Date: 20080307

Dockets: IMM-2922-07
IMM 2923-07

Citation: 2008 FC 324

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

BETWEEN

ARASH ASLANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

HARRINGTON J.

[1] Mr. Aslani is a citizen of Iran. He arrived in Montréal in November 2004 and claimed refugee status. Because his identity was in doubt, he was detained by immigration authorities and was the subject of many detention review hearings over three months. This is complicated by the fact that he presented two different versions of his reasons for why he came to Canada.

[2] Canadians would have to be truly naive to believe the story Mr. Aslani told in two components.

[3] If we were to believe Mr. Aslani's story, we would have to accept that he

a. was accused of having committed an act of treason against the State of Iran and was sentenced to death on June 28, 2003, by a military tribunal.
b. succeeded in escaping with the help of his father who allegedly bribed the judge.
c. returned to work as an associate in a computer company, instead of immediately hiding after he escaped from prison. And in the following days, Mr. Aslani and his co-worker Mr. Kashani were questioned by AMAKEN officers, a State-run control office, regarding a fraud. Mr. Aslani was detained, interrogated and tortured for at least a week.
d. he was released and then left Iran on July 19, 2003.

[4] The story in his first Personal Information Form (PIF) focuses mainly on the claim he was persecuted because of his employment. Mr. Aslani neglected to mention that he had been sentenced to death by the military tribunal. According to this version of the story, he only left Iran in October 2004. However, he was uncovered by the Canadian authorities who confronted him with the fact he had very likely left Iran in July 2003, and stayed in Europe for a long time before coming to Canada. As a result, Mr. Aslani filed a new PIF in which he explained that he had lied further to advice from his counsel or the interpreter, to hide the fact he had claimed refugee status in Holland in 2004 and was denied, then travelled to the United Kingdom, Germany, France and Turkey.

[5] He never recanted his first story, but the important facts in it are not included in his second FIP. He is now attempting to combine the two stories to create a single narrative, perhaps relying on

his claims regarding the problems with his job, but not mentioning anything related to the conviction sentencing him to death.

[6] Mr. Aslani asks this Court for a judicial review of the two negative decisions, namely the pre-removal risk assessment (PRRA) decision, docket IMM-2922-07, and a decision on humanitarian and compassionate grounds (H&C), docket IMM-2923-07. To make a decision in these cases, the Court had to become familiar with Mr. Aslani's convoluted story.

[7] Considered a flight risk upon his arrival in Canada in November 2004, Mr. Aslani was detained for many months. The transcript of the revision hearing of his detention conditions shows that he has at least four identities, he does not distinguish between fact and fiction, and he lied to his lawyer and to the authorities.

[8] In a decision rendered in June 2005, the Refugee Protection Division (RPD) denied Mr. Aslani's refugee claim. The RPD ruled on the risks Mr. Aslani raised based on the requirements of sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA), and found that he was not a Convention refugee or a person in need of protection. The RPD also found that Mr. Aslani's credibility was seriously compromised based on the many contradictions in his various narratives, his inability to explain them or to produce evidence in support of his claims.

[9] The application for judicial review of this decision was dismissed by Mr. Justice Simon Noël (*Aslani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 351, [2006] F.C.J. No.

422). He stated that the RPD did not err in fact or in law when it rendered its decision. Mr. Justice Noël even considered the applicant's claim that the RPD ignored certain elements of evidence, specifically Mr. Kashani's affidavit. He decided that this argument could not be valid because the RPD is presumed to have taken into consideration all the evidence before it, unless there is proof of the contrary. Moreover, he stated that according to the transcript of the hearing, Mr. Kashani's situation and his connections to the applicant were discussed during the hearing (see para. 41 of his decision).

[10] Then, Mr. Aslani asked for a PRRA and permission to submit an application for permanent residence while in Canada, based on humanitarian and compassionate grounds, instead of following the usual rule by which the application is filed outside Canada. The two applications were filed, assessed, and dismissed based on the written reasons stating the justification for each of the negative decisions. Mr. Aslani asks this Court for a judicial review of the two decisions.

[11] Until yesterday, the standard of review that applied to questions of fact was patent unreasonableness; the standard that applied to questions of mixed fact and law was reasonableness; and the standard that applied to questions of law was correctness. See for example *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540. The standard that applied when a PRRA decision was under review in its entirety was reasonableness (*Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] 4 F.C.R. 387). The case law has established that

the standard of review applicable to H&C applications is reasonableness (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817).

[12] But, in light of *Dunsmuir v. New Brunswick*, 2008 SCC 9, in which the Supreme Court of Canada just abolished the patent unreasonableness standard, everything must be reviewed again. After a more thorough analysis, I cannot find anything unreasonable about the two decisions the officer rendered, for the PRRA or the H&C claim.

[13] For the PRRA (docket IMM-2922-07), Mr. Aslani restated the same facts and fears as those previously reviewed by the RPD. We must note that he also filed Mr. Kashani's affidavit and he claims the officer in charge of the PRRA did not consider it. According to the reasons in the PRRA decision, the officer found that the content of the affidavit had already been submitted to the RPD and was therefore not considered "new evidence". According to the officer, although the affidavit had a new date, the overall content had already been considered by the RPD.

