Federal Court  Cour fédérale

Date: 20100423

Docket: IMM-2252-09

Citation: 2010 FC 443

Ottawa, Ontario, April 23, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

FERZAD SHOKOHI AND HAKEM SHOKOHI

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of a Visa Officer (Officer) dated March 31, 2009 (Decision), which refused Ferzad Shokohi's (Applicant) application for a permanent resident visa as a member of the Convention Refugee Abroad class or as a member of the Humanitarian-Protected Persons Abroad class.

BACKGROUND

[2] The Applicant is a 22-year-old Kurdish citizen of Iran. He alleges risk because he was allegedly reported to Iranian authorities for the possession of videos (CDs) containing information about the Democratic Party of Iranian Kurdistan (KDPI).

[3] The Applicant's family has a history of involvement with the KDPI. His grandfather and one of his uncles were killed for being supporters of the KDPI. His father has been arrested and barred from travel because of allegations that he is sympathetic to the KDPI, although he is not involved in politics.

[4] The Applicant is not a member of the KDPI, but is a sympathizer of the party. The Applicant has frequently watched KDPI propaganda CDs. On one occasion, his cousin gave him two documentary CDs about the killing of KDPI members by the Islamic Regime of Iran, including the killings of the Applicant's own grandfather and uncle. The Applicant went to a friend's house to watch these CDs. When his friend's father came home unexpectedly, the Applicant fled the house and left the CDs behind.

[5] The friend's father then came to the Applicant's home, threatened the Applicant's mother and threatened to make a complaint against the Applicant.

[6] In fear for himself and his family, the Applicant went to stay with his sister. He then learned that his house had been raided by the authorities. The authorities found alcohol and a satellite dish in the home, both of which are banned. The authorities threatened the Applicant's mother, saying that the Applicant should turn himself in.

[7] The Applicant left for Turkey and registered with the United Nations High Commissioner for Refugees (UNHCR). His case is currently under appeal with the UNHCR. The Applicant then applied for permanent resident status in Canada based on a group of five sponsorship.

[8] An uncle and a cousin of the Applicant reside in Canada. The uncle is a member of the group of five sponsorship and has started a trust for the Applicant. The group of five sponsorship application was approved in March, 2007.

DECISION UNDER REVIEW

[9] The Officer's Decision is based on the fact that country of origin information provides that "low-level supporters or Kurdish individuals who are sympathizers of KDPI would not present an interest to Iranian authorities." The Officer was unconvinced that the Applicant had not "credibly demonstrated that [he] would warrant the attention of the authorities." Accordingly, she determined that the Applicant's fear was not objectively substantiated.

[10] The Officer's conclusions were based on the fact that the Applicant had never been a member of the KDPI and had not undertaken any activities for them. Rather, the only thing that he had was a video. She determined that it was not reasonable — and the country documentation did not support a finding — that such a low-level sympathizer would warrant the attention of authorities.

ISSUES

[11] The Applicant submits the following issues on this application:

1. Whether the Officer breached the duty of fairness by using an incompetent interpreter;
2. Whether the Officer's Decision was unreasonable in that she ignored relevant evidence;
3. Whether the Officer breached principles of procedural fairness in failing to provide adequate reasons;
4. Whether the Officer erred in failing to inform the Applicant of the Country of Origin evidence she was intending to rely upon and in failing to allow the Applicant an opportunity to respond to that evidence;
5. Whether a reasonable apprehension of bias exists on the fact of this case.

STATUTORY PROVISIONS

[12] The following provisions of the Act are applicable in these proceedings:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut

unable or, by reason of that fear, unwilling to return to that country.

ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

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

Personne à protéger

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 punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels 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.
Person in need of protection	**Personne à protéger**
(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.

