

**Date: 20080617**

**Docket: IMM-1956-07**

**Citation: 2008 FC 745**

**Toronto, Ontario, June 17, 2008**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**ALIREZA ZAREIAGHDARAGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 13, 2007, wherein the Board found the applicant to be neither a Convention refugee nor a person in need of protection.

[2] The applicant requested that the Board's decision be set aside and the matter referred back to a newly constituted panel of the Board for redetermination.

## I. Background

[3] Alireza Zarei Aghdaragh (the applicant) is a 28 year old citizen of Iran. The circumstances leading to his application for refugee status are as described in his Personal Information Form (PIF).

[4] The applicant worked for Iran Khodro, the country's largest car manufacturer. The applicant alleged that a friend of his spoke to him about corruption at the company, specifically, that the owner was diverting funds from the sale of each car to the Iranian leadership. As a result, the applicant and two co-workers decided to expose the corruption by placing flyers in cars and writing in the company washrooms. It appears that the applicant and his co-workers' intention in doing so was to encourage workers to strike against the company.

[5] The applicant alleged that one day in June 2003, he witnessed one of his co-workers (who had helped distribute the flyers and write in the washroom) having problems punching his time card. The co-worker went to the clock room where the applicant then saw him surrounded by Harasat and plainclothes agents. As the applicant's time card was also not working, he felt uneasy and hid in the changeroom until he could leave the factory. The applicant went to his grandmother's home.

[6] The applicant's mother informed him that regime agents had raided their home and taken all of his identity documents. As such, the applicant fled Iran and entered the Netherlands where he made a claim for refugee protection. That claim was rejected and he appealed, but it appears that the

appeal was abandoned. The applicant alleged that he then travelled to Germany where he was detained for three months and then returned to the Netherlands where he was released. The applicant remained in the Netherlands for ten months until he was eventually able to come to Canada via St. Martine and Trinidad. Upon arrival in Canada, the applicant made his claim for refugee status.

[7] The applicant alleged that since his departure from Iran, one of his brothers has been unable to obtain a job because of the applicant's actions and another brother was arrested.

## II. The Board's Decision

[8] In its decision dated April 13, 2007, the Board determined that the applicant was not a Convention refugee as he did not have a well-founded fear of persecution based on a Convention ground and was not a person in need of protection. The Board identified the determinative issue as credibility and found the applicant's testimony not to be credible.

[9] The Board took issue with the fact that the applicant's descriptions of the incident differed between his Port of Entry (POE) notes and his PIF narrative. Specifically, the POE notes suggested that the actions were depicted in a newspaper article, whereas this was not the case with the description in the PIF narrative. When asked to explain the discrepancy, the applicant claimed it was a problem with interpretation. The Board found this explanation unsatisfactory as the translation was from the applicant's own written evidence. The Board drew a negative inference from this

discrepancy. The Board also noted the lack of corroborative evidence of the incident and the applicant's connection to it. The Board was of the opinion that as this was a big company, they expected some reference to the incident in newspapers. The Board found the incident was the central issue and that the applicant had failed to establish that it had occurred.

[10] The Board also took issue with discrepancies in the applicant's submissions regarding the pamphlets he alleged to have distributed in cars. In his PIF narrative, the applicant submitted that he stuffed pamphlets into cars, whereas in his oral testimony he said that he used a marker to write messages on cardboard which were put in only three cars. The Board further noted that the applicant could not explain how his name had been linked to the writing in the bathroom given that the applicant did not identify himself.

[11] With regards to the applicant's family, the Board noted that the detention of the applicant's brother was not mentioned in his PIF and drew an adverse inference from the omission. The Board mentioned that two of the applicant's other brothers had been unaffected by the incident.

[12] The Board reviewed a copy of a summons from Iranian government officials received by the applicant, but noted that it stated only that the applicant was summoned for "acts against internal security and disturbance of public thoughts" and that it was dated almost a month after the alleged incident.

[13] In conclusion, the Board found that after considering all the evidence, the applicant was neither a Convention refugee, nor a person in need of protection. Consequently, his claim was rejected.

### III. Issues

[14] The applicant submitted the following issue for consideration:

1. Did the Refugee Division err in law, breach fairness, err in fact and exceed jurisdiction in relation to credibility findings?

[15] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in fact in finding that the summons was not genuine?
3. Did the Board err in fact in finding that the applicant had stated in his POE examination that there was a newspaper article referring to the specific incident and strikes that the applicant alleged he had participated in?
4. Did the Board err in stating that the applicant had produced no corroborative evidence regarding the raids on his family's home?

