Federal Court  Cour fédérale

Date: 20120208

Docket: IMM-2554-11

Citation: 2012 FC 180

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PARVIZ AHANIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[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 the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 8 March 2011 (Decision), which refused the Applicant's claim for protection as a Convention refugee under section 96 or a person in need of protection under section 97 of the Act.

BACKGROUND

[2] The Applicant is a sixty-year-old citizen of Iran who claims to be an Orthodox Christian. He has a daughter and son living in Canada who have both made successful refugee claims. The Applicant's third child, a son, remains in Iran.

[3] The Applicant claims that, through a construction company – Navid Construction – he had business dealings with the Shah of Iran's nephew. After the Iranian Revolution in 1979, he was pressured by agents of the new regime to sell the shares he owned in Navid Construction to the state. He says he was arrested in 1988 and detained until 2001.

[4] While he was in prison the Applicant says that he signed over some property to the regime. Having done so, he was permitted to leave prison for two to four months each year until 2001. In July 2001, he says he was released, though he was found guilty of cooperating with the Shah's government and was required to post bail. After his release, he says he was forced to sign over his interests in Navid Construction and was compelled to report to the authorities whenever required.

[5] In July 2004, the Applicant applied for and received a visa issued by Sweden for the Schengen States. He says that he left Iran illegally at this time and travelled to Turkey. In Turkey, he obtained a visa to travel to Israel, where he went to have surgery to treat injuries he suffered when he was tortured. On 2 September 2004, he returned to Iran; he says he had to hide his trip to Israel from the Iranian authorities because Iranian nationals are not permitted by their government to travel to Israel.

[6] The Applicant says that in October or November 2004 he was re-arrested and detained in prison until 2006. During this time, the authorities accused him of travelling to Israel, but he denied doing so. He says he was pressured to give his remaining property to the regime and was tortured. His properties were confiscated and, in 2006, he was released after posting a bond.

[7] In 2007, the Applicant's son in Canada sent him a letter inviting him to come here. The Applicant applied for a visitor's visa, which was granted on 4 July 2007. On 18 October 2007, the Netherlands also issued him a visa for travel there. He did not travel to Canada until 23 October 2007 and did not claim refugee status in Canada until 13 February 2008. On that day, he was interviewed by Citizenship and Immigration Canada (CIC). The notes of that interview form part of the Certified Tribunal Record (CTR). He filed his first PIF on 21 February 2008 (Original PIF) and an amended PIF on 7 June 2010 (Amended PIF).

[8] The RPD heard the Applicant's claim for protection on 2 February 2011. At the hearing, the Applicant, his Counsel, the RPD member, and an interpreter were present. At the conclusion of the hearing, the RPD asked Counsel how much time she required for submissions. She told the RPD that getting a letter from Israel would take up to three weeks, but translating it could take time. The RPD therefore set a deadline of 2 March 2011 for submissions.

[9] As of 2 March 2011, neither the Applicant nor his counsel had made submissions. The record does not disclose the actual date or time, but some time between 2 March 2011 and 4 March 2011, a case officer at the RPD called Applicant's counsel to remind her that submissions had not yet been made. At 7:00PM on Friday, 4 March 2011, counsel faxed the Applicant's additional submissions to the RPD. These submissions included:

a. Additional written arguments;

b. A report from Dr. A. Q. Rana – a neurologist at the Parkinson Clinic of East Toronto;

c. A letter from Dr. A. Kachooie, a Physical Medicine and Rehabilitation Consultant at Multidisciplinary Progressive Disability Management at a clinic in Scarborough, Ontario;

d. An excerpt from an article on *Foreign Relations of Israel*, printed from the website wikipedia.org;

e. A printout of a photograph of the last page of an Iranian passport printed from the website lanseybrothers.blogspot.com which says "The holder of this passport is not entitled to travel to occupied Palestine."

[10] The RPD made its Decision on 8 March 2011 and concluded that the Applicant was neither a Convention refugee under section 96 nor a person in need of protection under section 97 of the Act. The RPD gave the Applicant notice of its Decision on 25 March 2011.

DECISION UNDER REVIEW

Allegations

[11] The RPD first reviewed the bases for the Applicant's claim for protection. It noted that he said he had been imprisoned, tortured, and made to sign over his property to the state. The RPD noted his trip to Israel in 2004, and his departure from Iran to come to Canada. It also noted that he claimed to be an Orthodox Christian.

Identity

[12] The RPD found that the Applicant had established his identity by his Iranian passport, which also contained a Canadian Visitor's Visa.

Credibility

[13] Based on a number of inconsistencies in his evidence, the RPD found that the Applicant's story was not credible. It found that, although he claimed a long history of detention and abuse at the hands of the Iranian regime, he was unable to provide documentary evidence to support his claim. He had testified that all of his documents had been seized in a raid on his home. He had also testified at the hearing that his property was seized, but could not provide evidence of the seizure. The Applicant was also unable to produce any documents related to the legal proceedings he said had been taken against him, though he said he could request a letter from his lawyer confirming his story. This letter was not provided to the RPD.

[14] With respect to the Applicant's allegations of torture, the RPD found that he had not produced a medical report from either Canada or Iran documenting the effects of the torture. The RPD also noted that it had given counsel four weeks to submit documents and had not received any documents or a request for an extension of time before the deadline of 2 March 2011 set at the hearing. The RPD determined the claim on the basis of the evidence available. It found that the Applicant could not provide documentary evidence to support any of the events which he said happened to him in Iran. The RPD expected there to be some corroboration of his story, though it may not have been reasonable to expect everything it had asked for.

[15] Because there was no corroborating evidence, the RPD said it was open to it to find that none of the alleged torture and detention had happened to the Applicant. However, it also said that it was "not morally certain that such is the case, and [did] not wish to offend and disrespect the claimant by making a finding that may not be the right one." The RPD did not find that the Applicant had not been detained or tortured; it simply noted that "the claimant was unable to buttress his claim by provision of helpful and illustrative corroborative documentation."