[13] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are also application in these proceedings:

139. (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that (*a*) the foreign national is outside Canada; (*b*) the foreign national has submitted an application in accordance with section 150; (*c*) the foreign national is seeking to come to Canada to establish permanent residence; (*d*) the foreign national is a person in respect of whom	**139.** (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis : *a*) l'étranger se trouve hors du Canada; *b*) il a présenté une demande conformément à l'article 150; *c*) il cherche à entrer au Canada pour s'y établir en permanence; *d*) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans

there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely (i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or (ii) resettlement or an offer of resettlement in another country; (*e*) the foreign national is a member of one of the classes prescribed by this Division;	un pays autre que le Canada, à savoir : (i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle, (ii) soit la réinstallation ou une offre de réinstallation dans un autre pays; *e*) il fait partie d'une catégorie établie dans la présente section;
145. A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.	**145.** Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

STANDARD OF REVIEW

[14] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[15] The determination of whether the Officer failed to give adequate reasons for rejecting the application is an issue of procedural fairness. Issues of procedural fairness are reviewed on a standard of correctness. See *Dunsmuir*, above, and *Weekes (Litigation Guardian) v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 293, 71 Imm. L.R. (3d) 4 at paragraph 17.

[16] The consideration of whether or not the Applicant was provided proper interpretation is concerned with the process and fairness of the hearing. Accordingly, pursuant to *Dunsmuir*, above, this issue will be reviewed on a standard of correctness.

[17] The Applicant submits that the Officer erred in failing to disclose the source of the documentary evidence she relied upon in making her decision and that this resulted in depriving him of an opportunity to respond. The issue of whether or not the Officer relied on extrinsic evidence without giving notice to the Applicant is an issue of procedural fairness. As such, it is reviewable on a standard of correctness. See *Worthington v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 626, [2008] F.C.J. No. 879 at paragraphs 42-45.

[18] The Applicant has also alleged a reasonable apprehension of bias. The existence of a reasonable apprehension of bias is reviewable on a standard of correctness. See *Dhaliwal v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 7, [2010] F.C.J. No. 12 at paragraph 27.

[19] Whether the Officer erred in her understanding and consideration of the risks facing the Applicant and the documentary evidence supporting these risks is an issue of fact. As such, these issues will attract a standard of reasonableness upon review. See *Dunsmuir*, above, at paragraph 51.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Interpreter

[21] The Applicant submits that access to a competent interpreter is necessary where credibility is a determining factor in a decision. See, for example, *Huang v. Canada (Minister of Citizenship and Immigration*, 2003 FCT 326, 231 F.T.R. 61 and *Xie v. Canada (Minister of Employment and Immigration)*, 107 N.R. 296, [1990] F.C.J. No. 173.

[22] The Federal Court held in *Huang*, above, at paragraph 8, that an applicant has a right to "continuous, precise, competent, impartial and contemporaneous interpretation." Furthermore, the Court has also determined that an applicant need not prove that he has suffered actual prejudice because of the breach of the standard of interpretation in order for the Court to interfere with a decision.

[23] The Applicant submits that he was not asked about his preference of interpreter. He does not speak much Persian, and he had difficulty communicating with the interpreter. Similarly, the Applicant contends that he said much more during the hearing than was contained in the Officer's notes. According to the Applicant, "by using this incompetent interpreter, who may have made multiple and significant errors in translation, it would have been impossible for the visa officer to have made a correct assessment, especially with respect to the Applicant's credibility."

[24] The Court in *Huang*, above, held that, because credibility was determinative of the application, the errors in translation were sufficient to allow the application for judicial review. The Applicant likens this to the case at hand, in which credibility seems to be a significant factor for the Officer's rejection of the Applicant's claim. Indeed, as in *Huang*,

> these errors [in translation] are not trivial or immaterial; they go to the very essence of the rejection of the claim. In this case, the Board relied, at least in part, on the errors of translation to support its conclusion that the Applicant was not credible. The main reason why the Board rejected the Applicant's claim was this negative credibility finding.

Ignoring Evidence

[25] Although the Applicant is not consistent on this point, he argues that the Officer seems to have accepted his evidence as credible. However, she determined that he had not provided sufficient evidence to convince her that he would face any risk upon his return to Iran.

[26] However, in making her Decision, the Officer erred by ignoring a significant portion of the Applicant's evidence: i.e. that his house was raided by the police as a result of his having possession of, and watching, the CDs. This evidence is pertinent because it substantiates the Applicant's fear of risk upon return to Iran, due to his family history of political involvement and his viewing of illegal contraband.

[27] Furthermore, the Officer erred in ignoring evidence of the circumstances faced by the Applicant as a minority Kurd in Iran. This is clearly in error when considered in the context of his father's imprisonment and the deaths of his grandfather and uncle. The Officer failed to consider the Applicant's family context, and did not address the fact that the authorities believed that the Applicant was attempting to recruit members for the KDPI.

