

Federal Court



Cour fédérale

Date: 20140430

Docket: IMM-11449-12

Citation: 2014 FC 402

Vancouver, British Columbia, April 30, 2014

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

IZAD SANAEI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) dated October 15, 2012, in which it concluded that the Applicant was not a Convention refugee nor a person in need of protection pursuant to sections 96 or 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This application is brought pursuant to section 72 of the IRPA.

[2] The Applicant, Izad Sanaei, is a citizen of Iran. At his port of entry (POE) interview and in his claim for refugee protection dated December 25, 2010, the Applicant stated that he was a member of the Green United Front and was being sought by the Iranian authorities because of his participation in political activities, including demonstrations in which he advocated for reform and democracy in Iran. He also stated that he was attending a Christian church and was threatened due to this. Although he was not being persecuted because of his religion, he was seeking Canada's protection because he did not agree with Islam.

[3] In his Personal Information Forms (PIF) dated January 15, 2011 and January 26, 2011 and in the narrative attached to the latter PIF, the Applicant stated that he feared persecution in Iran because of both his political and religious beliefs, as well as because of his membership in a particular social group. He claimed that he disagreed with the basic tenets of the Islamic religion. As a result, in April 1988, he was physically abused and threatened with death. In December 2004, while attending a party in Karaj, he and his wife were arrested by the Basij Militia. They were beaten, taken to a prison, detained for two days before being released on bail, and were later sentenced to 80 lashes and a fine of 125,000 Iranian Rials.

[4] The Applicant also claimed that his friends were aware that he was attending a church and reported this to the Basij Militia, who attacked his home in April 2010, beat him and told him to stop following Christianity or he would be killed. Before the Board, the Applicant testified that he was not sure who made this report to the Basij Militia, but that he had spoken to his close friends about his religion.

[5] In his narrative, the Applicant also claimed that he joined the Green Movement in March 2007 and that he participated in demonstrations. In a demonstration held in 2010, he sustained injuries, and as a result of the psychological harm he suffered, spent a week in a health clinic. Then, after participating in demonstrations in the fall, he was arrested by the Basij Militia and tortured for 48 hours. After this, he was constantly threatened and was told he would be killed should he be arrested again. After a further demonstration, he was detained, tortured and threatened. Once in Canada, he visited a psychologist and a doctor because of psychological issues arising from these incidents.

[6] In an amended PIF dated December 29, 2011, the Applicant again claimed fear of persecution on the basis of religion, political opinion as well as membership in a particular social group. The attached narrative, dated November 30, 2011, provided a shorter form of his previous narrative, containing similar but not identical submissions. He maintained his prior allegations of torture.

[7] In an amended narrative dated August 3, 2012 and on the day of the hearing before the Board, the Applicant resiled from his allegations of torture and fear based on political beliefs and relied only on his claim of religious persecution. He provided a handwritten annotated version of the November 30, 2011 narrative which deleted various paragraphs and sentences.

[8] On October 15, 2012, the Board denied the Applicant's claim for refugee protection (Decision). This is the judicial review of that Decision.

I. Decision under Review

[9] The Board found that the Applicant was not a Convention refugee nor was he a person in need of protection. The determinative issue was credibility.

[10] The Board found that the Applicant was not credible primarily because he admitted, before the hearing commenced, that the part of his previous narrative concerning his fear based on his political beliefs, namely being beaten in a political demonstration, detained, and wanted for his political activities, were fabricated. The Board acknowledged the Applicant's explanations that the smuggler he used to gain entry into Canada had advised him to base his claim on political grounds but that he later decided to tell the truth because he did not want to carry the burden of a lie and also because his pastor in Canada advised him to do so. However, the Board found that the Applicant was an educated adult who was capable of making proper choices in life but, instead, decided to falsify his claim.

[11] When the Board asked the Applicant why he should be believed given his prior "significant lie", he responded that he was remorseful. The Board noted that he only provided his true narrative in August 2012, shortly before the hearing, and that he lied not only to the government, but also to the Canadian Centre for Victims of Torture. The Board acknowledged the Applicant's claimed religious and moral convictions, as well as the fact that he had come forward with what he then claimed to be the truth without an apparent compelling reason to do so, but it did not accept his explanations. Rather, the Board found the admission to be self-serving and intended to bolster his claim, just as his prior claim of political persecution had been intended.