[16] The RPD, however, made several other credibility findings. First, it found the Applicant's claim that he was arrested two months after travelling to Israel in 2004 was not credible. He had testified that his visa for entry and exit to Israel was provided on a separate piece of paper from his passport to avoid alerting the Iranian authorities to the trip. At the hearing, the RPD had asked the Applicant how the Iranian authorities knew he had travelled to Israel, to which he answered "they have a strong intelligence system and they are capable of anything and everything." The RPD found this explanation unsatisfactory and found that, if the Iranian authorities knew he had travelled to Israel, they would have arrested the Applicant immediately on his return, not two months later. However, the RPD then said that this conclusion was somewhat speculative and placed little weight on it.

[17] The RPD also found that the Applicant's claim that he feared the Iranian regime was not credible because he had returned to Iran in 2004 after his trip to Israel. At that time, the Applicant had a Schengen visa, which would have allowed him travel to any of the European Union countries. Rather than fleeing to Europe when he had a chance, the Applicant returned to Iran. The RPD noted that the Applicant had said at the hearing that he intended leave Iran permanently before he went to Israel in 2004.

[18] The Applicant explained at the hearing that he had returned to Iran in 2004 to be with his son who, at that time, was single and in his early twenties. The RPD acknowledged that there may be cultural differences between Canadian and Iranian families, but found that it was not plausible that the Applicant would pass up the opportunity to escape a country where he had been mistreated for over 25 years just to be with his adult son. Had he truly feared the Iranian authorities, the Applicant would not have returned there from Israel. From this re-availment, the RPD drew a negative inference as to the Applicant's credibility.

[19] The RPD drew a further negative inference as to the Applicant's credibility from his delay in leaving Iran once he was granted a visitor's visa to Canada in 2007. This visa was issued in July 2007, but the Applicant waited until October 2007, nearly three months later, to leave Iran. The RPD rejected the Applicant's explanation that it had taken three months to bribe an airport official to allow him to leave the country. The RPD noted that the Applicant had written in his Amended PIF that he had been smuggled to Turkey in 2004, and found that there was no evidence that he had investigated the same travel route in 2007. The RPD drew a negative inference on credibility from the delay, though it said that this was less significant than the inference it drew from the 2004 re-availment because the delay was "not discussed in great depth at the hearing."

[20] The RPD also drew a negative inference as to the Applicant's credibility from his delay in claiming protection once he reached Canada. The Applicant arrived in Canada on 23 October 2007 and claimed protection on 13 February 2008, a delay of nearly three and a half months. The Applicant testified that he wanted to be sponsored by his children, but it did not work out. He said he had thought about making a refugee claim while waiting for the sponsorship application but, the RPD noted, he had not actually done so. The RPD rejected the Applicants' explanation for this

delay, saying that claimants are expected to make their claims on arrival or soon after they arrive in Canada. The RPD said the Applicant's first thought was to be sponsored, not to make a refugee claim, which was inconsistent with a fear of return to Iran. This gave rise to a negative inference.

[21] The RPD drew a further negative inference as to the Applicant's credibility from inconsistencies between the Original PIF, the notes of the interview conducted by CIC when the Applicant made his claim on 13 February 2010 (Interview Notes), and the Amended PIF. In the Amended PIF, the Applicant relates his story of travel to Israel for medical treatment and his arrest two months after he returned to Iran. This story does not appear in either the Interview Notes or the Original PIF. When confronted at the hearing with this omission, the Applicant said that he did not put it in the Original PIF because he was afraid that agents of the Iranian authorities would find out that he had travelled to Israel. Only when he found out that PIFs are confidential did he include this information in his narrative.

[22] The RPD rejected the Applicant's explanation for the omission. It noted that, though he said he was afraid the Iranian authorities would find out he had travelled to Israel from his PIF, he had already been arrested and accused of doing that very thing in 2004. The RPD found that there was no real danger in providing the information because the Iranian authorities already knew about the trip and drew a negative inference as to the Applicant's credibility from its finding that he had embellished his evidence.

[23] The RPD found there were other inconsistencies in the Applicant's evidence. In form IMM-5474, completed when he initially made his claim for protection, the Applicant wrote that he "was hidden for 24 years." At the hearing, he said that he had always lived at the same house in Iran. He said that what he meant by the statement that he was hidden for 24 years was that he was living a

"half-life" because the authorities had a lien on his house. The RPD said the statement that he was hiding for 24 years was untrue or a gross generalization, from which it drew a negative inference as to credibility.

[24] In addition, the RPD noted that the Interview Notes show that he said he had been unemployed since 1996. However, in his Amended PIF, he wrote that he owned a construction company from 1975 to 2005. When asked to explain this discrepancy, the Applicant said that he did not work with the government, did referral work, and did not have a steady flow of work. The RPD found that this did not explain the inconsistency and drew a further negative inference as to his credibility.

[25] The RPD also drew a negative inference as to credibility from inconsistencies in the dates of the Applicant's incarceration disclosed by his Original and Amended PIFs. The Applicant said that his daughter helped him fill out the Original PIF and that she was not aware of the exact years. The RPD did not accept this explanation; it said that the Applicant had allowed false information into his PIF, while at the same time he feared for his life in Iran. This supported a negative inference as to his credibility.

[26] Based on all the above inferences, the RPD found that the Applicant's evidence as a whole was not credible.

Well-Founded Fear

[27] The RPD said that the Applicant feared punishment for leaving Iran illegally and for not attending sessions of the Revolutionary Court he was required to. The Applicant did not submit any

evidence to show he was required to attend Court. The RPD found that he had not mentioned before the hearing that he had to attend court. The RPD did not accept this testimony, said that it was an embellishment, and drew a further negative inference as to his credibility.

