**Date: 20081105**

**Docket: IMM-848-08**

**Citation: 2008 FC 1235**

**Ottawa, Ontario, November 5, 2008**

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

**BETWEEN:**

**ALI FARROKHI TAMEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

## I. INTRODUCTION

[1] This is a judicial review of a refusal for permanent residence on humanitarian and compassionate (H&C) grounds. The Officer determining the H&C application was also the officer responsible for the pre-removal risk assessment (PRRA).

## II. FACTS

[2] The Applicant, a citizen of Iran, arrived in Canada in 2001 and was denied his refugee claim in 2002.

[3] In November 2001, the Applicant was baptized into the Mormon Church and in January 2003, began to attend an Anglican Church.

[4] In 2004, the Applicant submitted both an H&C application and a PRRA application. While those applications were pending, he was convicted of a *Criminal Code* offence of uttering a forged document and received a conditional discharge.

[5] Following the Officer's request for updated H&C material, the Applicant provided further submissions in June of 2007 at which time he disclosed his intent to marry. In fact, the Applicant did marry on July 21, 2007, but evidence of that marriage was never forwarded to the Officer. This information was allegedly provided to his counsel and his counsel failed to forward the information on. A complaint to the Law Society has been filed.

[6] In the Officer's decision, she reviewed all the grounds of the H&C, including family and personal relationships in Canada and Iran, the degree of establishment in Canada, whether the decision would impact the best interests of his wife's child, and finally the hardship and risks the Applicant would face upon returning to Iran.

[7] In particular, the Officer reviewed the issue of persecution of Christians in Iran, the failure of the Applicant at the refugee hearing to adduce evidence of his conversion, and the Applicant's stated preference of keeping his religious conversion private.

[8] The Officer also considered evidence of the Applicant's participation in a single protest against the Iranian government and the evidence, as it then existed, in respect of the intention to marry.

[9] Based on all of these considerations, the Officer concluded that the Applicant would not suffer undue, undeserved, or disproportionate hardship if he was not granted an exemption from the requirements under the *Immigration and Refugee Protection Act*.

## III. ANALYSIS

[10] I concur with the Respondent that the principal issue in this case is whether the Officer, in assessing both the H&C and PRRA, committed an error by applying the wrong test or alternatively, conflating the tests of an H&C and PRRA. (See *Youkhanna v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 187)

[11] The standard of review applicable to an H&C decision had been established previously in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. As indicated in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 62, the Court must take the standard of review established in earlier cases where that analysis is satisfactory. Since the standard established

under *Baker* is consistent with the conclusion in *Dunsmuir* that the standard of review is reasonableness, nothing more need be said on this issue.

[12] The basis upon which the Applicant contends that the Officer applied the wrong law in considering the H&C application or otherwise conflated the tests of an H&C and a PRRA is the following:

> I do not find that the applicant is at a personalised risk in Iran such that would make the hardship of his return there to obtain a permanent resident visa unusual and undeserved or disproportionate.
>
> [Emphasis added by the Court]

[13] The Court has on several occasions expressed concern for the administrative practice of having the same officer conduct an H&C and a PRRA where the element of risk is relevant in both but from very different perspectives. The potential for an officer to conflate the test or to otherwise mix the considerations of an H&C with those of a PRRA are painfully obvious. The Respondent does so at his peril.

[14] The above quote is problematic in that it speaks to an issue more relevant to a PRRA than to an H&C. It invites a submission that the Officer has applied the wrong test or conflated the test.

[15] However, what saves this case from a successful judicial review is that this decision, when read as a whole, is reasonable. It would be an error to microscopically examine each word in a decision as it would be a triumph of form over substance to grant the review on this basis. See, for

example, *Pannu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1356 at paragraph 37, which reads:

> I do not think that the reference in the last sentence to the risk to life of [*sic*] personal security is proof that the officer applied the wrong test. First of all, the officer could certainly adopt the factual conclusions in her PRRA decision to the analysis she was making in the H&C application (*Liyanage v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1293, 2005 FC 1045 at paragraph 41). Second, it is clear from a contextual reading of this paragraph that she was coming to the conclusion that the Applicant would not suffer unusual and undeserving, or disproportionate hardship since there was no objective evidence of personal risk. Not only did the officer correctly set out the H&C test at the very beginning of her reasons, but she also concluded her discussion of the Applicant's allegations of risk and hardship in the following way:
>
> > With the evidence before me, I find that the applicant has not provided sufficient persuasive evidence to establish that she faces a personalized risk to her life or a risk to the security of the person from her ex-husband if returned to India. Similarly, I find that the applicant has not provided sufficient probative evidence to establish the hardships associated with returning to India amounts to unusual and undeserved or disproportionate hardship.

[16] The essence of the Officer's decision in this case is that the Applicant's "story" does not make sense. That is a reasonable conclusion. It is also clear from a reading of the case as a whole that the Officer was aware of the different elements of risk to be assessed and that the Officer kept in mind, when dealing with the H&C application, those matters which were germane to that application.

[17] Having concluded that the principal basis for this judicial review cannot succeed, the Court will deal briefly with the other elements raised by the Applicant for the purpose of completeness.

[18] The Applicant's submission that he was denied the right to an oral hearing is likewise not sustainable. The issue before the Officer was not so much that of credibility as sufficiency of evidence. The Applicant's reliance on *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177, is misplaced. Justice Evans outlined in *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, that there is no legitimate expectation or requirement for a hearing, except in very limited circumstances, none of which apply here.

[19] The Applicant's submissions that the Officer ignored or misconstrued evidence are primarily a request that the Court re-weigh the evidence and substitute its judgment for that of the Officer. Given my finding that the Officer's decision is, on the whole, reasonable, this grounds for judicial review must also be dismissed.

[20] The Court likewise dismisses the contention that the reasons are vague and unclear. It is trite law that an officer need not refer to each and every piece of evidence. There is no operating presumption in this case that the absence of reference to evidence means that the evidence has been ignored. The reasons given by the Officer adequately explain the basis for her decision and there is no support for the inference that she failed to consider material evidence before her.

[21] Lastly, the Applicant cannot make out a case that he was denied the right to counsel. The allegation made is that either the counsel was incompetent or alternatively, the Applicant was under-represented in this case. This Court, on the facts before it, is in no position to make that assessment of professional conduct. There is no indication from the Officer's decision that but for the absence of information regarding the marriage, the Applicant would have been successful. The Applicant has been unable to substantiate that had this evidence been before the Officer, it would have made a material difference.

## IV. CONCLUSION

[22] For all these reasons, the application for judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review will be dismissed.

"Michael L. Phelan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-848-08 |
| **STYLE OF CAUSE:** | ALI FARROKHI TAMEH<br><br>and<br><br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | October 16, 2008 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Phelan J. |
| **DATED:** | November 5, 2008 |

**APPEARANCES:**

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| Mr. Brad Gotkin | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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