the Crime Organization, as well as his failure to voluntary [sic] break ties with the leaders linked to the Crime Organization, an organization that an RCMP police report has [sic] links to organized crime, I am of the opinion that Mr. Boroumand represents a present and future danger to the public in Canada. In my view, Mr. Boroumand is a potential re-offender, whose presence in Canada poses an unacceptable risk to the public.

[45] The Minister's Delegate's Analysis of the Risk Submissions and Risk Assessment, together with her conclusions on risk, are in the following terms:

> The PRRA officer examined claims by Mr. Boroumand that he would face torture because he assisted a Bahai and also because he was a military deserter. The officer found no grounds to warrant a finding of risk on either of these claims. Mr. Boroumand was in his twenties when he left Iran and is now 43 years old. It is unlikely that the Iranian military would have any interest in him at this stage of his life. I also am not satisfied based on the information provided that Mr. Boroumand would face torture because he was a military deserter.
>
> In his PRRA application, Mr. Boroumand indicated that he felt he would be at risk because he did not complete his military service. The PRRA office dealt at length with this issue. The officer furnished information on how one may 'buy' out one's military service in Iran and thus concluded that he would not be at risk because of the lack of completion of military service. As a result of this information, I am satisfied, on balance, that Mr. Boroumand would not face a personalized risk of harm for failing to complete his military service should he be returned to Iran.
>
> Mr. Boroumand also claimed that he would be executed because he agitated for human rights and for associating with the Mujahedin Khalgh Organization as he opposed the Iran/Iraq war. He claims that he was convicted *in absentia* and sentenced to death by hanging. However, when questioned by the PRRA officer, Mr. Boroumand was vague about the 1987 court documents and the PRRA officer determined, after research, to assign little weight to these documents.
>
> The PRRA officer did give weight to the travel document application of 1995 mentioned by Mr. Boroumand's counsel and to Mr. Boroumand's drug conviction in Canada as a basis for finding Mr. Boroumand to be at risk upon return to Iran.

Although the travel document application does not identify the conviction itself, it does contain a reference to the sentence imposed for that conviction. The PRRA officer states, "I am of the opinion that the application is likely to face prosecution and that the sentence imposed upon the applicant upon return to Iran would likely be in disregard of accepted international standards. As such, I am of the opinion that the Applicant will likely face risk of torture, risk to life, and risk of cruel and unusual treatment or punishment upon return to Iran."

As for fear of punishment for the drug-related conviction in Canada, the UNHCR Accord Country Report states that the "UNHCR has not been able to find any jurisprudence confirming sentences for persons convicted of drug-related crimes abroad.

UNHCR also does not posses any information on the degree of double conviction upon return for persons convicted of drug-related crimes outside of Iran… It should be noted that there are severe penalties for importing, exporting and producing narcotics as well as for purchasing, selling and using them in Iran but these are forward looking and not retrospective. Based on the information from UNHCR there is no reliable information regarding the possibility that Mr. Boroumand would face a state imposed sanction and hence would likely face a risk of torture or face a risk of cruel and unusual treatment or punishment based on his Canadian drug convictions.

According to documents presented, there is no significant difficulty for a person in Iran who denounces Bahaism. However, the article does not address the situation of Mr. Boroumand who claims that he supported a Bahai, not that he was himself a Bahai. The evidence…is silent on the risks faced by those who support a Bahai. However, the evidence does not indicate that those who support a Bahai in their practice are, on balance, at increased risk of personally facing the risks enumerated under s. 97.