[28] The Officer's reasons do not indicate any consideration of the Applicant's identity as a Kurd from Iran or his family background. The Officer clearly erred in failing to consider this important element of the Applicant's claim.

Inadequate Reasons

[29] The Officer erred by failing to identify the country documentation upon which she relied to make her Decision. She further failed to provide any analysis of this documentation. In addition, she erred by not explaining what she did (or did not) accept of the Applicant's testimony.

[30] While the Officer does not accept that that the possession of CDs would warrant the attention of authorities, she fails to consider this incident in the larger context of the Applicant's family history. Furthermore, she neglects to make any mention of the raid by the authorities of the Applicant's home. In this case, the reasons of the Officer are so unclear that it is not possible to say what her conclusions were, and how she reached them. As stated by the English Court of Appeal in *R. v. Civil Service Appeal Board ex p Cunningham*, [1991] 4 All E.R. 310:

> The Board should have given outlined reasons, sufficient to show to what they were directing their mind and thereby indirectly showing not whether their decision was right or wrong…but whether their decision was lawful.

[31] The Applicant contends that reasons must adequately explain the decision rendered. Indeed, reasons must clarify the basis for the decision and also provide the basis for meaningful appellate review. See, for example, *R v. Sheppard*, 2002 SCC 869, [2002] 1 S.C.R. 869.

[32] In this case, the Officer's reasons do not adequately explain her Decision. Moreover, she does not provide any sources for the country of origin information she used in coming to her

Decision. In this case, the reasons provided by the Officer do not suit the purpose that reasons are intended to serve. The reasons provided were too vague and inadequate.

Extrinsic Evidence

[33] The Applicant contends that the Officer erred by relying on country of origin information that was neither named nor sourced in her Decision. Not providing the Applicant with such information prevented him from responding to this evidence. The Applicant characterizes the Officer's use of such documentation as a reliance on extrinsic evidence.

[34] The country condition documentation before the Officer clearly refuted her findings. For instance, Amnesty International has determined that even "mere supporters" of the KDPI are at risk in Iran. The evidence before the Officer determined that low level supporters who have not come to the attention of the authorities would not be at risk. However, the Applicant's evidence demonstrates that he has indeed come to the attention of authorities, since they have come looking for him at his home.

[35] As decided by the Federal Court in *Dasent v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 720, 1994 F.C.J. No. 1902 at paragraph 20 (QL), extrinsic evidence is "evidence of statements, facts or circumstances that do not appear on the face of the document or that are not referred to in the document, but which serve to explain, vary or contradict the document." The Applicant suggests that the country of origin information relied on by the Officer

ought to have been disclosed to the Applicant prior to a decision being made. The Officer's failure to provide this evidence to the Applicant resulted in her relying on extrinsic evidence, and prevented the Applicant from commenting on that evidence. As determined in *Gill v. Canada (Minister of Employment and Immigration)*, 12 Imm. L.R. (2d) 305, [1990] F.C.J. No. 354, "in fairness, an applicant…must be given the opportunity to present contradictory evidence or make a contradictory submission."

[36] The Officer had a duty to ensure that all the information she was relying on to make her Decision was available to the Applicant. The Officer had a further duty to allow the Applicant an opportunity to respond to this evidence. The Officer erred by failing to identify the country of origin documentation she relied on.

Reasonable Apprehension of Bias

[37] Finally, in his further memorandum of argument and based upon the Officer's affidavit, the Applicant raises the issue of a reasonable apprehension of bias.

[38] Within the affidavit, the Officer states that she relied on her "personal understanding of the circumstances faced by Kurds in Iran" in coming to her conclusion. However, the Officer does not clarify the circumstances of which she speaks. The Applicant suggests that this could refer to experiences, past relationships, observations, or research. Accordingly, it appears that the Officer

undertook a role as an investigator as well as the final decision maker. The Applicant contends that this raises a reasonable apprehension of bias.

[39] The Applicant suggests that "a reasonable person, properly informed, may perceive the officer as pre-judging Kurdish applicants based on said Officer's 'personal understanding.'" Indeed, the Officer's personal experiences were unknown to the Applicant. The Officer did not share this information with him, nor did she warn him that she would be relying on personal research and experiences to formulate a conclusion on his application. The Officer's reliance on such information was an error of law.

