

Federal Court



Cour fédérale

**Date: 20110303**

**Docket: IMM-4507-10**

**Citation: 2011 FC 254**

**Toronto, Ontario, March 3, 2011**

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

**BETWEEN:**

**SALEM GALYANA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant is a 40-year-old Iraqi citizen of Chaldean Christian background. Before the Refugee Protection Division of the Immigration and Refugee Board he claimed that he feared persecution in Iraq as a Christian. Having been found by the Board not to be a practicing Christian, he now submits that the Board erred in failing to consider whether he faced persecution in Iraq because he will be identified as a Christian because he is Chaldean.

[2] I find that the Board made no such error.

[3] Mr. Galyana left Iraq, travelling first to Jordan and then to Malta. He attempted to join his brother in Canada, but was unable to obtain authorization to come here. He thought that he might be able to reach Canada through the United States of America, and so began his journey. He traveled via Italy and Spain to Mexico, and from Mexico he attempted to enter the U.S., posing as an American citizen, but was taken into custody when he could not provide any documentation. He submitted a claim for asylum that was denied by U.S. authorities and in July 2007 the U.S. Department of Justice's Board of Immigration Appeals issued its decision on removal. The applicant was unsuccessful in reopening his claim, his work permit was withdrawn, and he was arrested and detained for four months by U.S. authorities in June 2008. When the applicant was released from immigration detention, he decided to leave the U.S., and came to Canada in December 2008. In his Personal Information Form (PIF) he states that "[a]s a practicing Christian I was afraid to go back to Iraq."

[4] The Board found that the central issue in the claim was whether the applicant was a genuine practicing Christian. That was the very issue put before the Board by the applicant in his refugee claim and I find that it was a proper characterization by the Board of the central issue.

[5] Mr. Galyana and the truth are strangers.

[6] The Board noted that Mr. Galyana had not been credible and trustworthy in past asylum claims and that he had demonstrated a lack of credibility in his dealings with overseas visa officers,

the U.S. Department of Justice, and Citizenship and Immigration Canada. Importantly, the Board found that the applicant

... has shown a willingness to mislead, misrepresent, and lie regarding central issues and minor details of his personal history, his experiences, and his claims for protection. He was not forthcoming with the truth at the interview conducted by Canadian Immigration on 8 December 2008. He lied about refugee claims previously made, he lied about being under a deportation order, and he lied about being previously detained or jailed. He initially maintained the story he gave to the U.S. authorities was truthful and slowly admitted that some information was correct and finally he told the officer everything he said to the U.S. Justice Department was untrue.

[7] The Board noted that in his PIF the applicant admitted to “embellishment” of his life in Iraq, and that at the hearing his counsel admitted that most of the statements in the U.S. story were false. This meant that the applicant had lied about being arrested, beaten, interrogated and tortured in an effort to obtain asylum. The Board also challenged the applicant’s professed Christian faith due to his lack of knowledge of the faith as well as the lack of objective evidence to support it. As a consequence, the Board held:

This claim is rejected for lack of credibility. As a result I find the claimant is not a genuine practicing Christian and there is not more than a mere possibility that he would face persecution based on religion or for any Convention ground in Iraq.

[8] The only issue the applicant raises is whether the Board erred by failing to consider whether he would be perceived to be a Christian by virtue of the fact that he is a Chaldean, and whether this would result in persecution sufficient to support a refugee claim. This issue was not raised by the applicant before the Board.

[9] In *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381 the Court of Appeal held that “where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim.” I accept the submission of the applicant that where there is evidence that raises a risk factor, the Board is obliged to analyze it even if neither the applicant nor the Minister has raised it in argument. This is not to suggest that the Board has a duty to undertake a microscopic examination of the record before it to try to uncover a risk. The extent of the Board’s duty, in my view, is akin to that described by the English Court of Appeal in *Kerrouche, R (on the application of) v Secretary Of State For Home Department* [1997] EWCA Civ 2263, [1997] Imm AR 610 (31st July, 1997) in the context of a refugee appeal tribunal:

The anxious scrutiny which has to be exercised in relation to all issues which could affect the safety of a refugee means that a more relaxed approach should be adopted in relation to procedural failures than would be the case if a less important issue were at stake. If therefore an appellate body, whether it is a Special Adjudicator, of the Tribunal, is aware or ought to be aware that an appellant has not relied upon a point which could materially improve the outcome of his appeal, then the appellate body is under an obligation either to deal with the point or at least draw it to the attention of the appellant. However appellate bodies naturally focus primarily on the cases which are presented before them. They cannot be expected to carry out an investigation themselves to see whether there are points which have not been relied upon by an appellant that could have been relied upon. They are not required to engage in a search for new points. If however there is a readily discernible point which favours an appellant although he has not taken it, the Special Adjudicator or Tribunal should apply it in the appellant’s favour.

[10] In this case, the applicant submits that it was readily discernable from the record before the Board that Chaldean Christians suffer persecution in Iraq and therefore the Board was obligated to

consider whether the applicant, as a Chaldean, although not a practising Christian, would be viewed as a Christian and thus subject to persecution. The applicant's reasoning is as follows:

1. Mr. Galyana is Chaldean;
2. all Chaldeans are perceived in Iraq to be Christians;
3. therefore Mr. Galyana will be identified in Iraq as a Christian;
4. and since Christians in Iraq face persecution; therefore
5. Mr. Galyana faces persecution in Iraq.

[11] Even if the first two propositions could be established on the record before the Board, the third proposition only follows if Chaldeans are readily identified as such in Iraq. There is nothing in the record that supports that assumption. In sum, it is not readily apparent from the record that Mr. Galyana will be identified either as a Chaldean or as a Christian in Iraq. Accordingly, I find no error in the Board's decision.

[12] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-4507-10

**STYLE OF CAUSE:** SALEM GALYANA v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 2, 2011

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

**DATED:** MARCH 3, 2011

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