[12] The Board noted that while the Applicant stated that his testimony at the hearing was true, there were inconsistencies in his evidence. He was asked at what time the 2004 Basij Militia attack occurred and responded that it was around 9-10 pm. The Board then referred to his January 26, 2011 PIF, in which he stated it was around 8 pm. To explain this discrepancy, the Applicant stated that it was dark and that he simply testified to an approximate time. The Board did not accept this explanation, noting that while it should not be microscopic in its credibility analysis, it was entitled to make a negative inference as to credibility, particularly because the Applicant asserted that his testimony would be the truth, and for that reason, the Board should put less emphasis on his prior admitted significant lie. The Board noted other discrepancies, such as how his alleged Christianity in Iran came to the attention of the authorities. At the hearing, he testified that he did not know how the authorities became aware of it but in his narrative he stated that his friends had reported him to the Basij Militia. Given that the Applicant's testimony at the hearing was not consistent with previous allegations in his narrative, his credibility was further diminished.

[13] The Board also noted that there was no documentary evidence to corroborate his claims, such as a medical report to support the fact that he was beaten and lashed 80 times, proof of his practice of Christianity in Iran, or proof of the alleged damage to his home. The Board stated that it was not making negative inferences as to credibility from the lack of corroborative evidence, but that the Applicant was unable to buttress his claim by providing supporting evidence.

[14] The Board concluded that the Applicant's evidence, overall, was not credible and was insufficient to support his claim for refugee status.

[15] As a result of its credibility findings, the Board did not accept that he was a true Christian. It noted the evidence of the pastor from a church attended by the Applicant while in Canada, who testified at the hearing. The Board found that the pastor's endorsement was indefinite and lukewarm as he was unable to definitively state that the Applicant was a genuine Christian, and stated only that he was on his way to Christianity.

[16] The Board found that the Applicant displayed some of the behaviour of a true Christian, such as being baptized and attending church, but that this was outweighed by the Board's very significant credibility concerns, including the Applicant's significant lie. These so tainted the Applicant's credibility that the Board did not accept that he was a true Christian. Therefore, the Board concluded that there was not a serious possibility that he would face persecution for religious reasons, face a risk to his life or a risk of cruel and unusual treatment or punishment, or a danger of torture upon return to Iran.

II. Issues

[17] In my view, the issues are as follows:

- i. Did the Board err in its credibility analysis?
- ii. Did the Board err in its *sur place* assessment?

III. Standard of Review

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] 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 is well-settled

by past jurisprudence, the reviewing court may adopt that standard (*Dunsmuir*, above, at para 57; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18).

[19] It is established jurisprudence that credibility findings, described as the “the heartland of the Board’s jurisdiction”, are essentially pure findings of fact that are reviewable on a reasonableness standard (*Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 26; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) (CA)).

[20] Reasonableness is concerned with the justification, transparency and intelligibility of the decision-making process, but also with whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

[21] An omission to consider a *sur place* claim involves an error of law reviewed on a standard of correctness (*Hannoon v Canada (Minister of Citizenship and Immigration)*, 2012 FC 448 at para 42 [*Hannoon*]). However, in this case, the Board did not omit to deal with the *sur place* claim. Rather, it extended its credibility finding to the entire claim.

IV. Analysis

Issue 1: Did the Board err in its credibility analysis?

Applicant’s Position

[22] The Applicant submits that the Board unreasonably undermined the credibility of his claim of religious persecution because he fabricated his initial narrative concerning political

persecution. The Board determined that because he had overstated the grounds for his claim of political persecution, he was not likely a true Christian. However, the Board had an obligation to independently consider the merits of each claim and objectively assess the facts and evidence to determine if he has a well-founded fear of persecution (*Joseph v Canada (Minister of Citizenship and Immigration)*, 2011 FC 548 at para 11 [*Joseph*]; *Seevaratnam v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR 130; *Mylvaganam v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1195 (TD)(QL)).

[23] Where there is uncontradicted testimony and objective documentary evidence capable of sustaining a claim for protection, a lack of documentary evidence and minor testimonial inconsistencies are insufficient to deny a claim (*Kanesaratnasingham v Canada (Minister of Citizenship and Immigration)*, 2008 FC 48 at para 8; *Kathirkamu v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 592 (TD) at para 47 (QL); *Kamalanathan v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 826 (TD) at para 25 (QL)).