Mr. Boroumand stated that he had agitated for human rights improvements in Iran. This activity as well as the military desertion caused the authorities to come after him and to convict him *in absentia* to death by hanging. Unlike the PRRA officer, I was not satisfied, on a balance of probabilities, that the legal document presented by Mr. Boroumand was in fact genuine. Information from the Tehran visa office in response to the PRRA officer's query regarding the authenticity of these legal documents stated that the letter of Notice issued in civil legal cases while a letter of Summons issued in penal cases. So, based on information on file which was disclosed to Mr. Boroumand's counsel, it can be understood that the case of Mr. Boroumand is a civil litigation case and not a penal case. The person consulted suggested this verdict does not resemble the regular format in which execution verdicts would be issued. It is normal for a summary of the case to appear at the top before the actual verdict which follows after the summary but this verdict does not include a summary at all. The language and the manner in which this verdict has been compiled are very weak and feeble for such a sentence (Execution Sentence). As this verdict is issued recently two years ago (not 28 or 29 years ago at the time of Islamic Revolution) it undermines the credibility of the verdict. For example, it is highly unlikely that such a verdict would be issued in such an inexpert way especially the end of this verdict which states… "to announce the port of arrivals to arrest the person and to transfer him to the Execution of Orders Board". The person (to which person are you referring? Suggest you refer to where this information is taken from) added, when a verdict is execution it is not

final and it can be appealed so this verdict should have a sentence explaining that if this verdict is final or not while in this verdict nothing mentioned re this fact. The way is that the copy of such a verdict is supposed to be sent to the Passport dept and to the attention of the other countries. The person added that this letter of notice does not/not match this verdict (execution). This should be a letter of Summons not a letter of Notice as it is a penal case and not a civil litigation case. In addition, in both letter of notice and the judgement they were undated. For the people that are under arrest, they try to attempt to find the person rather than announcing that we want to arrest from before and no address is also registered. There was an explanation that the stamp used at the bottom of the verdict is not clear and no information can be reached from this stamp. The stamp includes some info but nothing can be revealed from this one. On the other hand, all of the information including the signature, the Ministry of Justice emblem (Scale), the wording Judiciary, ALLAH (God) emblem and the wording of Justice can be read. The expert that was consulted felt that something was not right if the only information which is not shown or readable is the place which issued the verdict. When a stamp is not clear, all the information or at least some information is not clear. On this case all of the information is clear except the most important part which is the name of the office or branch that issued the sentence. The easiest way of verification is to go by the branch number or office number or exact place which issued the verdict. The fact that this stamp does not disclose information which could be used to corroborate the authenticity of the verdict and sentence imposed undermines the credibility of the entire document.

Having received this information from the visa office, it was disclosed to Mr. Boroumand without revealing the name of the person who provided it as the person remains in Tehran. I note the oral hearing held by the PRRA officer on September 15, 2004. After the interview the officer noted that when Mr. Boroumand came to Canada he did not mention these charges or convictions. When confronted with this information, he replied during the interview that he didn't have proof then. He also said he didn't mention his desertion as he thought he might be refused. Again when he made an application under the Post-Determination Refugee in Canada Class (PDRCC), he failed to mention either of these two significant events. Based on Mr. Boroumand's failure to have mentioned this important information, an Iranian conviction for desertion *in absentia* and sentence to death by hanging, on two separate occasions and in view of the information that the documents submitted are not authentic, I am not satisfied, on balance, that the information filed in support of this allegation of risk should be given very little weight. In view of my assessment of the relative weight to be given to this information, I conclude that Mr. Boroumand would not be at risk upon return based on his conviction for desertion.

I further note that in submissions received from counsel, in a section under "Appeals", an article submitted by Mr. Boroumand's counsel states, "However, in the event of a sentence to the death penalty or to stoning, a sentence under lex talionis, a flogging, confiscation of an asset worth more than 1 million rials, appeal is possible."…

**Part V – Conclusion on Risk:**

It is true that the human rights situation in Iran is very poor. It is against this general information regarding the prevailing country conditions in Iran, including its record on human rights, that I assessed Mr. Boroumand's personalized risk, as

> identified in s. 97 of *IRPA*, should he be returned to Iran. This section is clear that the risk must be personal.
>
> Following a review of the material on the record, including the PRRA officer's assessment that Mr. Boroumand would be subjected to a risk to his life or to torture or to cruel and unusual treatment or punishment if returned to Iran, based on the material that I reviewed, and for reasons provided above, I am satisfied, on balance of probabilities, that Mr. Boroumand is unlikely to personally face any of the risks identified under section 97 of *IRPA* if returned to Iran.