The Respondent

Treatment of Evidence

[40] There is no basis for the Applicant's allegation that the Officer ignored evidence, since it is clear that the Officer turned her mind to the totality of the evidence before her. After having considered the totality of the evidence, the Officer then made a finding that the Applicant had not "credibly demonstrated that [he] would warrant the attention of the authorities."

[41] It is not the Court's role to interfere with an officer's findings of credibility where an oral hearing has taken place, unless the Court is satisfied that the officer relied on irrelevant considerations or that she ignored evidence before her. Moreover, the Court should not interfere with an officer's inferences and conclusions where they are reasonable, as is the case at hand. See

Aguebor v. Canada (Minister of Employment and Immigration), 160 N.R. 315, [1993] F.C.J. No. 732. In the case at hand, the Officer expressed her credibility concerns with the Applicant and he failed to provide a reasonable explanation.

[42] Moreover, the Officer was entitled to prefer the documentary evidence over the testimony provided by the Applicant, even where the Applicant was found to be credible. See *Yang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 678, [2008] F.C.J. No. 846 at paragraph 7.

[43] The Applicant also alleges that the Officer failed to note the Applicant's identity as a Kurd from Iran. However, the CAIPS notes demonstrate that the Applicant's identity was considered at the start of the hearing and was, according to the Respondent, "considered along with the rest of the evidence before the Officer." It was the Applicant's onus to raise any evidence that he wanted the Officer to consider regarding the situation of Kurds in Iran. In this instance, he failed to provide any evidence.

Country of Origin Information

[44] The Applicant has alleged that the Officer failed to identify the country documentation upon which she relied. However, the Officer refers to Article 498 of the Islamic Criminal Code within the CAIPS notes. The Officer made the determination that there was no credible evidence that the Applicant would be punished under this law. Accordingly, it was unnecessary for her to address any further considerations.

[45] Moreover, although it was not stated in the Decision, in her affidavit the Officer has provided the country of origin documentation upon which she relied.

[46] Based on the Officer's station in Turkey and the number of Iranian Kurds making refugee claims there, it was reasonable for the Officer to rely upon her familiarity with the country conditions facing Kurds. The Applicant bears the burden of providing specific evidence he wishes the Officer to consider with regard to country conditions. In this case the Applicant did not raise any evidence. Accordingly, the Applicant cannot now allege that the Officer erred by not specifically referring to evidence. See, for example, *Qarizada v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1310, [2008] F.C.J. No. 1662.

[47] The Applicant has also alleged that the Officer relied on extrinsic evidence. However, there is no evidence that the Officer relied on anything other than information available from a public source that was available to the Applicant. As such, this information cannot be considered extrinsic evidence, and there is nothing unfair about considering such evidence. Furthermore, there was no obligation for the Officer to bring this information to the attention of the Applicant before rendering her Decision. See *Worthington v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 626, 330 F.T.R. 40 at paragraphs 44-45; and *Asmelash v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1732, [2005] F.C.J. No. 2145 at paragraphs 14-16.

[48] The Officer is presumed to have considered all of the evidence before her. There is no obligation on the Officer to list each piece of evidence she reviewed in making her Decision.

Furthermore, the Applicant's allegation that the country documentation "clearly refutes the Officer's conclusion" is essentially a disagreement over the weight assigned to the evidence, which is not reviewable by the Court.

Procedural Fairness

[49] The Respondent contends that the nature of the decision being made by the Officer in this instance militates in favour of more relaxed requirements under the duty of fairness. See *Jallow v. Canada (Minister of Citizenship and Immigration)*, 122 F.T.R. 40, [1996] F.C.J. No. 1452 at paragraph 18. Furthermore, the Court should not impose a "level of procedural formality that, given the volume of applications that visa officers are required to process, would unduly encumber efficient administration." See *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, 213 F.T.R. 56 at paragraph 32.

Interpreter

[50] Contrary to the Applicant's submissions, he was given the opportunity to choose the language of his interpreter. On his application for permanent residence in Canada, the Applicant indicated that his preferred language for the interview was "Persian – Kurdish." Because his first choice appeared to be Persian (Farsi), the Applicant was provided with a Farsi interpreter.