[28] The RPD found that the Applicant would not be in danger for having left Iran illegally. He had added a new allegation at the hearing that he had to report to the Prosecutor at the Revolutionary Court before leaving Iran, which the RPD found was an embellishment. He had also said that, though he bribed an official to allow him to leave Iran and that it would appear he had left legally, in Iran people paying bribes were punished, but people accepting bribes were not.

[29] The RPD also noted the Applicant's allegation that he would not be able to practise Orthodox Christianity in Iran and would be persecuted for practising it. The Applicant could not produce a document attesting to his alleged conversion from Islam in 1980 or a document confirming attendance at an Orthodox church in Iran. He said he could provide a letter confirming church attendance in Canada, but the RPD said that none had been provided before it made its Decision. No such letter appears in the additional submissions made after the hearing.

[30] The RPD further noted that the Applicant said that the only thing he feared in Iran was punishment for having left the country illegally; he then added the allegation that he would be punished for his religious beliefs. The RPD found that his explanation for the late addition was evasive and non-responsive. The Applicant had to be reminded by the RPD at the hearing that he had alleged religious persecution in his PIF, so the RPD drew a negative inference as to his credibility.

[31] The RPD found that the Applicant was not a convert to Christianity from Islam, so there was not a serious possibility that he would be persecuted on the basis of his religion if he were returned to Iran.

Conclusion

[32] The RPD said that it had considered all the submissions and evidence and concluded that the Applicant did not have a well-founded fear of persecution. It also concluded that the Applicant did not face a risk to his life or of cruel and unusual treatment or punishment. The RPD therefore found that the Applicant was neither a Convention refugee under section 96 nor a person in need of protection under section 97.

STATUTORY PROVISIONS

[33] The following provisions of the Act are applicable in this proceeding:

3. (2) The objectives of this Act with respect to refugees are	**3.** (2) S'agissant des réfugiés, la présente loi a pour objet :
…	…
(*e*) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;	*e*) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;
…	**…**
Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a	**96.** A qualité de réfugié au sens de la Convention — le

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

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; […]
…

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;
…

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

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,	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.

[34] The following provisions of the *Refugee Protection Division Rules* SOR/2002-228 (Rules) are also applicable:

37. (1) A party who wants to provide a document as evidence after a hearing must make an application to the Division.	**37.** (1) Pour transmettre, après l'audience, un document à la Section pour qu'elle l'admette en preuve, la partie en fait la demande à la Section
(2) The party must attach a copy of the document to the application. The application must be made under rule 44, but the party is not required to give evidence in an affidavit or statutory declaration.	(2) La partie fait sa demande selon la règle 44 et y joint une copie du document, mais elle n'a pas à y joindre d'affidavit ou de déclaration solennelle.
(3) In deciding the application, the Division must consider any relevant factors, including:	(3) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment:
(*a*) the document's relevance and probative value;	*a*) la pertinence et la valeur probante du document;

(*b*) any new evidence it brings to the proceedings; and

(*c*) whether the party, with reasonable effort, could have provided the document as required by rule 29.

…

44. (1) Unless these Rules provide otherwise, an application must be made in writing and without delay. The Division may allow a party to make an application orally at a proceeding if the party with reasonable effort could not have made a written application before the proceeding.

(2) Unless these Rules provide otherwise, in a written application the party must

(*a*) state what decision the party wants the Division to make;

(*b*) give reasons why the Division should make that decision; and

(*c*) if there is another party and the views of that party are known, state whether the other party agrees to the application.

b) toute preuve nouvelle qu'il apporte;

c) si la partie aurait pu, en faisant des efforts raisonnables, le transmettre selon la règle 29.

…

44. (1) Sauf indication contraire des présentes règles, toute demande est faite sans délai par écrit. La Section peut permettre que la demande soit faite oralement pendant une procédure si la partie n'aurait pu, malgré des efforts raisonnables, le faire par écrit avant la procédure.

(2) Dans sa demande écrite, sauf indication contraire des présentes règles, la partie :

a) énonce la décision recherchée;

b) énonce les raisons pour lesquelles la Section devrait rendre cette décision;

c) indique si l'autre partie, le cas échéant, consent à la demande, dans le cas où elle connaît l'opinion de cette autre partie.

ISSUES

[35] The Applicant raises the following issues:

a. Whether the RPD breached his right to procedural fairness by making its Decision without considering post-hearing submissions;

b. Whether the RPD's credibility determination was reasonable; and

c. Whether the RPD failed to consider section 97 risk.

STANDARD OF REVIEW

[36] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a 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.

[37] In *Nagulesan v Canada (Minister of Citizenship and Immigration)* 2004 FC 1382, Justice Johanne Gauthier held at paragraph 17 that the failure to consider submissions made after an RPD hearing was complete was a breach of procedural fairness. Justice Paul Rouleau made a similar finding in *Caceres v Canada (Minister of Citizenship and Immigration)* 2004 FC 843, at paragraph 21. As questions of procedural fairness are evaluated on the standard of correctness, the standard of review on the first issue is correctness. As the Supreme Court of Canada held in *Dunsmuir* (above, at paragraph 50).

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[38] With respect to the third issue, I note that in *Bouaouni v Canada (Minister of Citizenship and Immigration)* 2003 FC 1211 Justice Edmond Blanchard wrote that "whether the Board properly considered both [section 96 and 97] claims is a matter to be determined in the circumstances of each case." Justice Carolyn Layden-Stevenson held in *Brovina v Canada (Minister of Citizenship and Immigration)* 2004 FC 635 at paragraph 17 that a section 97 analysis need not be conducted in every case; only where there was evidence before the RPD to support that analysis must it be conducted. With respect to the third issue, then, the question before me is whether there was evidence before the RPD to support a section 97 analysis. If I conclude there was, I must then determine whether the RPD actually did conduct a section 97 analysis. Both of these inquiries call for me to "undertake [my] own analysis of the question" (*Dunsmuir*, above, at paragraph 50), which is the very definition of the correctness standard. The standard of review on the third issue is therefore correctness.