5. Did the Board err in its consideration of the applicant's lack of information on his coworkers' arrests?

#### IV. Applicant's Submissions

[16] The applicant submitted that the Board made an error of fact in finding that the summons received by the applicant from the Iranian government was not genuine. It was submitted that the fact that the applicant could not explain the summons, an Iranian legal document, is not a basis to find that the document is false (*Bulambo v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1330). The applicant does not bear the onus of explaining why the authorities decided to do as they did or to explain the authorities' state of knowledge (*Kalonda v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 396). Moreover, the applicant submitted that no deference is owed to the Board on this issue as they have no expertise in the matter of foreign official documents. The Board commits a reviewable error when it finds that a document is not genuine without citing evidence upon which to base the finding (*Sadeghi-Pari v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 282). The applicant also noted that the Board mistakenly found that the summons was issued a month after the incident. In fact, the summons is dated June 17, 2003 and the incident is alleged to have occurred at the end of June.

[17] The applicant also submitted that the Board erred in fact in finding that the applicant had stated in his POE examination that there was a newspaper article referring to the incident. The

officer's POE notes indicate that the applicant admitted to publicizing the scandal through flyers and pamphlets and by divulging information to a newspaper. It was submitted that the applicant never said that a newspaper article resulted from the information divulged. Moreover, the Board erred in stating that the applicant had said that the strikes he attended were publicized in the newspaper. The applicant submitted that there was a newspaper article publicizing certain strikes, but his evidence was that the strikes that he personally participated in were not publicized.

[18] The applicant also took issue with the Board's finding that there was no corroborative evidence establishing that the applicant's family's home had been raided by Iranian officials. It was submitted that there was no evidence to submit because the Iranian government does not issue receipts or documentation in the event of a raid. And finally, the applicant submitted that the applicant's lack of knowledge of what happened to his two co-workers after he left Iran should not be used against him.

#### V. Respondent's Submissions

[19] The respondent submitted that the cases cited by the applicant for the proposition that failure on the part of the applicant to explain the charges cited in the summons should not undermine his credibility, are clearly distinguishable from the present case. Unlike in the present case, the cases cited by the applicant involved situations where the Board drew a negative credibility finding from the applicant's inability to properly identify a document for want of legal or technical knowledge. In the present case, the Board noted a discrepancy between the contents of the summons and the

applicant's evidence; the result of this discrepancy in light of a number of other credibility concerns, led the Board to conclude that the document was not genuine. The respondent cited a number of cases wherein credibility concerns led the Board to find the documentary evidence not to be genuine (*Songue v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. 1020 (T.D.); *Culinescu v. Canada (Minister of Citizenship and Immigration)* (1997), 136 F.T.R. 241 (T.D.)). The respondent submitted that there is no duty on the part of the Board to submit suspect documents for expert assessments provided there is sufficient evidence before the Board to cast doubt on the authenticity of the document (*Jin v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 181).

[20] The respondent argued that the Board's credibility concerns arose from a number of material inconsistencies, implausibilities and omissions on the part of the applicant. With regards to the applicant's inconsistent statements about the newspaper coverage of the strikes, the applicant stated at the hearing that he "was also involved in the strikes and for the newspaper coverage of these incidents". The respondent submitted that a plain reading of this statement could reasonably lead the Board to conclude that there was media coverage of at least some of the strikes. Thus, the Board was entitled to draw an adverse inference from the applicant's failure to adduce newspaper coverage of any of the strikes.

[21] The respondent submitted that the applicant has misunderstood the nature of the Board's finding with regards to the applicant's lack of knowledge about his two co-workers' fates after his



departure from Iran. The Board's finding was based on inconsistencies in the applicant's testimony and omissions in his PIF and not from the applicant's lack of knowledge.

[22] And finally, with regards to the Board's comments concerning the lack of corroborative evidence of the raids on his family's home, the respondent argued that the requirement of corroborative evidence is a matter of common sense. The Board had independent concerns regarding the applicant's testimony and failure to produce corroborating documents further undermined the applicant's credibility. The Board can note a lack of effort to obtain corroborating evidence as a contributory factor in a negative credibility finding (*Matarage v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 460 (F.C.T.D.), *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 862). Moreover, Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228 requires that "claimants provide acceptable documents establishing identity and other elements of the claim".

## VI. Applicant's Reply

[23] With regards to the respondent's submissions on the summons, the applicant submitted that the summons cannot be rejected merely because the Board finds that they should have official seals even though there was no evidence of this requirement (*Mulaja v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1296). Moreover, independent documentary evidence, such as a summons, can actually offset the Board's finding of a lack of credibility (*Hamid v. Canada (Minister of Employment and Immigration)*, [1995] FCJ 1293).