[24] The Applicant submits that the Board's credibility finding was based in part on a microscopic examination of peripheral and irrelevant issues (*Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55; *Attakora v Canada (Minister of Employment and Immigration)*, (1989) 99 NR 168; *Dag v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1254; *Venegas Beltran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1475 at paras 4-6), such as the precise time of the 2004 attack and how his Christianity came to the attention of Iranian authorities. These alleged inconsistencies were irrelevant to the determinative issue of his claim, which was whether he was credible and a genuine Christian.

In addition, his testimony about how the Basij Militia learned of his faith is consistent with this final PIF amendment dated August 3, 2012. The Board erred by ignoring his amended PIF to make a finding of inconsistency (*Reyad Gad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 303 [*Reyad Gad*]; *Weng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1483 at para 31 [*Weng*]).

[25] The Applicant submits that the Board also found that it was implausible that he could be a Christian and, at the same time, not tell the truth. This is unreasonable and illogical reasoning. Adverse findings of credibility made on implausibility require reasonable inferences (*Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131 (QL) at paras 6-8 (TD); *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429 at para 20; *Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 332 at para 30 [*Okoli*]; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 503 at para 16 [*Zhang*]).

[26] The Applicant submits that the Board unreasonably discounted his credible oral testimony in which he explained why he exaggerated details of his political persecution claim, which he disclosed at the hearing, namely that the smuggler advised him to make the claim but that his pastor later told him to tell the truth. The Board also misinterpreted his explanation as being a self-serving act, rather than an indication of his honesty and faith as well as a mitigating factor in its credibility assessment. The Board has a duty to consider an Applicant's explanation for amending his PIF and not to draw negative inferences from those made in a timely manner (*Okoli*, above, at para 28; *Ameir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 876).

[27] The Applicant submits that the Board's reasoning about his motivation for telling the truth, its finding that he was not a true Christian and its dismissal of the pastor's evidence do not meet the *Dunsmuir* standard nor that of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador*, 2011 SCC 62, [2011] 3 SCR 708.

[28] In short, the Applicant submits that the Board failed to consider the totality of the evidence, ignored credible and trustworthy evidence, engaged in a microscopic examination of the evidence, misapprehended the evidence, and failed to independently assess the credibility and trustworthiness of the evidence in finding that the Applicant was not a true Christian.

Respondent's Position

[29] The Respondent submits that the Board is not required to compartmentalize its assessment of the Applicant's credibility into different portions of the claim as its credibility finding applies to the entirety of the evidence (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA)). Past lying is relevant to assessing the claimant's credibility as a whole (*Ren v Canada (Minister of Citizenship and Immigration)*, 2009 FC 973 at paras 15-16 [*Ren*]; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 24; *Sandhu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 370 at para 4; *Chandra v Canada (Minister of Citizenship and Immigration)*, 2012 FC 751 at para 21; *Kaur Barm v Canada (Minister of Citizenship and Immigration)*, 2008 FC 893 at para 21). The Board made a credibility finding based on the Applicant's lies and on the basis of his fear on religious grounds.

[30] The Respondent submits that the Applicant's reliance on *Joseph*, above, does not assist him as that decision supports the Respondent's position that dismissing an application on grounds of credibility can be used to discount the entirety of the Applicant's evidence.

[31] The Respondent submits that the Board is permitted to compare different versions of PIF narratives to evaluate a claimant's credibility, even if they have been amended (*Aragon v Canada (Minister of Citizenship and Immigration)*, 2008 FC 144 at paras 17-19 [*Aragon*]). While the Applicant argues that his testimony was consistent with one version of his PIF, this does not demonstrate that the Board's decision is unreasonable, but actually highlights the concerns with his claim.

[32] The Respondent submits that the Board did not misinterpret the Applicant's explanation for not telling the truth, but simply found it unsatisfactory. The Applicant is a mature, educated adult and he repeated his lies on several occasions.

[33] The Respondent submits that the Board's credibility findings were not microscopic or based on irrelevant issues. Further, these findings must be considered in light of the entire Decision as the Board had strong reasons to doubt the Applicant's credibility. The Board appropriately noted the contradictions concerning how the authorities became aware of his religion and the time at which the alleged assault occurred.