[39] In *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Further, in *Hou v Canada (Minister of Citizenship and Immigration)* 2005 FC 1586, Justice John O'Keefe held at paragraph 23 that the standard of review on a finding of credibility was patent unreasonableness. The standard

of review on the second issue is reasonableness. See also *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA).

[40] 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." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only 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

The RPD Breached the Right to Procedural Fairness

[41] The Applicant faxed his additional submissions on 4 March 2011, before the RPD rendered its Decision in his case. He says that when the RPD failed to consider these submissions, it breached his right to procedural fairness because they were received before the RPD made its Decision. Though the RPD had set a deadline for submissions of 2 March 2011 and his submissions were received after this deadline passed, the RPD had indicated that it would be open to receiving late submissions when the case officer called counsel to tell her that it had not yet received submissions.

[42] Some cases suggest that, where submissions are unsolicited, there is a duty on claimants to follow up with the RPD to ensure they have been received (see *Nagulesan*, above). The Applicant

says that his submissions were not unsolicited because the RPD had referred at the hearing to the submissions to be provided. Further, the submissions the Applicant provided were material to the issue of credibility, as they include medical evidence which corroborates his allegations of torture.

The RPD's Credibility Finding was Unreasonable

[43] The Applicant says that the RPD found it was improbable that he would return to face persecution in order to be with his son. In *Samani v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1178, Justice James Hugessen wrote at paragraph 4 that "It is never particularly persuasive to say that an action is implausible simple because it may be dangerous for a politically committed person." It was therefore not open to the RPD to reject evidence of the Applicant's actions simply because it thought the action was risky. The Applicant says that the bond between parent and child is as strong as that of a political opinion and that it is unreasonable to find him not credible because he returned to danger in order to be with his son.

The Respondent

[44] The Respondent argues that the Decision was reasonable because it was based on all the evidence before the RPD. He also argues that there was no breach of procedural fairness because the Applicant failed to follow up with the RPD to ensure that his late submissions had been received.

The RPD's Credibility Finding was Reasonable

[45] The Respondent says that the credibility findings the RPD made were based on re-availment, inconsistencies, contradictions, and delay in claiming, all of which are accepted bases for making adverse inferences on credibility. These findings were made in clear and unmistakeable

terms. Since negative credibility findings are permissible so long as the RPD gives reasons in clear and unmistakeable terms, the Decision should stand.

There was no Breach of Procedural Fairness

[46] The Respondent also says that there was no breach of procedural fairness in this case. The correctness standard is not applicable to the alleged breach of procedural fairness in this case because the Applicant has twice failed to carry out his obligations: he failed to meet the deadline imposed by the RPD and he failed to follow up to ensure his submissions had been received. The Applicant's late submissions are analogous to unsolicited submissions because they were received by the RPD after the deadline set at the hearing. In order to trigger the RPD's obligation to consider the submissions, he therefore had an obligation to follow up with the RPD to ensure the submissions had been received. See *Avci v Canada (Minister of Citizenship and Immigration)* 2002 FCT 1274, *Vairavanathan v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1025, *Ahmad v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1740, and *Arulanandam v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 988.

[47] Further, because the submissions were faxed by the Applicant's counsel after business hours on a Friday, the RPD did not actually receive them until Monday morning. The Respondent says that the Applicant cannot allege a breach of the duty of fairness after missing a deadline and making no effort to ensure that the late submissions found their way to the decision-maker. The Applicant did not mark the submissions urgent, nor did he indicate on the fax cover-page that the RPD was expecting these submissions. There is no evidence that the Applicant ever called to ensure that the RPD member making the Decision received his submissions.

[48] Even if the RPD did breach procedural fairness by not considering the late submissions, the Respondent says that the Court should disregard the breach because it had no material effect on the Decision. He relies on *Yassine v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 949 (FCA). Though the medical documents the Applicant submitted refer to torture, the Respondent notes that the RPD expressly declined to find that he had or had not been tortured. Further, only the Applicant's written submissions address re-availment and delay in claiming, which were determinative of the RPD's finding on credibility. Though the written submissions address these issues, they could not make a difference to the RPD's Decision because they only repeat the explanations the Applicant gave at the hearing, which were rejected by the RPD. The Applicant's submissions also do not corroborate his asserted conversion to Orthodox Christianity, which was one of the main issues in the Decision.

The Applicant's Reply

[49] The Applicant says that his submissions, though they were late, are not analogous to unsolicited submissions. He notes that a case officer called his counsel to remind her that submissions were still outstanding. Since these submissions are similar to expected submissions, proof of their submission and receipt is sufficient to show that the RPD had an obligation to consider them. He says that he has proven his submissions were received through the affidavit of counsel who represented him at the hearing.

[50] In *Avci v Canada (Minister of Citizenship and Immigration)* 2003 FCA 359, the Federal Court of Appeal wrote at paragraphs 7 and 8 that

> Counsel for the Minister conceded that, if she did not persuade us, as she has not, that the panel was functus on November 7, 2001 when it dictated its reasons, the Board's decision must be set aside.

> She agreed with counsel for Mr. Avci that, if the panel were not functus on November 7, the Board breached the duty of fairness when it failed to consider, or to refer in its reasons to, material submitted to the Board on behalf of Mr. Avci on November 20, 2001, two days before it signed its written reasons for decision. Counsel for the Minister conceded that this material was sufficiently important to issues in dispute in the refugee determination proceeding that the failure of the panel to consider it or to refer to it in its written reasons warranted quashing the Board's decision to reject Mr. Avci's refugee claim. We do not disagree with this concession.
>
> For these reasons, the application for judicial review will be allowed, the decision of the Applications Judge reversed, the decision of the Board set aside and the matter remitted to it for redetermination by a differently constituted panel.