The foregoing is reproduced as in the original. With great respect, it is in part garbled and very difficult to understand, particularly in the very long central paragraph.

[46] With respect to humanitarian and compassionate considerations and best interests of the Applicant's Canadian born child, the Minister's Delegate concluded in the following terms:

> …although the wife and child will suffer as a result of Mr. Boroumand's removal, they have lived without his presence for much of the last few years and have demonstrated the resilience to cope without him. As a result, I am not satisfied, on balance, that the child's best interests, outweighs the other considerations which weigh in favour of Mr. Boroumand's removal.
>
> There is little evidence on file to indicate that Mr. Boroumand has successfully established himself in Canada.
>
> I am mindful that Mr. Boroumand's family members would be hurt by any enforced separation due to his removal from Canada. However, after considering the totality of the evidence before me, on a balance of probabilities, I find that Mr. Boroumand's actions in violating Canadian laws, and his inability to successfully integrate into Canadian society, and the likely danger to the public should he be permitted to remain in Canada, leads me to the conclusion that this is not an appropriate case warranting favourable consideration on humanitarian and compassionate grounds.

[47] Following all of the above, the substance of the Minister's Delegate's decision is relatively brief. It is quoted in paragraph [1] of these reasons.

[48] It is particularly worthy of note that, while the mandate of the Minister's Delegate is to balance interests, in particular, on the one hand, the safety of Canadians and the security of Canadian society and on the other hand, humanitarian and compassionate concerns and the risks flowing from removal of persons such as the Applicant, the Minister's Delegate's role is made substantially simpler by her conclusion reflected in the last very brief conclusion quoted in paragraph [1] hereof. In effect, the Minister's Delegate takes removal risks out of the equation leaving only humanitarian and compassionate concerns to be weighed against risks to the Canadian public flowing from allowing the Applicant to remain in Canada.

**THE ISSUES**

[49] In the memorandum of argument filed on behalf of the Applicant, counsel for the Applicant identified seven (7) issues on this application for judicial review, without referring to the universal issue on an application such as this of standard of review.

[50] At the opening of the hearing, counsel nonetheless acknowledged that, in light of the determination by the Minister's Delegate that the Applicant, if removed to Iran would not be subject to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment, the only substantive issue on this application for judicial review is whether or not that determination was open to her since no issue was taken with regard to the Minister's Delegate's conclusion with regard to humanitarian and compassionate considerations and best interests of the Applicant's Canadian born child.

[51] In essence, given the determination of "no risk" on return to Iran, and if it can withstand judicial review against the appropriate standard of review, the issue of danger to the public in Canada and balancing of those competing interests is "off the table". There is, after all, an outstanding deportation order against the Applicant which it would be open to the Respondent to implement. Further, as noted earlier in these reasons, the Applicant pursued the option of landing from within Canada on humanitarian and compassionate grounds. That application was refused and relief from that decision was denied when leave was denied on an application for judicial review of the decision.

[52] I am thus satisfied that only two (2) issues arise as follows: first, what is the appropriate standard of review on this application for judicial review; and secondly against that standard, was the decision of the Minister's Delegate that the Applicant would not face any of the risks identified under section 97 of *IRPA* open.

**ANALYSIS**

a**) Standard of Review**

[53] Counsel for the Applicant urged that the substantive issue on this application should be reviewed on a standard of correctness. By contrast, counsel for the Respondent urged that the appropriate standard of review is patent unreasonableness. I reject the submissions of both counsel on this issue. The decision under review is essentially a Pre-Removal Risk Assessment decision

made by the Minister's Delegate while rejecting the opinion or advice of the Pre-Removal Risk Assessment Officer that was before her.

[54] In *Figurado v. Canada (Solicitor General)*[4], my colleague Justice Martineau wrote at paragraph [51]:

> In my opinion, in applying the pragmatic and functional approach, where the impugned PRRA decision is considered globally and as a whole, the applicable standard of review should be reasonableness *simpliciter*… . That being said, where a particular finding of fact is made by the PRRA officer, the Court should not substitute its decision to that of the PRRA officer unless it is demonstrated by the applicant that such finding of fact was made in a perverse or capricious manner or without regard to the material before the PRRA officer… .
>
> [citations omitted]

My colleague Justice Mosley reached the same conclusion in *Kim v. Canada (Minister of Citizenship and Immigration)*[5].