[24] The applicant also replied to the respondent's argument on a lack of credible evidence. It was submitted that the Board failed to consider that there was no corroborative evidence for the applicant to submit given that the Iranian government does not publicize or keep public records of raids. Moreover, a lack of corroborative evidence does not require the Board to refuse a claimant's claim.

## VII. Analysis and Decision

### A. *Issue 1*

What is the appropriate standard of review?

The Board's credibility findings should be reviewed on a standard of reasonableness.

[25] I wish to now deal with Issue 3.

### B. *Issue 3*

Did the Board err in fact in finding that the applicant had stated in his POE examination that there was a newspaper article referring to the specific incident and strikes that the applicant alleged he had participated in?

The applicant submitted that the Board erred in finding that the applicant in his POE examination submitted that a newspaper article dealing with the specific incident alleged by the applicant existed. The applicant submitted that his POE examination was translated in a very vague

manner which led the Board to conclude that such a newspaper article existed. The applicant acknowledged that he admitted to providing information to the newspapers, but submitted that he had never stated that a newspaper article was printed regarding the specific incident.

[26] The respondent submitted that it was reasonable for the Board to infer from the applicant's POE examination that such an article existed and as such, the adverse inference drawn by the Board was reasonable.

[27] The relevant portion of the Board's decision reads as follows:

The claimant mentioned one incident in his PIF that led him to leave Iran. His description of that incident in his handwritten notes at the port of entry (POE) and in his PIF narrative is different. In his POE notes, he suggests that his actions of attending strikes pertaining to this incident were depicted in the newspaper, but that was not the case in his PIF narrative. The claimant was asked why his POE notes state that this is an event covered by the media and the PIF does not. His explanation was that there was a problem with interpretation, but the panel does not find that explanation satisfactory because his own written evidence that was translated by the interpreter on record are similar to what the officer's notes state. The panel draws an adverse inference from the discrepancy.

[...]

There was no newspaper article of this incident, even though in his POE notes, he states it was in the Elite paper. He presented a newspaper article about his weight and his score as a wrestler, which has no relevance to the incident which he states led him to leave Iran and file his claim in Canada. The claimant had no corroborative evidence of the incident or his connection to it. Since the company is reputedly such a large company, one would expect some reference to the newspaper about that incident. The panel finds that this incident was the central issue and the claimant has not established that indeed this incident happened. Therefore the claim of the claimant fails.

The translation of the POE examination notes reads as follows:

[...] MY FRIENDS, HUSSAIN, MAJID, AND I, MADE IT PUBLIC KNOWLEDGE BY WAY OF FLYERS, PAMPHLETS AND THE "ETLANT" NEWSPAPER AND AS A RESULT, WE WERE TARGETED BY THE SEPAH PRESENCE IN THE WORKPLACE. THE NEWSPAPERS PRINTED THAT THE PERSONS RESPONSIBLE FOR THE REVELATION WOULD BE DEALT WITH BY SEPAH.

[28] The applicant's PIF is silent on whether the applicant approached the newspapers and on whether any stories of the alleged incident were printed. During the hearing, the applicant, through the interpreter, provided the following response when questioned about the incident:

**INTERPRETER:** Towards the army or other political things. I was also involved in these strikes and for the newspaper coverage of these incidents. This caused the leader to announce that these problems should be reacted to. [...]

[29] In my opinion, the Board wrongly inferred from these ambiguous statements that the applicant was submitting that as a result of the applicant approaching the newspapers an article concerning the specific incident had been published. The Board stated that such an incident in such a big important corporation would likely have been publicized. The Board went on to fault the applicant for not providing the article and for being inconsistent in his statements to the Board. In my opinion, the Board erred in this regard. The applicant did on several occasions mention his involvement in approaching the newspapers for their help in publicizing the incident, but nowhere in any of the applicant's statements does he state explicitly that an article in relation to the specific incident was published in any newspaper.

[30] In my opinion, the Board wrongly assumed that the newspaper article about similar instances to which the applicant referred to in the hearing was in fact an article about the particular strikes and incident the applicant participated in. The Board then faulted the applicant based on this faulty assumption. As such, I would allow the judicial review on this ground.

[31] Because of my finding on this issue I need not deal with the remaining issues.

[32] The application for judicial review is therefore allowed and the matter is referred back to a newly constituted panel of the Board for redetermination.

[33] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review is allowed and the matter is referred back to a newly constituted panel for redetermination.

“John A. O’Keefe”

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Judge

## ANNEX

### Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA):

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that 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.

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,

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) 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;

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.

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) 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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(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.

(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,

(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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualifié 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



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

**DOCKET:** IMM-1956-07

**STYLE OF CAUSE:** ALIREZA ZAREIAGHDARAGH

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 21, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** June 17, 2008

**APPEARANCES:**

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