

**Date: 20080418**

**Docket: IMM-3617-07**

**Citation: 2008 FC 511**

**Ottawa, Ontario, April 18, 2008**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**ALI REZA GOLESORKHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicant had previously been found not credible in respect of his claim that he was a convert to Christianity. His claim of conversion was the cornerstone of his refugee claim, which was based on fear of persecution in Iran due to his Christian beliefs. The decision under review is a negative PRRA decision. The issues raised in this review are procedural fairness due to the use of

undisclosed evidence; the legal test of personalized risk; and the reasonableness of the decision in so far as it is based on the premise that the Applicant was unlikely to attend church even if he was a Christian.

## II. BACKGROUND

[2] Mr. Golesorkhi, a citizen of Iran, made his refugee claim under the previous *Immigration Act*. He had claimed that he converted to Christianity while in Canada.

[3] The then-CRDD found, based on his testimony, that the Applicant had demonstrated a lack of knowledge about his faith. The CRDD concluded that there was no credible or trustworthy evidence that he was a Christian and, even if he was, he was unlikely to attend church in Iran. Consequently, he would not be discovered by Iranian authorities and he had nothing to fear.

[4] In his PRRA application, the Applicant submitted letters of support from the International Federation of Iranian Refugees, the Toronto Christian Resource Centre and his local Member of Parliament. Mr. Golesorkhi also relied on country reports showing Iran's poor human rights record, particularly with respect to freedom of religion.

[5] The PRRA Officer (Officer) assumed, because the Applicant failed to identify the specific risk, that the risk was religious persecution. The Officer concluded that, having considered the CRDD decision, the Applicant had not established that his knowledge of Christian tenets of faith

had increased or (assuming he was a true Christian) that he would go to church and thus expose his beliefs to Iranian authorities.

[6] The Officer also found that the letters of support did not confirm the Applicant's faith or adherence to Christianity. The Officer, acknowledging Iran's human rights record, found that the actuality of religious persecution did not constitute personalized risk.

[7] The Officer also considered the risk attendant to being a returned failed refugee claimant but considered that such actions by the Iranian authorities depended on the circumstances and concluded that the information did not establish that the Applicant would be at risk as a returnee from Canada.

### III. ANALYSIS

#### A. *Standard of Review*

[8] As a result of the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, it is now clear that the standard of review is correctness on the issues of the correct legal test and procedural fairness, and reasonableness in respect of the findings of facts and overall decision itself.

#### B. *Procedural Fairness*

[9] In respect of procedural fairness, the Applicant argued that the use of the 2007 U.K. Home Office Report was unfair because he did not have an opportunity to respond to it. The Applicant

relies upon the decision in *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461 (C.A.).

[10] However, the Federal Court of Appeal in *Mancia*, in dealing with documents which became available after the time of submissions, held that those documents must be disclosed to an applicant if they “are novel and significant and where they evidence changes in general country conditions that may affect the decision”.

[11] The 2007 UK Home Office Report and, in particular, the parts relied upon by the Officer was taken from a 2006 US DOS Report which in turn referred to the information in a 2001 UNCHR Report. The information existed in the public domain before the Applicant’s submissions, originated from well-known sources and were general in nature.

[12] It was not unfair to take account of these well-known conditions in Iran. The Applicant was not denied procedural fairness.

### C. *Legal Test*

[13] The Applicant contends that the Officer erred in focusing on the Applicant’s personalized, rather than a generalized, risk of persecution. The Applicant’s argument can be distilled to an argument that s. 97 of the *Immigration and Refugee Protection Act* uses the words “would subject them personally” to a risk of torture, etc. whereas s. 96 does not use a term that individualizes the risk.

[14] This is an erroneous interpretation of the law. Under either provision, the individual must establish that he/she is likely to fall within one of the named circumstances of the particular provision. The Applicant must show that he, as an individual, has the well-founded fear under s. 96 or would personally face the risk named in s. 97.

[15] The Applicant contends that the Officer failed to consider the risk to persons “similarly situated”. The use of the “similarly situated” analysis is relevant because often the individual’s claim is based on speculation as to what “will” happen upon return. Since the feared event has not yet happened, an applicant can point to what has happened to similarly situated persons as a predictor of what will happen to the applicant. The “similarly situated” analysis is also relevant to the credibility of a claim that an individual experienced certain treatment if there is compelling evidence that others in the same position experienced the same treatment.

[16] The difficulty with the Applicant’s position is not that the Officer ignored the “similarly situated” person analysis but that the Applicant was not similarly situated with the persons with whom he identified. He did not fall within the similarly situated - Christians returning to Iran - because of the factual finding that he was not a Christian.

D. *Merits of Decision*

[17] Lastly, the Applicant argues that the decision is unreasonable. A critical component of this argument is the finding of the Officer that the Applicant would not go to church once he was in Iran and therefore his conversion would not be known and he would not suffer persecution.

[18] If this was the principal reason for the decision of absence of risk, I would agree that the decision is legally infirmed. This “quiet Christian” analysis is flawed because religious persecution can exist where a claimant is prevented from practising his religion due to fear. It is no answer to a claim of risk of religious persecution to say that there is no risk if one does not practise one’s religion or cannot practise it openly (see *Fosu v. Canada (Minister of Employment and Immigration)* (1994), 90 F.T.R. 182; *Irripugge v. Canada (Minister of Citizenship and Immigration)* (2000), 182 F.T.R. 47).

[19] The Officer’s finding, however, must be taken in context. The Officer concluded that the Applicant had failed to demonstrate that he was a Christian. The conclusion about not attending church was an alternative finding and, at best, *obiter*. The key conclusion is that the Applicant was not at risk because he was not a Christian, not because he would not attend church.

[20] The letters of support tendered to establish the *bona fides* of the Applicant’s conversion and practice were devoid of detail. While volunteering at a church may be an expression of faith, that fact alone does not necessarily establish *bona fide* belief. It was open to the Officer in the face of the

CRDD's conclusion and the paucity of real evidence of adherence and practice of the Christian faith to conclude that the Applicant had failed to establish his status as a Christian.

[21] Given the reasonableness of the Officer's finding about Christian conversion, the Officer's conclusion of the absence of risk is likewise reasonable.

#### IV. CONCLUSION

[22] For these reasons, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3617-07

**STYLE OF CAUSE:** ALI REZA GOLESORKHI  
and  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 10, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** April 18, 2008

**APPEARANCES:**

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