Analysis

[34] In my view, the Board did not err in its credibility finding or in extending its finding to the evidence as a whole.

[35] In *Ren*, above, the Board found that the applicant lacked credibility as he had lied to Canadian officials about his past and was trying to gain access to Canada based on a fabricated story in order to circumvent Canadian immigration laws. Justice Mainville dismissed the application for judicial review and stated the following about the applicant's lack of truthfulness:

[16] [...] Refugee determinations in Canada are based on voluntary and truthful declarations from claimants. The Applicant decided not to reveal key information to Canadian authorities since he believed this would facilitate his access to Canada. His failures to declare his stay in the USA, his unsuccessful refugee claim there and his eventual return to China in 2005 clearly affect his credibility, and it was entirely reasonable for the Panel to draw an adverse inference from this.

[36] In *Rahaman v Canada (Citizenship and Immigration)*, 2007 FC 1008, the applicant admitted that he obtained documents with the help of a friend in order to bolster his refugee claim. Justice Beaudry dismissed the application for judicial review finding that the Board did not commit a reviewable error in choosing to extend to the evidence as a whole, its finding that the applicant was not credible. In that case, both the applicant's personal credibility and the credibility of the evidence were at issue. Not only was the documentary evidence central to the claim found to be false, but the applicant had initially misled the Board by denying his knowledge of a forgery.

[37] In my view, in the circumstances of the present case, it was entirely reasonable for the Board to find the Applicant not to be credible. As noted by the Board and admitted by the Applicant, he fabricated his first account at the POE to CBSA officials when giving initial details about his refugee claim. At the POE, the Applicant stated that he was being persecuted because of his political activities and not because of his religion. He continued the fabrication as to his political activities and the consequences thereof, in detail, in his signed PIF narrative and in several subsequent amended versions of it. Moreover, not only did he falsely allege in his claim that he had been detained and tortured as a result of his political opinion, but in December 2010 while being detained by the Canadian immigration authorities, he sought the assistance of a physician and a psychologist with respect to alleged resultant psychological issues. Later, in March 2012, he attended the Canada Centre for Victims of Torture and repeated those false allegations in order to obtain a medical report from a psychologist to support his claim that, as a result of the alleged abuse, he suffers from ongoing psychiatric disorders (severe complex post-traumatic stress disorder and severe anxiety). This displayed a continuing and deliberate intention to mislead.

[38] On the day of the hearing, the Applicant admitted that he had lied in on his previous PIF. He submitted that the Board had an obligation to consider his explanation for amending his PIF and to not draw negative inferences from this. However, it was not the amendment of the PIF that led the Board to draw a negative inference, but rather the misrepresentation of the truth by the Applicant. In any event, the simple ability to amend a PIF narrative is not responsive to the credibility concerns that may arise from such an amendment (*Aragon*, above, at paras 19-20; *Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at para 31; *Taheri*

v Canada (Minister of Citizenship and Immigration), [2001] FCJ No 1252 at paras 4 and 6).

Here, the Board considered, but did not accept, the Applicant's explanation, as it was entitled to do. Even if the Board had accepted that the Applicant's furtherance of his Christian faith while in Canada had resulted in his desire to approach the hearing with a clean slate, it was not compelled to find that this alone was sufficient to overcome its overall credibility finding arising from the Applicant's prior deception.

[39] In my view, the Applicant's reliance on *Joseph*, above, does not assist his position in these circumstances. There, Justice O'Reilly found that:

[11] The Board must be careful not to dismiss a refugee claim on the basis that it disbelieves parts of the claimant's testimony, or evidence that does not go to the core of the claim. Sometimes claimants embellish their stories, or they forget minor details. It is unreasonable for the Board to dismiss claims simply because they find evidence at the fringes not to be reliable or trustworthy. Even if the Board finds some evidence not to be credible, it must go on to consider whether there remains a residuum of reliable evidence to support a well-founded fear of persecution. (See, e.g. *Seevaratnam v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR 130, 88 ACW (3d) 650 (TD); *Mylvaganam v Canada (Minister of Citizenship and Immigration)* (2000), 98 ACWS (3d) 1089, [2000] FCJ No 1195 (FCTD) (QL); *Kanesaratnasingham v Canada (Minister of Citizenship and Immigration)*, 2008 FC 48).