[14] The PRRA program was implemented to allow eligible persons to claim protection from Canada because of new risks to which they might be exposed upon returning to their country of nationality. However, it must be noted that even if the PRRA takes the RPD decision into consideration, the PRRA officer is not bound by the findings in that decision and must not revise it. Under section 113, of the IRPA, the officer must consider only "new evidence" that arose after the rejection of the refugee protection claim and that was not reasonably available or could not have been reasonably expected to be presented to the Board (*Kaybaki v. Canada (Solicitor General),*

2004 FC 32, [2004] F.C.J. No. 27). The IRPA limits the acceptable new evidence to review risks to elements that arose since the RPD decision based on the requirements under sections 96 and 97. Mr. Aslani's submissions do not meet these criteria.

[15] I do not find any reviewable error in the PRRA decision. The applicant is attempting to present the same arguments as in his application for judicial review of the negative RPD decision from June 2005. The extent to which the RPD considered the affidavit, its content and the fact its author could not testify at the RPD hearing has already been ruled on by this Court (*Aslani, supra*). In his reasons, the officer in charge of the PRRA indicates that he took the affidavit into consideration but found its content was not new evidence. Moreover, the content of the two affidavits is not relevant to the officer's findings, because Mr. Kashani's narrative supports Mr. Aslani's story from his first PIF, before he made amendments and submitted a second PIF to support his PRRA application. The content was of no assistance but rather reinforced the contradictions in his story and further undermined his credibility. There are currently three affidavits by Mr. Kashani in the file, with few differences except, in particular, a clarification of the date, which is more of a hindrance to his story since Mr. Kashani allegedly left Iran before the events described even happened.

[16] In Mr. Aslani's application for permanent residence (docket IMM-2923-07), the officer found that there were no humanitarian considerations that would justify granting an exemption from the requirement to obtain a permanent resident visa before coming to Canada. In the present case, I see no reviewable error: the officer's finding is irrefutable.

[17] The case law has established that it is the applicant's responsibility to provide evidence in support of an H&C claim (*Owusu v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 158, [2004] 2 F.C.J. 635), which Mr. Aslani did not do. He produced letters to show he had ties to Canada including a job and friends, but did not submit any evidence or judgment by the military court or arrest warrant to support his claims that he had been detained or sentenced to death in Iran or even to justify his fears of returning based on Iranian authorities' looking for him.

[18] Although the officer's decision cannot be based purely on conjecture, he can still consider many factors when assessing an H&C application, including the manner in which the applicant came to Canada, the extent to which the humanitarian reasons a person claims are the result of his own actions and the possibility of employment or presence of family in his country of origin.

[19] The officer noted that all of Mr. Aslani's family is in Iran. The fact the officer then suggested that his family could support him threw things off track. It had to then be determined whether Mr. Aslani could provide for himself in Iran, for example, by finding a job. As a fit young man with good training, the answer is undoubtedly affirmative.

[20] The officer consulted many information documents on Iran, for both files, the PRRA and the H&C claims, including the UNHCR/ACCORD. In his further memorandum, the applicant claims that the officer did not make any mention of the document, "Iran: European Country of Origin Information Network" and the fact the respondent submitted a copy of it with an additional affidavit

constitutes new evidence, which is prohibited by the rules of this Court. The applicant is incorrect, however. The document was indeed considered and explicitly mentioned by the officer in his reasons, in both cases. Moreover, the applicant was the one who first raised the argument, in his principal memorandum, that this document constituted extrinsic evidence since it had not been disclosed by the officer and was not accessible to the public through the Website indicated in the reasons for the decision. The applicant takes it one step further, supporting this claim with an affidavit by his counsel's secretary. The respondent proved the contrary, providing a copy of the document, taken from the Internet, which did not constitute new evidence.

[21] From the above, it is clear that the PRRA officer assessed the risk to which the applicant would be exposed should he return to Iran thoroughly and in detail. His decision is absolutely consistent with both the information available on the conditions in Iran even if the documentation the applicant challenged is not taken into consideration, and with Mr. Aslani's particular situation, namely his lack of credibility and the fact he did not provide any evidence to support his claims.

[22] I feel it is relevant to quote from *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358, [2002] F.C.J. No. 457, in which the Federal Court stated the following at paragraph 19:

> In short, the *Immigration Act* and the Canadian immigration policy are founded on the idea that whoever comes to Canada with the intention of settling must be of good faith and comply to the letter with the requirements both in form and substance of the Act. Whoever enters Canada illegally contributes to falsifying the immigration plan and policy and gives himself priority over those who do respect the requirements of the Act. The Minister, who is

> responsible for the application of the policy and the Act, is definitely authorized to refuse the exception requested by a person who has established the existence of humanitarian and compassionate grounds, if he believes, for example, that the circumstances surrounding his entry and stay in Canada discredit him or create a precedent susceptible of encouraging illegal entry in Canada. In this sense, the Minister is at liberty to take into consideration the fact that the humanitarian and compassionate grounds that a person claims are the result of his own actions.

[23] Mr. Aslani will have until Tuesday, March 18, 2008, to propose any serious questions of general importance to be certified. The Minister shall have until Tuesday, March 25, 2008, to reply.

"Sean Harrington"

Judge

Ottawa, Ontario
March 7, 2008

Certified true translation
Elizabeth Tan, translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2922-07 IMM-2923-07
STYLE:	ARASH ASLANI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	February 6, 2008
REASONS FOR ORDER:	JUSTICE HARRINGTON
DATE OF REASONS:	March 7, 2008

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