[51] Furthermore, the Applicant does not identify any mistakes made by the interpreter; he simply states that upon a viewing of the CAIPS notes he "believed he had said much more than what is contained" in the CAIPS notes. He also suggests that the interpreter "may have made multiple and significant errors in translation," but he does not say what they are.

[52] The Officer is an experienced interviewer who had no concerns with regard to the quality of the translation at the hearing. According to the Respondent,

> [t]here was not an inordinate amount of dialogue between the Applicant and the interpreter that was not subsequently translated, nor was there inconsistency between the amount of information given by the Applicant and what was subsequently translated into English.

Furthermore, the CAIPS notes do not show that the Applicant had any significant difficulty in understanding the questions put to him.

[53] It must also be noted that the Applicant did not advise the Officer of any difficulty in interpretation; the onus is on the Applicant to raise any issues with the interpreter during the interview. Instead, the Applicant confirmed with the Officer that he understood the interpreter without difficulty. Clearly, the Applicant's failure to raise the issue of interpretation at the interview is fatal to his claim for relief. See *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 F.C. 85 at paragraph 18; and *Dhillon v. Canada (Minister of Employment and Immigration)*, 1995 F.C.J. No. 390 at paragraph 10.

[54] The Applicant has suggested that his version of events should be preferred over the CAIPS notes. However, the Applicant's version of events is taken from an affidavit which was signed five months after the interview, while the CAIPS notes were made during the interview. The Court has given greater weight to the CAIPS notes where there is a discrepancy between the CAIPS notes and the Applicant's evidence. See *Al Nahhas v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1507, [2006] F.C.J. No. 1949 at paragraphs 14-16.

[55] Furthermore, even if difficulties were found to exist with regard to the interpretation, there was no breach of natural justice in this case since no evidence exists to show that the Applicant was prejudiced in any way as a result of the difficulties alleged. See *Dhillon*, above, at paragraph 9.

Adequate Reasons

[56] In the context of an application for refugee protection abroad, the Court has determined that CAIPS notes in combination with a refusal letter are considered sufficient reasons as long as they explain why the application was refused. See *Besadh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 680, [2009] F.C.J. No. 847 at paragraph 4 and *Bhandal v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 427, 2006 F.C.J. No. 528 at paragraph 18.

[57] The Officer's Decision was not vague. The Decision makes it clear that the Applicant's application was refused because he had not "credibly demonstrated the [he] would warrant the attention of authorities." The Respondent suggests that this finding is not limited to the

consideration of the CDs in the Applicant's possession, but rather was made after consideration of the totality of the Applicant's claims.

[58] A lack of citation with regard to country of origin information does not render the Decision unreasonable. Rather, the Decision was based on a factual determination with regard to the Applicant's credibility. Whether or not the country of origin information was cited is not relevant to the Officer's finding.

[59] Even if the Court were to find that the reasons were insufficient, the inadequacy of reasons does not automatically constitute an error. Rather, the Applicant must discharge the burden of showing that the deficiency of reasons caused prejudice to the exercise of a legal right. See, for example, *Bakht v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1193, [2008] F.C.J. No. 1510 at paragraph 37 and *Sheppard*, above.

[60] Indeed, in this case there was enough in the Decision to explain to the Applicant why his claim was refused, and also to permit effective judicial review.

Allegation of Bias

[61] An allegation of bias is serious and should not be made lightly. Such an allegation should be supported by material evidence. See *Arthur v. Canada (Attorney General)*, 2001 FCA 223, [2001] F.C.J. No. 1091 at paragraph 8.

[62] The Applicant's argument that the Officer's reliance on a personal understanding of the circumstances of Kurds in Iran resulted in prejudice to the Applicant is speculative and lacks merit. There is no evidence that the Officer relied on anything but publicly available objective evidence in her rejection of the Applicant's application.

[63] It was reasonable for the Officer to state in her affidavit that she was aware of the difficulties faced by Kurds in Iran, since the Applicant had questioned the Officer's understanding of these circumstances in his memorandum of argument. Nothing in the Officer's affidavit or the Decision suggests that the Officer acted outside her jurisdiction or that the Decision was biased.