[12] On the other hand, sometimes the Board's concerns about the credibility or trustworthiness of the claimant's evidence causes it to doubt the very essence of the claim. In those circumstances, the Board need not look to general country condition evidence to determine whether the claim was well-founded: *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387 (CanLII), 2003 FC 1387 at para 7-8. That was the case here. The question, then, is whether the Board had a reasonable basis for its concerns about the evidence presented by Ms. Joseph.

[40] Similarly, for the reasons set out above, the Board identified a very serious concern with the Applicant's credibility as a result of his admittedly fabricated evidence and related actions. The Applicant also lacked documentation to support his allegations of mistreatment arising from his interest in the Christian faith. The Board clearly doubted his credibility in whole, which affected all aspects of his claim. It was entitled to draw an adverse inference from the lack of documentary evidence given its credibility findings (*Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473 at para 24).

[41] The Board also found the Applicant's evidence as to how the authorities became aware of his religion to be inconsistent. The Applicant testified that he did not know how the authorities became aware of his religion but that he had spoken to his close friends about it. In his PIF, he stated that his friends reported him to the Basij Militia. The Board found that this further demonstrated that the Applicant was not credible. Viewed in isolation, this, as well as the precise time of the Basij Militia attacks, might be considered to be minor inconsistencies. However, viewed in the context of the evidence as a whole, the Board did not unreasonably consider these as a part of its credibility assessment. Further, these matters were not the main focus of the Board's credibility finding.

[42] In my view, the Board had a reasonable basis for its credibility finding and did not commit a reviewable error in arriving at its conclusion that the Applicant was not credible.

Issue 2: Did the Board err in its sur place assessment?

Applicant's Position

[43] The Applicant submits that the Board did not consider the consequences of his activities in Canada, as an active church member, upon his return to Iran. There was no assessment of how Christians, and more specifically, Muslim converts to Christianity (apostates), are treated in Iran which is a reviewable error. Even if his motives for conversion are not genuine, the Board must consider consequences of return (*Ejtehadian v Canada (Minister of Citizenship and Immigration)*, 2007 FC 158 at para 11 [*Ejtehadian*]).

[44] The Applicant submits that the Board ignored credible and trustworthy evidence that he was and still is a “true Christian”, including his baptismal certificate, pictures of the baptism, the Applicant’s testimony as to his faith and conversion, his pastor’s testimony that he believed the Applicant was a true Christian who attended church regularly, as well as the Applicant’s confession on the advice of his pastor (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 (TD)(QL)).

[45] The Board made an implausibility finding, in disregard of the evidence and logic, that a true Christian does not lie and that, therefore, the Applicant is not a true Christian (*Zhang*, above, at para 16). It was also unreasonable for the Board to dismiss his faith on account of a significant lie (*Yin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 544 at para 94 [*Yin*]).

Respondent's Position

[46] The Respondent submits that the Board is entitled to doubt the sincerity of the Applicant's religious identity if it finds the rest of the claim not to be credible (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at para 27 [*Jiang*]; *Xuan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 673 at para 20). The Board can also hold the claimant to a higher standard of proof for a *sur place* claim when the rest of the claim is found to be not credible (*Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 998 at paras 31-32 [*Li*]).

[47] The Respondent submits that the Board did not ignore the Applicant's evidence about his Christianity. The Board is presumed to have considered all the evidence and it expressly discussed it in its Decision. The evidence was inadequate to overcome the fact that the Applicant was not a credible witness. As a result, the Board could not accept the Applicant's assertions that he was a Christian (*Li*, above, at paras 28-32; *Cao v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1174 at paras 27-28). Further, the Applicant's reliance on *Etjehadian*, above, is misplaced as in that case the Board accepted that the applicant was a genuine practicing Mormon priest but applied the wrong test in assessing the *sur place* claim. In this case, the Applicant failed to establish that he was a genuine Christian.

[48] The Respondent submits that the Board's treatment of the pastor's evidence was also reasonable as he declined to unequivocally state that the Applicant is a true Christian. It was also entitled to give that evidence limited weight as the Applicant has a history of deceiving individuals in relation to his refugee claim (*Jin v Canada (Minister of Citizenship and*

Immigration), 2012 FC 595 at para 20). The Board weighed this evidence along with its major credibility concerns and determined that the pastor's evidence was insufficient to demonstrate that the Applicant is a Christian.

