

Federal Court



Cour fédérale

Date: 20100430

Dockets: IMM-4003-09

Citation: 2010 FC 484

Ottawa, Ontario, April 30, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

FARZAN FARZANEH SARKARIZI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2007, Mr. Farzan Farzaneh Sarkarizi sought refugee protection in Canada after fleeing Iran. He claims to have been persecuted in Iran because of his interest in Christianity. A panel of the Immigration and Refugee Board heard Mr. Sarkarizi's claim, but dismissed it because it disbelieved his account of events.

[2] Mr. Sarkarizi maintains that the Board's adverse credibility findings were unreasonable and he asks me to order another panel of the Board to reconsider his claim. I agree that the Board erred and, therefore, will grant this application for judicial review.

II. Analysis

(1) Factual Background

[3] Mr. Sarkarizi outlined a number of problems he had in Iran because he was perceived to be anti-Islam. He had trouble getting into university and experienced difficulties during his military service. He was arrested and beaten, once for playing music in his car and a second time for wearing a Michael Jackson t-shirt. He ran into more serious difficulties when he told a member of the Basij that he wanted to follow Christ. Two days later, his apartment was raided. State agents looked for him at his father's home. They accused Mr. Sarkarizi of insulting Islam and threatened to kill him.

(2) The Board's Decision

[4] The Board found inconsistencies in Mr. Sarkarizi's account of events. First, the Board noted that in his initial interview on arrival in Canada, Mr. Sarkarizi said he was an atheist, not a Christian.

[5] Second, the Board found that Mr. Sarkarizi had not actually converted to Christianity; nor had he spent the necessary time studying Christianity in Iran when he had an opportunity to do so.

[6] Third, while Mr. Sarkarizi claimed that he attends a Jehovah's Witness church regularly, again he could not confirm that he had fully converted to Christianity. Further, he did not have corroborating documentation from the church, only a letter from a fellow parishioner.

[7] Fourth, Mr. Sarkarizi asserted that authorities would still be looking for him in Iran. The Board thought this was unlikely after two years in Canada.

[8] Fifth, the Board was concerned that Mr. Sarkarizi's statutory declaration, taken at the port-of-entry on his arrival in Canada, made no reference to his claim to have been arrested and detained in Iran.

(3) Was the Board's Decision Reasonable?

[9] Mr. Sarkarizi disputes all of the Board's findings. I agree with him that at least some of these findings are inconsistent with the evidence.

[10] First, at the port-of-entry, Mr. Sarkarizi mentioned his interest in Christianity. True, he labelled himself an atheist, but he explained that in Iran an atheist is a person who is not religious or is not Islamic. He felt this description applied to him, notwithstanding his interest in the Christian faith, which he made very clear.

[11] Second, it appears that Mr. Sarkarizi has not yet fully converted to Christianity. However, this does not mean that he was not, or would not be, persecuted on religious grounds in Iran.

[12] Third, Mr. Sarkarizi explained that he attends Bible studies at a Jehovah's Witness church once or twice a week (the Board said once or twice a month, which appears to be an inadvertent error). He explained that the church has a policy of not providing letters to refugee claimants. The Board did not address that explanation. Mr. Sarkarizi did, however, provide a letter corroborating his attendance at Bible class.

[13] Fourth, the Board was entitled to be sceptical of Mr. Sarkarizi's claim that authorities would still be looking for him at this point. But, generally, care must be taken to find evidentiary support for findings of implausibility. The Board did not refer to any documentary evidence on this point.

[14] Fifth, at the port-of-entry, Mr. Sarkarizi did refer to his detentions for playing music and for wearing a t-shirt considered to be offensive. The same account appears in his written narrative.

[15] In its conclusion, the Board stated that the cumulative effect of its concerns about Mr. Sarkarizi's credibility led it to believe that he would not experience persecution in Iran. In my view, several of the Board's main concerns were not supported by the evidence. Accordingly, its conclusion was unreasonable.

III. Conclusion and Disposition

[16] A number of the Board's adverse credibility findings were not supported by the evidence. Accordingly, its conclusion that Mr. Sarkarizi's account of events could not be believed was unreasonable – it did not fall within the range of acceptable outcomes based on the facts and the law. Therefore, I must allow this application for judicial review and order a new hearing before a different panel of the Board. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4003-09

STYLE OF CAUSE: SARKARIZI v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: February 3, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 30, 2010

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