[64] In determining the claim, the Officer was entitled to consider objective country of origin information. The Respondent suggests that "[p]ublished information relating to conditions in the refugee claimant's country is precisely the type of 'information or opinion' that may be expected to be within the 'specialized knowledge' of the Officer." See *Hassan v. Canada (Minister of Employment and Immigration)*, 151 N.R. 215, [1993] F.C.J. No. 127; and *Kalu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 400, [2008] F.C.J. No. 488 at paragraph 5. Moreover, simply reviewing this objective information does not constitute an investigation.

[65] The Respondent submits that the Applicant's argument of bias amounts to a "speculative and microscopic analysis of two words from the Applicant's affidavit, and it does not establish that the Officer's decision was unreasonable."

ANALYSIS

Confusion over Central Aspect of Decision

[66] The Applicant has raised a range of issues for review. In the end, however, there is a fundamental confusion at the centre of the Decision which requires that it be returned for reconsideration.

[67] The Applicant submitted no country documentation and so the Officer did her own research and came to the following conclusions:

> Article 498 of the Fifth Book of the Islamic Penal Code says: "Anyone with any thought, forms a group, association or a branch of more than two persons in or outside the country or manages the said formation with the aim of distorting the national security will be sentenced to imprisonment from two to ten years if not recognized as "an enemy of" God.
>
> However, PA was not part of a group, he was not a member of KDPI, he simply had obtained two CDs distributed by KDPI which happened to contain information about his grandfather. Furthermore, COI indicates that in practice "Unless the individual has come to the direct attention of the Iranian authorities, it is unlikely that the authorities will demonstrate an interest in an individual of Kurdish ethnicity or a low level supporter of the KDPI or Komala. However there is objective evidence which indicates that leaders and militant supporters of the KDPI and Komala would be at a real risk of persecution because of their activities."
>
> Based on this COI, PA has not credibly established that he would be an individual of interest to Iranian authorities. The only evidence of any attachment between PA and KDPI is a CD video. It is not reasonable, and COI does not support, that such a low-level sympathizer would warrant the attention of authorities. I therefore do not find that PA's fear is objectively substantiated.
>
> Application is therefore REFUSED.

[68] Notwithstanding the cross-examination of the Officer by the Applicant's counsel, in my view, there is confusion at the core of the Decision. It is not clear to me whether the Officer is saying that she believes the authorities know about the Applicant's possession of the CDs, but would not be interested in him because the country documentation does not support a conclusion that the authorities would be interested in someone who was merely in possession of KDPI CDs and was "such a low-level sympathiser."

[69] If this is the Officer's conclusion, then a problem arises because the Officer accepts that the authorities are looking for the Applicant, or at least there is nothing in the Decision to suggest she does not accept this. So, whether or not they know about the CDs, the authorities have already demonstrated an interest in the Applicant and have shown they are looking for him.

[70] On the other hand, the Officer could be saying that the Applicant has not established that the authorities know about the CDs, or that the Applicant is a KDPI sympathizer. If this is the intent, then it is not clear why the Officer appears to rely so heavily upon country documentation to suggest that the Applicant would not be of interest to the authorities because he is "such a low-level sympathiser." Without knowledge of the CDs, then it is difficult to see how the authorities would connect the Applicant to the KDPI as any level of sympathizer.

[71] I do not think this confusion is cleared up by the cross-examination where the Officer says that the Applicant could not establish that the police knew anything about the CDs because, if the

Officer did not accept that the police knew about the CDs, they would not know that he was "a low-level sympathiser," which appears to be the basis for her Decision.

[72] When she was cross-examined on her affidavit, the Officer was asked what she had accepted about the Applicant's story. On the crucial issue of the connection between the CDs and the police raid, the Officer said that the friend's father

> could have made a complaint that resulted in them coming to the house, but it's not necessarily the case that he made a complaint against the applicant because of his possession of the CD….. I wasn't satisfied that they had come because of this incident because of the possession of the KDPI video.

This does not clear up the confusion in the reasons already described.

Incompetent Interpreter

[73] The Applicant complains after the fact about incompetent interpretation. He says he was surprised when he saw the Officer's notes and he believes he said much more. He says that by using an incompetent interpreter "who may have made multiple and significant errors in translation, it would have been impossible for the visa officer to have made a correct assessment, especially with respect to the Applicant's credibility."