[49] The Respondent also submits that the Applicant's position is inconsistent. On the one hand, he states that he told the truth to come clean which was an indicator of his faith, while on the other, he states that the fact that he lied cannot be used to evaluate whether he is a Christian because that is a subjective standard. The Board was entitled to consider the Applicant's story against common sense and rationality. The Applicant's actions were at odds with his assertions.

[50] The Respondent submits that the broader evidentiary record further demonstrates that the Applicant's assertion about his religious concern was reasonably rejected as there were numerous inconsistencies in his evidence.

Analysis

[51] In *Hannoon*, above, Justice O'Keefe stated the following about the law on a *sur place* claim and the circumstances in which it should be addressed:

[46] A *sur place* refugee is defined in the United Nations Handbook on Procedures and Criteria for Determining Refugee Status (the UNCHR Handbook) as a person "who was not a refugee when he left his country, but who becomes a refugee at a later date".

[47] It is established jurisprudence that even if an applicant does not explicitly raise a *sur place* claim, it must still be examined if it perceptibly emerges from the evidential record that activities likely to cause negative consequences on return took place in Canada (see *Mohajery* above, at paragraph 31; and *Mbokoso c. Canada (Ministre de la Citoyenneté & de l'Immigration)*, [1999] F.C.J. No.

1806 (Fed. T.D.) at paragraph 10). Where there is trustworthy evidence that supports the claim, this analysis must be conducted whether or not the decision maker deems the applicant credible (see *Mohajery* above, at paragraph 32).

[48] The UNCHR Handbook describes two situations in which a *sur place* claim may arise:

- a) A change in circumstances in the country of origin during the person's absence, or
- b) As a result of a person's own actions such as associating with refugees already recognized or expressing political views in the new country of residence.

[52] Justice O'Keefe concluded the following about the obligation to assess a *sur place* claim:

[52] It is not in dispute that the Board did not deal with the *sur place* claim in its decision.

[53] I am of the view that the Board made an error of law in failing to deal with the *sur place* claim. Once a *sur place* claim was present, it was for the Board to deal with it. It might have been successful or it might not have been successful I do not know, as the Board failed to deal with this claim. The Board should have considered the evidence and argument presented. In failing to do so, the Board made a reviewable error and as a result, the decision of the Board must be set aside and the matter referred to a different Board member for redetermination.

[53] This Court has assessed the requirements of religion-based *sur place* claims in a line of cases starting with *Ejtehadian*, above. There, after he left Iran, the claimant became a Mormon and later a priest in the Mormon church. He claimed a risk of persecution or serious harm as a result of the apostasy laws should he return to Iran. The Board accepted that apostasy and proselytizing of Christians to Muslims in Iran could result in the claimant's death. However, the Board dismissed his claim because it determined that his conversion was not genuine, finding that he had become a Christian as a means of remaining in Canada and claiming refugee status.

Justice Blanchard overturned the Board's decision, noting it that had misarticulated the test in a *sur place* claim, and held that:

[11] The IRB's articulation of the test in a *sur-place* claim is incorrect. In a refugee *sur-place* claim, credible evidence of a claimant's activities while in Canada that are likely to substantiate any potential harm upon return must be expressly considered by the IRB even if the motivation behind the activities is non-genuine: *Mbokoso v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1806 (QL). The IRB's negative decision is based on a finding that the Applicant's conversion is not genuine, and "nothing more than an alternative means to remain in Canada and claim refugee status." The IRB accepted that the Applicant had converted and that he was even ordained as a priest in the Mormon faith. The IRB also accepted the documentary evidence to the effect that apostates are persecuted in Iran. In assessing the Applicant's risks of return, in the context of a *sur-place* claim, it is necessary to consider the credible evidence of his activities while in Canada, independently from his motives for conversion. Even if the Applicant's motives for conversion are not genuine, as found by the IRB here, the consequential imputation of apostasy to the Applicant by the authorities in Iran may nonetheless be sufficient to bring him within the scope of the convention definition. See *Ghasemian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266 (CanLII), 2003 FC 1266, at paragraphs 21-23, and *Ngongo c. Canada (M.C.I.)*, [1999] A.C. F. No 1627 (C.F.) (QL).