[55] In reaching the decision that she did on risk to the Applicant on removal to Iran, the Minister's Delegate clearly relied heavily on the findings of fact contained in the Pre-Removal Risk Assessment that was before her but reinterpreted certain of those facts. In so doing, I am satisfied that she opened her conclusion to review "globally and as a whole" and that thus the appropriate standard of review to be applied here is reasonableness *simpliciter*.

**e) Was the Minister's Delegate's decision on risk of removal of the Applicant to Iran open to her?**

[4] [2005] 4 F.C.R. 387.
[5] [2005] F.C.J. No. 540; 2005 FC 437, April 1, 2005.

[56] The substance of the Minister's Delegate's decision, that is to say, the conclusion following a reasonably extensive introduction and analysis, is quoted in paragraph [1] of these reasons. It is worthy of note that, while the Minister's Delegate cites certain of the objectives of *IRPA* and certain of the guidance provided for the construction of *IRPA* as "pertinent objectives", which I interpret as meaning objectives pertinent to the task before her, she omits the following guidance provided for the interpretation of *IRPA*:

| | |
|---|---|
| (3)(3) This Act is to be construed and applied in a manner that | (3)(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet : |
| … | … |
| (*f*) complies with international human rights instruments to which Canada is signatory. | *f*) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire. |

[57] Paragraph 97(1)(a) of *IRPA*, quoted above in paragraph [5] specifically cites a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture*. That *Convention* is, I am satisfied, an international human rights instrument within the contemplation of paragraph 3(3)(f) of *IRPA*, and Canada is certainly a signatory to it.

[58] The Minister's Delegate acknowledges the reference to Article 1 of the *Convention Against Torture* at page 10 of her reasons and indeed quotes the definition of "torture" from the *Convention* but makes no link between that definition, the material before her and paragraph 3(3)(f) of *IRPA*. I would regard this omission as a reviewable error against the appropriate standard of review if the first substantive paragraph of the Minister's Delegate's decision were determinative. I am satisfied

it is not, although I am satisfied that the omission is relevant to the second brief substantive paragraph.

[59] As noted earlier in these reasons, the Applicant put before the Pre-Removal Risk Assessment Officer eight (8) bases on which he feared return to Iran. The Officer rejected seven (7) of those bases. He accepted the eighth as sufficiently well founded to warrant a recommendation against removal to Iran. He also found that basis, when taken together with the other bases alleged, as equally sufficiently well founded.

[60] The Minister's Delegate succinctly agreed with the Pre-Removal Risk Assessment Officer on six (6) of the seven (7) bases on which that Officer rejected the Applicant's concern. She failed to address the seventh such concern, that being the Applicant's concern that he would instantly come to the attention of authorities in Iran on his arrival in that country due to lack of current travel documentation, that he would thus be interrogated, that the totality of his experiences in Canada would thus come to the attention of Iranian authorities and that he would then be at substantial risk. Given the tenor of the Minister's Delegate's analysis with regard to the six (6) other bases of risk that were rejected by the Pre-Removal Risk Assessment Officer, I regard it as likely that, if she had addressed the seventh concern, she would likely have reached the same conclusion as the Officer. That being said, such a conclusion on my part is mere conjecture. The Minister's Delegate should have addressed the seventh concern.