[51] The Applicant says the Respondent has not addressed this authority in his argument. He also says that the submissions he made on 4 March 2011 were stamped "Received" on 7 March 2011, the day before the RPD made its Decision. It was a breach of procedural fairness for the RPD not to consider these submissions since they were received before the Decision was made. His case is identical to *Avci*, above, so it should be decided the same way.

[52] The Respondent has argued that this Court should not quash the Decision even though there may have been a breach of procedural fairness. The Applicant says that, unless his written submissions added nothing to the RPD's Decision, the Decision should be returned for reconsideration. He relies on *Cardinal v Kent Institution*, [1985] 2 SCR 643, and *Harelkin v University of Regina*, [1979] SCJ No 59 for this proposition. He says that, contrary to the Respondent's assertion that the submissions were not material, they address virtually every point raised by the RPD.

The RPD Failed to Analyze Section 97 Risk

[53] The Applicant says that, given that the Respondent has acknowledged the medical evidence was relevant to the question of torture, this raises the issue of whether the RPD appropriately analyzed the risk he faced under section 97. He says that the RPD has failed to analyze section 97 risk so that the Decision must be returned for reconsideration.

The Respondent's Further Memorandum

Illegal Exit and Religious Identity

[54] The Respondent notes that the RPD considered the bases on which the Applicant claimed he would be punished or persecuted in Iran: his illegal exit and re-entry to the country in 2004 and his conversion to Orthodox Christianity. The RPD's findings he did not face punishment or persecution on either of these grounds were reasonable as they were based on the evidence before the RPD, so the Decision should stand.

ANALYSIS

Procedural Fairness

[55] The record shows that a deadline of 2 March 2011 was set for post-hearing documentation and submissions. The Applicant failed to meet this deadline, and did not contact the RPD to explain. There is still no explanation as to why the deadline was not met.

[56] The RPD indicates in the Decision that it called Applicant's counsel after 2 March 2011 "to inquire if there were to be any submissions, but no reply was received." Before the Decision was complete, the RPD went out of its way to find out what the problem was, but received no response.

[57] An affidavit by Ms. Mary Tatham, Applicant's previous counsel, says that she forwarded the post-hearing documents by fax. The cover-page she sent reads

> RE: TA8-02681
>
> Disclosure & submissions

[58] There is no evidence that Ms. Tatham submitted materials in response to the RPD's inquiry, or that she contacted the RPD to ensure that the materials were received and placed before the RPD before it made its Decision. The fact that Ms. Tatham does not refer to these important matters in her affidavit, leads me to draw a negative inference that she did neither of these things.

[59] The stamp on the fax cover page shows that the materials were stamped "Received" in Toronto on 7 March 2011. The date of the Decision is 8 March 2011. By pure chance, the RPD received the materials before the Decision was rendered.

[60] It is clear that the materials were faxed at 7 PM on Friday, 4 March 2011, and were stamped on the very next business day of Monday, 7 March 2011 at 8:40 AM. There was no malingering here by the RPD. It seems to me that the RPD followed a prudent and courteous approach to this matter and the Applicant did not. The RPD gave the Applicant additional post-hearing time to file documentation and submissions and, when they were not received by the 2 March 2011 deadline, called Applicant's counsel to find out what the problem was and, receiving no response, proceeded with the Decision.

[61] The Applicant, on the other hand, missed the 2 March 2011 deadline, failed to contact the RPD to explain why, and then submitted late materials without explanation and without ensuring that the RPD was alerted to those late materials.

[62] The Applicant now says that he has been denied procedural fairness in this matter because the RPD did not consider his post-hearing submissions or review his post-hearing documents before rendering its Decision. The Decision itself would seem to indicate that the RPD was completely unaware that the Applicant had submitted post-hearing materials when the Decision was made and, given the sequence of events outlined above, this is hardly surprising.

[63] Here we have a situation where the RPD gave the Applicant the additional time he requested for post-hearing submissions including evidence, attempted to contact his counsel when the deadline passed and no materials were received, and then, quite reasonably, proceeded to make the Decision on the evidence before it.

[64] The RPD did everything it could to accommodate the Applicant but he alleges procedural unfairness in the face of his own lack of diligence, prudence and courtesy. The post-hearing materials did not reach the RPD before the Decision was made, but the evidence tells me that this was totally the fault of the Applicant. The post-hearing submissions were, in effect, unsolicited and sent after the deadline and an unsuccessful attempt by the RPD to contact Applicant's counsel. The late submissions were not marked urgent and there was no covering letter explaining that they should be put before the RPD member immediately. The fax cover-page does not even identify the RPD member who was dealing with the claim. There is no evidence of any follow-up by Applicant's counsel. There is nothing to suggest that the RPD acted unreasonably or unfairly in this

process. It was by pure chance that the materials were marked received on 7 March 2011 before the Decision was rendered on 8 March 2011.

[65] The question for the Court is whether this pure chance should allow the Applicant to claim procedural unfairness in the face of a decision by the RPD which gave the Applicant every opportunity to submit his post-hearing submissions and documents and, even after the deadline passed, attempted to find out what the problem was and whether he intended to make submissions. Intuition would suggest that, on the facts of this case, the Applicant was given a fair and reasonable opportunity to make his case. The problems that arose were of his own making, and he has still not explained to the RPD or the Court why he did not meet the deadline or why he did not contact the RPD to explain the problem and alert it to the fact that his submissions would be late. He did not do the fair or prudent thing and now he says that he has been treated unfairly. I think most people would think this is an unreasonable claim to make, but we are governed by the jurisprudence.

