



Date: 20120223

Docket: IMM-4232-11

Citation: 2012 FC 246

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 23, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MILAD MOHAJEER BASTAMIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review submitted in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act), of a decision dated June 1, 2011, by the Refugee Protection Division of the Immigration and Refugee Board (panel) that the applicant was not a refugee or a person in need of protection under sections 96 and 97 of the Act.

I. Background

A. *Factual background*

[2] Milad Mohajeer Bastamie (applicant), an Iranian citizen, is twenty-five (25) years old. The applicant fears persecution should he return to Iran because of his political opinion and activities in Iran and in Canada against the regime of the Islamic Republic of Iran.

[3] In 2005, during the presidential election campaign in Iran, the applicant was a member of an activist group called Freedom for the Children. He distributed pamphlets to support the reformist candidate, Mostafa Moeen.

[4] On June 14, 2005, the applicant and his friend Navid allege that they were stabbed while distributing the said pamphlets. The applicant maintains that his attackers were members of the Baseej, an Iranian paramilitary force, who supported the candidacy of Mahmoud Ahmadinejad. Following the attack, the applicant was hospitalized for a one-week period and it took him about six (6) months to recover.

[5] On June 16, 2005, the applicant's uncle filed a complaint on behalf of the applicant with the prosecutor of the Revolutionary Court against the Baseej members who had attacked him. In the years subsequent to the attack, the applicant alleges that he was the victim of harassment by the Baseej members because they wanted him to withdraw his complaint.

[6] On June 20, 2009, the applicant maintains that he participated in a demonstration against the 2009 presidential election results. At that demonstration, the applicant and his friend Navid were purportedly arrested, detained and tortured.

[7] On July 19, 2009, the applicant submits that he was released on the condition that he withdraw his 2005 complaint. After his release, the applicant learned that his friend Navid had died in custody. The applicant therefore went into hiding in Karaj.

[8] In August 2009, the applicant claims that his mother received threatening telephone calls saying that the applicant would be killed if they found him because he had still not withdrawn his 2005 complaint.

[9] The applicant left Iran illegally on November 25, 2009. He travelled to Turkey and then by ship in a container to France, which is where he left for Canada on a false Swedish passport.

[10] On December 26, 2009, the applicant arrived in Montréal and claimed refugee protection.

[11] After his arrival in Canada, the applicant contends that he participated in two demonstrations, organized in Montréal, against the Iranian regime. Consequently, the applicant claims that he is a refugee “sur place”.

[12] On May 16, 2011, his refugee claim was heard by the panel.

B. Impugned decision

[13] In its decision, even though the panel was satisfied that the applicant had established his identity, the panel found that the applicant was not a refugee or a person in need of protection under the Act because his account was not credible.

[14] The panel noted a number of issues in the applicant's claim that diminished his credibility.

The panel drew negative inferences for the following reasons:

(i) Regarding the point of entry form and the Personal Information Form (PIF):

- The panel had concerns about the nature of the militancy of the group Bach hae Azadi, or Freedom for the Children, to which he claims to have belonged from 2005 to 2009. The panel found that the applicant's political involvement in Iran was rather minimal: the applicant simply distributed pamphlets with his friends in the two weeks prior to the 2005 election. In the election of 2009, the panel noted that the applicant did not participate in the campaign despite the fact that he alleges that he was arrested at a post-election demonstration;
- The panel noted that there were inconsistencies with respect to some of the dates mentioned in his PIF and his testimony. Although the applicant attributed these errors to poor translation, the panel rejected this explanation;
- The applicant testified that, after his release from custody in 2009, he went into hiding in Karaj, where he remained for a period of four (4) months. However, the panel noted that the applicant made no mention of this fact in his point of entry form. Once again, the panel rejected the applicant's explanation, which blamed the interpreter for this omission;
- The panel noted that the applicant could not specifically identify which country he arrived in by container despite the fact that he says he remained there for one week. The panel also rejected the applicant's explanation that he only found out that he had arrived from France after his arrival in Canada;
- The panel stated that the applicant lied to the immigration officer about his father's whereabouts when he entered Canada;

(ii) Regarding the attack in June 2005:

- The panel found that the applicant's account concerning the stabbing incident in 2005 was problematic. In particular, the panel had concerns about the fact that the applicant's uncle allegedly filed a complaint at the police station two days after the incident and stated that the residence of the attackers in question was in Tehran, when the applicant's uncle would not have known this information only two days after the attack. In contrast, the applicant testified that it took months to obtain information on the attackers. Consequently, the panel found that there was little probative value in the copy of the complaint made by the uncle and the letter by the applicant's mother, which were submitted as evidence. The panel found that the applicant had been stabbed, but that there was no credible and trustworthy evidence indicating that the applicant's attackers were in fact members of the Baseej;
- The panel noted that there were inconsistencies with respect to the applicant's allegation that he had appeared before a judge two years after the 2005 attack and that the judge had been reluctant to proceed with the matter;