[54] In *Jiang*, above, the Board doubted the integrity of the applicant's refugee claim. The Board found it irrational and therefore not credible that the applicant therein would have chosen to practice Falun Gong, which was potentially politically dangerous, without first seeking medical attention and treatment through medication. It further found that on the basis of the totality of its findings, the applicant's current knowledge of Falun Gong was gained only in order to support her fraudulent claim, and that she was not a genuine Falun Gong practitioner.

[55] On the *sur place* claim, Justice Zinn stated that the real question was whether the Board was entitled to and reasonably imported its findings in relation to the fraudulent claim into the applicant's *sur place* claim, namely to impute that the applicant was not a genuine Falun Gong practitioner:

[27] In my view, the Board must be entitled to import its credibility findings into its assessment of an applicant's *sur place* claim. The Board here found that the applicant had fabricated her story to claim refugee protection. A reasonable inference from that premise is that her current knowledge, appearance in photos, and letters of support were fostered in the intervening two years to support that fraudulent claim.

[28] This Court has held that it is permissible for the Board to assess an applicant's genuineness and therefore its *sur place* claim in light of credibility concerns relating to the original authenticity of a claim: *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993 (CanLII), 2012 FC 993, at para 57; *Yang v Canada (Minister of Citizenship & Immigration)*, 2012 FC 849 (CanLII), 2012 FC 849, at para 19.

[56] Justice Zinn noted that on the one hand, the applicant's claim was found to be fraudulent, she had also provided little evidence that she was a Falun Gong practitioner in Canada. On the other hand, she demonstrated knowledge of Falun Gong and had some, though very weak, documentary evidence in support of her claim. She also had two years to learn Falun Gong theory in Canada. The Board weighed the evidence and found that she was not a genuine practitioner. That finding fell within the range of possible, acceptable outcomes defensible in respect of the law and the facts.

[57] In the present case, the Board did not explicitly state that it was or was not conducting a *sur place* analysis, nor did it refer to country documentation evidence. It did note, in the context of the Applicant's continued claim, that he submitted that he had truly converted to Christianity

and that this “might well indicate that he should be conferred refugee protection in Canada, were this allegation accepted”. Similar to *Jiang*, above, the Board stated that it weighed its very significant credibility concerns against the evidence in favour of the proposition that the Applicant is a true Christian and found, on balance, that the former outweighed the latter. The credibility concerns so tainted the Applicant’s credibility that the Board did not accept that he was a true Christian.

[58] The Board also acknowledged the Applicant’s testimony and the fact that he had submitted a baptism certificate, as well as the testimony from the pastor. However, it discounted this evidence because of the Applicant’s lack of credibility and the lack of an unequivocal response from the pastor as to whether the Applicant was a true Christian. In that regard, the pastor’s evidence was that the Applicant had been baptized, attending church for 1.5 years, and encouraged to tell the truth regarding his claim. His testimony as to whether the Applicant is a genuine Christian was that:

Well the... there is an interesting thing in the Bible, when the Christians started Christianity they were not called Christians, they were called ‘people of The Way’ because Jesus once said “I am the Way, and the Truth and the Life” and this is what he is, he is on The Way, for sure and well, you have seen Christians that went astray again on The Way and others are still on The Way and I think he is on The Way. I am strongly...think he is on the right way.

(Record of the Hearing before the Board, p 44)

[59] In *Li*, above, the applicant similarly alleged a fear based on his religious beliefs. The Board determined that there was no credible basis for his claim. The Board made a finding on his activities in China and then considered his adherence to Christianity while in Canada.

It concluded that the applicant had joined a Christian church in Canada for the purpose of supporting a fraudulent refugee claim and determined that he has not been nor was he a genuine Christian and would not be perceived to be a Christian in China.

[60] As to credibility, Justice Gleason noted that the fact that the claimant had made an earlier fraudulent attempt to enter Canada tainted his refugee claim as it showed he was willing to employ dishonesty to gain admittance to the country. It was reasonable for the Board to rely on this as a significant reason for disbelieving his claims regarding what happened in China, as well as for finding that the applicant was not a sincere Christian. As to motive for engaging in a religious practice:

[20] Contrary to what the applicant asserts, the case law recognises that motive for engaging in a religious practice in Canada may be considered by the RPD in an appropriate case. However, a finding that a claimant was motivated to practice a religion in Canada to buttress a fraudulent refugee claim cannot be used, in and of itself, as a basis to reject the claim. Rather, the finding that the claimant has been motivated by a desire to buttress his or her refugee claim is one factor that may be considered by the RPD in assessing the sincerity of a claimant's religious beliefs.