[66] Justice Gauthier has reviewed the jurisprudence applicable to situations where documents are submitted late and are not reviewed by the RPD before a decision is rendered. In *Nagulesan*, above, she provided the following helpful guidance on the law at paragraphs 6-17:

> The respondent states that there is no evidence that the decision maker ever saw this material. He argues that the applicant had a duty to obtain confirmation that the presiding member had in fact received these documents prior to issuing his decision. Having failed to do so, he cannot allege a breach of the duty of fairness. To support his position, the respondent refers to four decisions of this Court namely, *Avci v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 1274, [2002] F.C.J. No. 1748, *Vairavanathan v. Canada (Minister of Citizenship and Immigration)* (1996), 34 Imm. L.R. (2d), 307, [1996] F.C.J. No. 1025, *Ahmad v Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1740 and *Arulanandam v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 988.

The Federal Court of Appeal reversed the decision of this Court in *Avci*, [2003] F.C.J. No. 1424, even though it found that the Court was right in concluding that the RPD was not *functus officio* when the new evidence was filed. In effect, despite the Court's initial findings in his favour on these issues, the Minister had conceded that if the RPD was not *functus officio*, it had breached its duty of fairness when it failed to consider or to refer in its reasons to the material submitted by Mr. Avci which was sufficiently important to the issues in dispute to warrant such consideration. The Court of Appeal indicates that it does not disagree with this concession, and on that basis it set aside the decision of the RPD.

In *Vairavanathan* above, the decision under review was set aside because the decision maker had failed to consider evidence submitted by the applicant well before the decision was rendered. The respondent relies particularly on the fact that the learned judge noted in her decision that when a party submits additional material, which the decision maker had not requested, after the hearing, there is a duty on counsel to obtain a confirmation from the relevant panel members that their additional submissions have actually been received and that she would expect counsel to obtain such a confirmation in the future.

In Ahmad above, there was evidence that additional submissions and material had been faxed to the decision maker but there was no evidence that it had in fact been received by it. The Court concludes that the post-hearing document never found its way to the decision maker and says that "at a minimum, counsel ought to have ensured that the fax, for which he received no acknowledgement from the Board, had in fact been received."

In *Arulanandam* above, Gibson J. had to deal with another situation where the alleged additional submissions did not form part of the certified record and there was no evidence to prove that they were actually received by the respondent. In the circumstances, the Court found that it had to presume that they were not received and that thus no error was made in failing to consider those submissions.

In the present case, the applicant did have confirmation that the RPD received these documents which were hand delivered. I cannot agree with the respondent that having done this, the applicant also had the duty to obtain a further confirmation that those documents properly filed with the RPD were indeed remitted to the member who heard his claim. The case was properly identified and was properly filed with the RPD. It may well be

advisable for counsel to follow up to ensure that there are no undue administrative delays in forwarding the documentation but a failure to do so cannot materially affect the applicant's rights.

Although the parties did not address this point explicitly, implicit in the discussion of the argument presented by the applicant is the existence of a continuing obligation to consider evidence submitted by the applicant until the RPD is *functus officio*.

This obligation was recently considered by Rouleau J. In *Vinda v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 797 who said:

> para. 19 In Nadarajah, the Court of Appeal held that the Board is under a continuing obligation to consider evidence proffered by the applicant until the Board is functus officio. The respondent challenges that proposition saying that the law has changed since Tambwe-Lubemba[2]. As I see it, the passage relied upon by the respondent is taken out of context. The applicants in Tambwe-Lubemba submitted that the panel hearing their claim should have considered information received by the Refugee Division's document centre after the hearing but before the decision had been rendered. What the Court held was that the panel was under no obligation to consider information that the members had not seen and that was not tendered by the claimants.

The learned judge then concluded that in neglecting to acknowledge or comment on the additional evidence submitted by the applicant the RPD failed in its duty and acted unfairly.

When it adopted its new Rules (Can. Reg. 2002-228), the RPD dealt with this issue specifically at Rule 37 which sets out some new parameters. The Rule reads as follows:

> 37(1) Additional documents after the hearing has ended - A party who wants to provide a document as evidence after a hearing must make an application to the Division.
>
> (2) Written application - The party must attach a copy of the document to the application. The application must be made under rule 44, but the

> party is not required to give evidence in an affidavit or statutory declaration.
>
> (3) Factors - In deciding the application, the Division must consider any relevant factors, including:
>
> (a) the document's relevance and probative value;
>
> (b) any new evidence it brings to the proceedings; and
>
> (c) whether the party, with reasonable effort, could have provided the document as required by rule 29.
>
> * * *
>
> 37(1) Documents supplémentaires après l'audience - Pour transmettre après l'audience, un document à la Section pour qu'elle l'admette en preuve, la partie en fait la demande à la Section.
>
> (2) Forme de la demande - La partie fait sa demande selon la règle 44 et y joint une copie du document, mais elle n'a pas à y joindre d'affidavit ou de déclaration solennelle.
>
> (3) Éléments à considérer - Pour statuer sur la demande, la Section prend en considération tout élément pertinent et examine notamment :
>
> a) la pertinence et la valeur probante du document;
>
> b) toute preuve nouvelle qu'il apporte;
>
> c) si la partie aurait pu, en faisant des efforts raisonnables, le transmettre selon la règle 29.

Pursuant to Rule 44, an application must normally be made in writing and it must indicate the decision the party wants the RPD to make and give the reason why it should make that decision. If there is another party (this was not the case) and the views of the party are known, it should also mention whether the other party agrees to the application.

In the particular circumstances of this case, I am satisfied that the applicant's letter of August 5th satisfies the requirement of Rule 37. This means that the RPD had to deal with the applicant's request. It could simply mention in its decision that, having reviewed the letter, it decided not to consider the evidence because of factors listed in Rule 37(3) or it could accept to consider the new evidence and deal with it in its decision. The RPD simply failed to deal with this matter. A breach of procedural fairness can

> only be overlooked if there is no doubt that it had no material effect on the decision. This is not such a case and I must set the decision aside.