[61] I turn then to the eighth basis of the Applicant's fear, that being that the Respondent's officials provided the Iranian government with information about his drug conviction and refugee claim in Canada and the impact of that basis when read cumulatively with the other seven (7) bases. The Pre-Removal Risk Assessment Officer noted that the Iranian government does have access to Canadian criminal history records. For this, he cited an Immigration and Refugee Board Directorate document dated the 28th of February, 2000. He consulted the Anti-Narcotic Drugs Law of Iran, which he apparently accessed through the United Nations Office on Drugs and Crime. He further accessed the Country Report on Iran (UK IND, April 2004, and the UNHCR/ACCORD: 7th European Country of Origin Information Seminar Country Report on Iran (June 2001, final report), and another IRB document dated the 22nd of March, 2000 which cited an Iranian lawyer in London, England. On the basis of all of this information, as well as the submissions before him on behalf of the Applicant, the Officer concluded:

> …I am of the opinion that the Applicant is likely to face prosecution and that the sentence imposed upon the Applicant upon return to Iran would likely be in disregard of accepted international standards. As such, I am of the opinion that the Applicant will likely face risk of torture, risk to life, and risk of cruel and unusual treatment or punishment upon return to Iran.

The Officer reached the same conclusion on the cumulative impact of all of the grounds for concern identified by the Applicant, read cumulatively.

[62] It is against the foregoing conclusions of the Officer that the Minister's Delegate reached a different conclusion and thus concluded against a risk to the Applicant if he were required to return to Iran. The Minister's Delegate wrote:

> As for the fear of punishment for the drug-related conviction in Canada, the UNHCR Accord Country Report states that the "UNHCR has not been able to find any jurisprudence confirming sentences for persons convicted of drug-related

> crimes abroad. UNHCR also does not possess any information on the degree of double conviction upon return for persons convicted of drug-related crimes outside of Iran. It should be noted that there are severe penalties for importing, exporting and producing narcotics as well as for purchasing, selling and using them in Iran but these are forward looking and not retrospective. Based on the information from UNHCR there is no reliable information regarding the possibility that Mr. Boroumand would face a state imposed sanction and hence would likely face a risk of torture or face a risk of cruel and unusual treatment or punishment based on his Canadian drug convictions.
>
> [emphasis added]

[63] While the conclusion reached by the Minister's Delegate in this regard might have been reasonably open to her, I am satisfied that it simply was not open on the very brief analysis of risk in which she engaged. She ignored one basis of fear of return put forward by the Applicant. She paid limited attention to one (1) independent-third-party document relied on by the Pre-Removal Risk Assessment Officer. She ignored other third-party information relied on by the Officer. There is no indication whatsoever that she fully analysed the extensive submissions made on behalf of the Applicant to the Officer and to her directly. Similarly, she failed to take into account paragraph 3(3)(f) of *IRPA* and ignored the issue of cumulative impact of all of the bases of concern put forward by and on behalf of the Applicant.

[64] Based on the foregoing analysis, I conclude that, whether based on a global review of the decision under review as a whole and on a standard of review of reasonableness *simplicter*, or on the basis of a conclusion that the Minister's Delegate's reasons for decision as a whole were simply inadequate given the significance of the decision to the Applicant, where the standard of review would be correctness given that the adequacy of reasons is a matter of fairness or natural justice[6], I am satisfied that the decision under review was made in reviewable error.

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[6] See: *Jiang v. Canada (Minister of Citizenship and Immigration)* [2005] F.C.J. No. 597 at paragraphs 12 and 13.

**CONCLUSION**

[65] For the foregoing reasons, this application for judicial review will be allowed, the decision under review will be set aside and the matter will be referred back to the Respondent for redetermination by a different Minister's Delegate.

**CERTIFICATION OF A QUESTION**

[66] At the close of the hearing of this matter, decision was reserved. Counsel urged that time be provided after issuance of reasons for them to make submissions on certification of a question. Given the assurance of counsel that this is, to this point in time, a unique or, at least, relatively unique matter, I agreed. Counsel will have two (2) weeks from the date these reasons are released to provide to the Court and to exchange submissions on certification of a question. Only thereafter will an Order issue giving effect to these reasons.

"Frederick E. Gibson"
JUDGE

Ottawa, Ontario
November 21, 2007

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1592-07 |
| **STYLE OF CAUSE:** | MASOUD BOROUMAND and THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | October 25, 2007 |
| **REASONS FOR ORDER:** | GIBSON J. |
| **DATED:** | November 21, 2007 |

**APPEARANCES:**

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|---|---|
| Lorne Waldman | FOR THE APPLICANT |
| Bridget O'Leary | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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