[61] Thus, the mere fact that the Board considered and relied on the applicant's motive for joining a religious group and practicing in its activities did not invalidate its decision.

The question was whether the Board had reached a reasonable conclusion in determining that the applicant was not a genuine Christian. In that regard Justice Gleason stated:

[29] More particularly, the burden of establishing the sincerity of his beliefs rested with the applicant. The Board's determination that he had not discharged this burden was based on its assessment of the applicant's credibility: the fact that he had obviously fabricated a story about what occurred in China, had lied during his testimony before the Board and had offered no convincing proof of

a conversion experience in Canada. Apart from the pastor's letter, the baptismal certificate and the photographs, there was no other evidence offered by the applicant to support his claim to be a true Christian. The Board was in no way obliged to accept these documents as proof of the sincerity of the applicant's religious beliefs, especially in light of the applicant's lack of credibility and earlier fraudulent attempt to enter Canada. In this regard, I endorse the comment of Justice Pinard in *Yin* (cited above at para 24) at para 20, that:

[...] it would be absurd to grant a *sur place* claim every time a pastor provides a letter attesting to an applicant's membership in his church.

[...]

[32] Where, as here, a claimant's assertion to have been the victim of religious persecution abroad is found to be a fabrication, it is completely reasonable for the RPD to require a much higher degree of proof of the sincerity of the applicant's beliefs and practice in support of a *sur place* claim than might be required where the mere fact of apostasy might lead to persecution or where the Board believes the claimant to have been the victim of religious persecution abroad. Otherwise, it would be far too easy to succeed in a fraudulent claim: a dishonest applicant would need only to join a church and study the religion to advance a *sur place* claim. Proof of joining a church and knowledge of its precepts, however, does not equate to proof that the individual would be at risk if returned to his or her country of origin. In the context of a country such as China, where persecution is practiced against Christians not for apostasy but for the practice of their religion, the claimant must satisfy the RPD that he or she will continue to practice his or her faith in China. On the facts of this case, the Board's determination that the applicant was unlikely to do so was completely reasonable. The Board offered understandable reasons that were grounded in the facts before it.

[62] The Applicant cites *Yin*, above, in support of its position that it was unreasonable for the Board to dismiss his faith on account of a significant lie. In that case, the Board also rejected the applicant's religious practices in Canada on the basis of a general negative credibility finding.

The Board found that the applicant acquired his knowledge of Christianity in Canada to bolster a

manufactured refugee claim and not because he was committed to that religion. As the Board found that the applicant was not a member of an underground Christian church in China, he was found not to be a Christian in Canada. Justice Russell found that the Board's logic was unreasonably flawed because the independent and credible evidence of the applicant's religious activities at his church in Canada were not addressed by the Board, a situation which does not arise in the present case.

[63] Here, the Board had significant and legitimate credibility concerns with the Applicant's claim given that he had initially fabricated a significant aspect of his claim concerning his political activities in Iran. It also acknowledged that the Applicant displayed some behaviour of being a true Christian, such as being baptized and attending church while in Canada. The Board discounted the pastor's evidence on the basis that he did not state unequivocally that the Applicant is a true Christian. While the pastor's evidence could, on a reading of the transcript, be interpreted as pragmatic and positive, deference is owed to the Board as it had the benefit of actually hearing the evidence and observing the demeanour of the witness (*Navaratnam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 856 at para 22; *Chen v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ 551, 240 NR 376).

[64] The Board made an overarching credibility finding arising from the Applicant's admission that he lied about his political activities. That is, it imported its overarching credibility finding into its implicit consideration of whether a *sur place* claim arose. The Board weighed the evidence and found that the Applicant was not credible and was not a genuine practitioner of the Christian faith. Having made that finding, and although the Board indirectly referred to the

possible apostasy, it did not then have to further consider the *sur place*. Based on *Jiang* and *Li*, both above, it was entitled to take this approach.

[65] While I might have found differently, it is not the role of this Court to reweigh the evidence. As the Board's finding falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47), there is no basis upon which this Court can interfere with its finding. The application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied.

No question for certification was proposed nor does one arise.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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