[67] The Applicant says that the present case is on all fours with paragraph 11 of Justice Gauthier's decision in *Nagulesan*. He says receipt of his documents was confirmed on 7 March 2011, so that he had no further duty to "obtain a further confirmation that those documents properly filed with the RPD were indeed remitted to the member who heard his claim." He says that a failure to follow-up cannot affect his rights, which include "a continuing obligation to consider evidence submitted by the Applicant until the RPD is *functus officio*."

[68] This argument simply does not accord with the facts. The Applicant had no confirmation that his submissions were received, so he cannot be excused from his obligation to ensure that they were received by the RPD (see *Nagulesan* at paragraph 11).

[69] It seems to me, however, that the matter is not quite as clear as the Applicant says it is. Justice Gauthier's discussion and conclusion on the jurisprudence includes a reference to the new Rules 37 and 44, and she concludes that, on the facts of the case before her, she was "satisfied that the applicant's letter of August 5th satisfies the requirement of Rule 37. This means that the RPD had to deal with the applicant's request." In other words, Justice Gauthier's decision in *Nagulesan* is premised on the finding that the applicant in that case satisfied Rules 37 and 44 on the facts.

[70] The facts before me are very different. In the present case, the RPD authorized the Applicant to submit post-hearing materials up to the deadline of 2 March 2011. It did not authorize him to submit new materials beyond that date and, when he did so, the Applicant did not, on the facts of this case, comply with Rule 37. An attempted courtesy call to find out why the post-hearing

materials have not been submitted by the deadline is not, in my view, an indication that the RPD in this case was willing to accept the materials after the deadline and there is no evidence that Applicant's counsel even received the call or understood that the materials and submissions would still be accepted.

[71] With regard to the submissions he made after the hearing, the Applicant distinguishes documents he submitted as argument and documents submitted as evidence. He concedes that Rule 37 applies to the documents that he submitted as evidence. In my view, given that the RPD did not authorize the Applicant to submit materials after the 2 March 2011 deadline, the Applicant runs afoul of section 37 with respect to the evidence he submitted after the hearing. To oblige the RPD to consider the additional evidence he submitted, the Applicant had to make a request under section 37, which he did not do.

[72] I do not agree with the Applicant that the state of the law is that late or unsolicited materials must always be considered by the RPD if they are received before reasons are signed, notwithstanding non-compliance with the Rules. *Avci*, above, stands for the proposition that the RPD is not *functus officio* until its reasons are finalized, either by oral delivery or by signature on written reasons. However, *Avci* was decided under the old Act and without the benefit of sections 37 and 44 of the Regulations. I do not see how a case decided under the *Immigration Act*, RSC 1985, c I-2, can establish that compliance with the Regulations established under the Act need not be followed. In addition, as Justice Gauthier pointed out in *Naguleson*, above, the Minister in *Avci*, above, had conceded that if the RPD was not *functus officio* it had breached its duty of fairness when it failed to consider or to refer in its reasons to the material submitted by Mr. Avci. The Court of Appeal indicated that it did not disagree with this conclusion, and on the basis it set aside the

decision of the RPD. In the present case, there is no such concession by the Minister. On the facts of this case, the Minister says that the Applicant cannot unilaterally extend a deadline and that, given the actual sequence of events, no unfairness occurred because the Applicant was granted a full opportunity to submit any evidence or argument that he thought would assist him.

[73] As the Applicant points out, section 37 of the Rules clearly applies to documents submitted after the hearing "as evidence." Unfortunately, there is a lacuna in the Rules with respect to additional submissions made after the hearing as argument. There is no rule that says argument can or cannot be made after the hearing. Also, we have the RPD's well established practice of accepting post-hearing submissions. Procedural fairness includes "an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker that a decision-maker consider submissions made" (*Baker* at paragraph 22). It seems to me that this principle must extend to materials, including counsel's submissions, submitted in the course of a refugee hearing.

[74] The Respondent refers to section 29 of the Rules and says that this section requires the RPD to consider whether the submissions could have been submitted in compliance with section 29 with reasonable effort. Looking at the wording of section 29, however, I do not think it can apply in this situation. That section reads as follows:

29. (1) If a party wants to use a document at a hearing, the party must provide one copy to any other party and two copies to the Division, unless these Rules require a different number of copies. Disclosure of documents by the Division	**29.** (1) Pour utiliser un document à l'audience, la partie en transmet une copie à l'autre partie, le cas échéant, et deux copies à la Section, sauf si les présentes règles exigent un nombre différent de copies. Communication de documents par la Section

(2) If the Division wants to use a document at a hearing, the Division must provide a copy to each party. Proof that document was provided	(2) Pour utiliser un document à l'audience, la Section en transmet une copie aux parties. Preuve de transmission
(3) Together with the copies provided to the Division, the party must provide a written statement of how and when a copy was provided to any other party.	(3) En même temps qu'elle transmet les copies à la Section, la partie lui transmet également une déclaration écrite indiquant à quel moment et de quelle façon elle en a transmis une copie à l'autre partie, le cas échéant.

[75] It seems to me that section 29 clearly refers to a document used at a hearing; given that section 27 refers to a document in a proceeding, there must be a distinction between documents generally and documents used at the hearing. In this case, the Applicant's additional submissions – as argument – were not intended to be used at the hearing. Though they were documents used in the proceeding, they were clearly submitted and intended to be used by the RPD after the hearing. In my view, then, section 29 of the Rules does not apply in this case.

[76] I think it is also clear that the RPD is justified in setting a deadline for submissions with actual consequences. One of the purposes of the Act is

> to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

[77] Further, the Federal Court of Appeal held in *Tahmourpour v Canada (Solicitor General)* 2005 FCA 113 at paragraph 39:

> A reviewing court owes no deference in determining the fairness of an administrative agency's process: *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29, at para. 100. Nonetheless, the court will not second guess procedural choices made in the exercise of the agency's discretion which comply with the duty of fairness.