[74] As the CAIPS notes show, the Officer took the precautions to ensure that the Applicant understood the questions. A competent interpreter was used and the Applicant cannot even point to any mistakes or anything he said that is not contained in the CAIPS notes. There is simply nothing

to support his allegations about interpretation problems. And, as the cross-examination established, the real problem was not credibility in this case; rather, the central issue was the connection between his possession of the CDs and the police raid.

Ignoring Evidence and Reliance on No Evidence

[75] The Applicant says that the Officer erred because she ignored

> [s]ubstantive and significant evidence put forward by the Applicant and, in fact, recorded by the Officer. The Applicant stated that as a result of having in his possession and viewing the pro KDPI CDs, his home was raided by police who found alcohol and a satellite dish, both of which are banned items in Kurdish regions. The Applicant was not at home at the time but his mother was and she later informed him that the authorities had told her he had to surrender himself.

[76] The Applicant says that the Officer ignored the evidence that the police attended his home looking for him. In my view, the basis of the Decision is that "[i]t is not reasonable, and C.O.I. does not support, that such a low-level sympathizer would warrant the attention of the authorities." This means that the Officer must recognize the Applicant as "a low-level sympathiser" and that the authorities must know about the "attachment between PA and KDPI [which] is a CD video." This conclusion overlooks the fact that the authorities have already demonstrated such an interest in the Applicant that they have been to his home looking for him. In my view, overlooking this crucial fact renders the Decision unreasonable. See, for example, *Castillo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 56, [2004] F.C.J. No. 43 at paragraphs 8-10.

Inadequate Reasons

[77] I have already explained why I believe there is a basic confusion in the conclusions to the Officer's reasons. This confusion renders the Decision unreasonable. See *Dunsmuir*, above, at paragraph 47.

Extrinsic Evidence

[78] The Applicant has not shown that he was prevented from accessing this country of interest documentation. Nor has it been shown that this was novel and significant information that evidenced a change in country conditions.

[79] The Applicant contends that the country of origin information ought to have been disclosed to him in order to allow him the opportunity to respond. However, as stated by the Respondent, there is nothing in this case that demonstrates that the Officer relied on any evidence other than what was available from a public source. Therefore, this evidence cannot be considered extrinsic. As a result, there was no obligation on the Officer to draw this information to the Applicant's attention. According to Justice Hansen in *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 266, [2002] 4 F.C. 193 at paragraph 33,

> Fairness…will not require the disclosure of non-extrinsic evidence, such as general country conditions reports, unless it was made available after the applicant filed her submissions and it satisfies the other criteria articulated in [*Mancia*].

There is no evidence before the Court that the country of origin information relied on by the Officer in this instance meets the threshold described by Justice Hansen in *Chen*, above. Accordingly, it cannot be said that the Applicant's procedural fairness was breached by the Officer's failure to draw his attention to the Country of Origin Information.

[80] In the case at hand, the Officer relied on evidence that would have been available to the Applicant, had he sought it. The Officer then considered this evidence in the context of the Applicant's claim to determine whether the Applicant was within the scope of risk as described in the evidence. However, the Officer determined that the Applicant had not proven that he was a low-level sympathizer whose sympathy had been brought to the attention of authorities.

[81] I do not believe that the Officer was incorrect in her consideration or application of the documentary evidence available to her. This is especially so in an instance where the evidence was available to the Applicant if he had chosen to access it and Applicant himself failed to provide country interest documentation.

Other Grounds

[82] The Applicant raises several other grounds, such as a reasonable apprehension of bias, for which I can find no support in the record.

Conclusions

[83] In the end, I think the Decision is unreasonable because the Officer does not explain why the authorities would not be interested in the Applicant as "a low-level sympathizer" when the authorities have already demonstrated they are interested in him by raiding his house and telling his mother that he must surrender himself. This means that the Officer has either erred by entirely overlooking a crucial demonstration of interest by the authorities or that the reasons are inadequate because they do not make clear why the Applicant would have been brought to the authorities attention as "a low-level sympathizer" of the KDPI if the authorities do not know about the CDs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The Application is granted. The decision is quashed and returned for reconsideration by a different officer.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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