(iii) Regarding his arrest at a post-election demonstration in June 2009:

- The panel noted that the only evidence provided by the applicant with respect to his arrest and detention during the 2009 demonstrations was his testimony. Because the panel found that the applicant's testimony was not credible regarding the other elements of his account, the panel found, on a balance of probabilities, that the applicant had not been arrested at the demonstration. Also, the panel found that the applicant did not fit the profile of those arrested at the 2009 demonstrations;

(iv) Regarding his release from prison in July 2009:

- The panel did not accept the applicant's allegation that he was released after one month in custody on the simple promise to withdraw his 2005 complaint. Also, the panel did not find it credible or plausible that the applicant was sought by the authorities in 2009 because of a complaint filed in 2005, with which the judicial process had no clear desire to proceed;
- The panel found the applicant's allegations that he had been harassed constantly by Baseej members until his departure in November 2009 implausible. The panel noted that the applicant did not attempt to leave the country until 2009 despite the fact that he testified that he had received death threats. The panel therefore found that this delay diminished the subjective element of the applicant's fear of persecution;

(v) Regarding the refugee “sur place” allegations and the risk of being a failed refugee:

- The panel determined that there was no credible evidence that the applicant actually took part in demonstrations against the Iranian regime in Canada (the applicant did not submit photos or evidence from Facebook, Twitter or YouTube). Furthermore, the panel noted that there was no evidence that the applicant’s alleged participation in these demonstrations had come to the attention of the Iranian authorities. Consequently, the panel found that the applicant’s activities in Canada would not pose a risk for him should he return to Iran. Similarly, the panel stated that, if he were to return to Iran, the applicant would not face a risk because of his failed refugee claim.

II. Issue

[15] In this application for judicial review, the Court is of the opinion that there is one issue:

Did the panel base its decision on an erroneous finding of fact, made in a perverse or capricious manner, or without regard for the material before it?

III. Applicable legislative provisions

[16] Sections 96 and 97 of the *Immigration and Refugee Protection Act* read as follows:

REFUGEE PROTECTION,
CONVENTION REFUGEES AND
PERSONS IN NEED OF
PROTECTION

NOTIONS D’ASILE, DE RÉFUGIÉ
ET DE PERSONNE À PROTÉGER

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

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette

fear, unwilling to avail
themselves of the protection of
each of those countries; or

(b) not having a country of
nationality, is outside the
country of their former habitual
residence and is unable or, by
reason of that fear, unwilling to
return to that country.

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

(a) to a danger, believed on
substantial grounds to exist, of
torture within the meaning of
Article 1 of the Convention
Against Torture; or

(b) to a risk to their life or to a
risk of cruel and unusual
treatment or punishment if

(i) the person is unable or,
because of that risk,
unwilling to avail themselves of
the protection of that
country,

(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,

crainte, ne veut se réclamer de
la protection de chacun de ces
pays;

b) soit, si elle n'a pas de
nationalité et se trouve hors du
pays dans lequel elle avait sa
résidence habituelle, ne peut ni,
du fait de cette crainte, ne veut
y retourner.

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) 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) soit à une menace à sa vie
ou au risque de traitements ou
peines cruels et inusités dans le
cas suivant :

(i) elle ne peut ou, de ce fait,
ne veut se réclamer de la
protection de ce pays,

(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,

- | | |
|---|---|
| <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> | <p>(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,</p> |
| <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> | <p>(iv) la menace ou le risque ne résulte pas de l’incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> |

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.

IV. Applicable standard of review

[17] This issue concerns the panel’s assessment of the applicant’s credibility. It is settled law that credibility findings are reviewable on the standard of reasonableness because this is a question of fact (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*); *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, [2009] FCJ No 438). The Court will therefore focus on “justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir*, above, at paragraph 47). Pursuant to *Aguebor v Canada (Minister of Employment and Immigration)* (1993) 160 NR 315

(FCA), on questions of credibility, the Court is required to give considerable deference to the panel's findings of fact.

V. Analysis

[18] First, the applicant argues that the panel erred in assessing his credibility. More specifically, the applicant states that the panel was not entitled to draw negative inferences from the information in his point of entry form and PIF, his allegations regarding the attack he was a victim of in June 2005, his arrest at a post-election demonstration in June 2009 or his release from custody in July 2009 because the documentary evidence confirms the plausibility of his account.