[78] In addition, the Federal Court of Appeal held at paragraph 7 of *Uniboard Surfaces Inc. v Kronotex Fussboden GmbH and Co.* 2006 FCA 398 that

> The duty of procedural fairness is better described by its objective -- which is essentially to ensure that a party is given a meaningful opportunity in a given context to present its case fully and fairly -- than by the means through which the objective is to be achieved for the simple reason that those means will depend on an appreciation of the context of the particular statute and the rights affected (see *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 22). There is no rigid test or formula. There is no list of items to be checked out. The duty, to use the words of a former era, is to ensure fair play in action.

[79] I do not think that setting a deadline for submissions in this case deprived the Applicant of a full opportunity to present his case. The RPD was diligent in processing his case and followed up with counsel when it appeared as though no submissions were going to be made. Though strong procedural protections are required in refugee cases, this does not mean that the RPD has to accommodate unilateral decisions made by applicants to disregard the rules and deadlines.

[80] An applicant has the right to make submissions until a decision is made, but where a reasonable deadline is set for post-hearing submissions an applicant cannot, in my view, disregard the deadline for no apparent reason and then make submissions at a time and in a way that suits his or her own convenience. There was nothing to prevent the Applicant and his counsel in the present case from contacting the RPD to explain the delay and to request a brief extension. The fact that the

Applicant chose not to do this means that he must have assumed the risk that his late submissions would not be considered by the RPD for one reason or another. He now seeks to unilaterally award himself the right to extend the deadline without consent or warning. He took the chance that his post-hearing submissions would not be considered by the RPD but says that because they were simply stamped "Received" before the Decision was rendered makes all the difference. Even if the RPD could not reasonably have been made aware of that receipt, he says the RPD had an obligation to consider his late submissions and that its failure to do so deprived him of procedural fairness.

[81] In the absence of a specific rule that either forbids the submission of argument outside of a post-hearing deadline or which permits any submission irrespective of whether an applicant acts reasonably or not, I think I have to ask myself whether, on the facts of this case, this Applicant was denied a full and fair opportunity to make his case. I think he was not denied that opportunity because:

a. He was given a full and fair hearing;

b. He was granted an additional opportunity to submit further post-hearing evidence and argument by a reasonable deadline;

c. Having missed the deadline for no reason that he cares to explain, he had every opportunity to contact the RPD to discuss an extension and/or alert the panel to his late submissions and he failed to do either for reasons he does not care to explain.

[82] On the facts of this case, the Applicant is saying that procedural fairness requires that he be allowed to make post-hearing submissions at a time of his own choosing and without any need to alert the RPD that he has decided to disregard the deadline and/or that he has made submissions outside the deadline.

[83] I do not see that any of the cases cited by the Applicant, including *Avci*, provide authority for this position.

[84] I also do not see how the RPD's courtesy call can be taken as authorizing additional submissions. The RPD was trying to find out why submissions had not been made by the deadline. This does not mean that the RPD was authorizing submissions beyond the deadline.

Credibility

[85] The Applicant says that the RPD made an unreasonable plausibility finding in concluding that it would be improbable that he would return to Iran just to be with his adult son. He invokes the words of Justice Hugessen in *Samani*, above, at paragraph 4, by way of analogy:

> It is never particularly persuasive to say that an action is implausible simple because it might be dangerous for a politically committed person.…

[86] The Applicant says that the bond between parent and child is not any less strong than a political opinion, and is such that to find that parents will not face danger to be re-united with their children is an unreasonable basis to reject credibility.

[87] I note that the RPD's findings on this matter are an important part of its general negative credibility findings. In addition to the Applicant's re-availment to Iran, the RPD relies upon the delay in departure, and his delay in claiming once he arrived in Canada. The cumulative impact of these factors is what led the RPD to decide against the Applicant. For example, in regard to the delay in departure, the RPD says that "given the other concerns in regard to credibility, the Panel

does not accept the claimant's explanation." The implausibility finding regarding the son is therefore important in its own right and it also feeds the other negative credibility findings.

[88] The Applicant had explained that his youngest son was alone in Iran and that it is very difficult for single men to live alone in that country because of how the culture views and treats them. This changed when his son married and allowed the Applicant to make his escape to Canada. In my view, there is nothing inherently implausible in what the Applicant did in returning to Iran to support his single son even in the face of danger. When it comes to what parents will face in order to support their children, matters are very subjective and personal.

[89] I would not interfere with this implausibility finding if it was not such a significant part of the overall credibility determination. Given its pivotal role, I think the RPD should have explored the issue further and provided more justification than it has for its conclusions on point. Its assessment has to be objective and reasonable but a decision to face danger in order to protect an isolated child is, in my view, plausible depending upon the personality and beliefs of the person involved. I think it would have been easy enough for the RPD to elicit from the Applicant the details of what the son was facing in Iran in order to determine whether it was reasonable for the Applicant to place himself in danger in order to support and/or protect his child. The CTR shows that the Applicant specifically asked the RPD not to look at this issue from the perspective of Canadian society, but "to look at things through Iranian. A 20 year old might be considered an adult in Canada, but an Iran even older age, children rely on their parents."

[90] I see no indication that the RPD addressed this cultural issue in a reasonable way. The conduct of an applicant cannot be reasonably assessed by applying Canadian norms and cultural assumptions to foreign cultures. (see *Valtchev v Canada (Minister of Citizenship and Immigration)*

2001 FCT 776, at paragraph 7, *Dong v Canada (Minister of Citizenship and Immigration)* 2006 FC 314 at paragraph 3, and *Yin v Canada (Minister of Citizenship and Immigration)* 2010 FC 544, at paragraph 44).

[91] Counsel agree there is no issue for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2554-11
STYLE OF CAUSE:	**PARVIZ AHANIN**
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