[19] Second, the applicant claims that the panel erred in its assessment of his allegation of being a refugee "sur place" and a failed refugee. In this case, the applicant submits that the documentary evidence in the record contradicted the panel's findings and that the panel referred only to part of the documentary evidence found in the record.

[20] Generally, the respondent points out the reasonableness of the panel's decision. The respondent argues that the panel was entitled to find that the applicant is not credible in light of the lack of evidence in the record and all of the inconsistencies and implausibilities in the applicant's account. The respondent contends that the applicant had the burden of establishing a serious possibility of persecution on the basis of credible evidence, which he did not do in this case. The respondent also notes that the panel found that the applicant did not provide any evidence except for his testimony, which was deemed not credible, to support his allegations.

[21] The Court notes that the applicant's credibility is central to the panel's decision. After reviewing the record, the Court is of the opinion that the panel's decision was reasonable for the following reasons.

[22] In its decision, the panel focused on several contradictory and implausible elements in the applicant's account. When considered together, they seriously undermine the applicant's credibility. The Court points out that the panel drew a negative inference with respect to the applicant's credibility because of the following problems:

- Contradictions between the information in the applicant's point of entry form and PIF and his testimony, namely, the following:
 - The applicant's membership in the political group Freedom for the Children (Tribunal Record, page 386);
 - The locations and dates of the applicant's alleged work prior to his departure from Iran (Tribunal Record, pages 390-391);
 - The applicant's journey to Canada (Tribunal Record, pages 426-428);
- Contradictions and implausibilities with respect to the June 2005 attack and the applicant's appearance before a judge (Tribunal Record, pages 406-409 and 410-412).

[23] Consequently, after a detailed analysis, the panel found the applicant to be not credible. Because the panel stated that the only evidence provided by the applicant regarding his arrest and detention during the 2009 demonstrations was his testimony and because of its concerns with respect to credibility, the panel concluded, on the balance of probabilities, that the applicant was not arrested at a post-election demonstration in June 2009. Furthermore, the panel did not find it credible or plausible that the applicant was sought by the authorities in 2009 because of a complaint filed in 2005, with which the judicial process had no desire to proceed. The Court is of the opinion that the inconsistencies raised by the panel cannot be characterized as subordinate or collateral.

Finally, because of the applicant's lack of credibility, the panel stated that there was no evidence to support the applicant's allegation that he was a refugee "sur place" or that he would be persecuted as a failed refugee should he return to Iran because the Canadian authorities do not advise foreign authorities of the return of a failed refugee (Tribunal Record, paragraph 31).

[24] The Court recalls that the applicant has the burden of establishing the risk he faces with credible evidence. On these grounds, it was open to the panel to find that the applicant lacks credibility. Pursuant to *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238, [1990] FCJ No 604 (FCA), the lack of credibility finding may extend to all evidence emanating from his testimony. Also, the Court notes that the panel explained in clear and concise terms all of the reasons why it considered the applicant's testimony not credible. The applicant's arguments concerning the selective treatment of documentary evidence by the panel are of no help to him under the circumstances. In this case, the lack of credibility apparent in the record is such that it is sufficient to dispose of the matter. The errors of the panel alleged by the applicant do not warrant the intervention of the Court. In fact, even though the document entitled "On certain crimes and punishments in Iran," to which the panel referred, is dated 2005 (Tribunal Record, page 45), the fact remains that the panel also relied on A-1, the recent document entitled "United Kingdom (UK). October 2010. Home Office. *Operational Guidance Note: Iran.*" Furthermore, even though the applicant insisted that the Iranian authorities monitor Web sites like YouTube, Facebook and Twitter (Tribunal Record, page 297), in this case, there is no evidence in the record that the applicant's participation or photo related to the demonstrations against the Iranian regime appear on those sites, which could have possibly come to the attention of the Iranian regime as a result (*Zaree v Canada (Minister of Citizenship and Immigration)*, 2011 FC 889, [2011] FCJ No 1097).

[25] For all of these reasons, the Court is of the opinion that the panel's findings, considered as a whole, cannot be characterized as erroneous, perverse or capricious. Consequently, the panel's decision falls within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law", and the intervention of the Court is unwarranted (*Dunsmuir*, above, at paragraph 47).

[26] At the hearing, counsel agreed that this matter did not raise any serious question of general importance.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. This application for judicial review be dismissed.
2. No question will be certified.

“Richard Boivin”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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