Federal Court  Cour fédérale

Date: 20120229

Docket: IMM-5627-11

Citation: 2012 FC 278

Ottawa, Ontario, February 29, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MOUSA JAVADI

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*, SC 2001, c 27 (the Act) for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated July 25, 2011, which refused the applicant's claim to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant seeks an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] Mr. Mousa Javadi (the applicant) is a thirty-three (33) year old citizen of Iran.

[4] In June of 2009, the applicant took part in the protests following the Iranian presidential elections. The applicant participated in the protests held in the city of Rasht, near his hometown.

[5] On June 16 or 17, 2009, while participating in a protest, the applicant maintains that he was arrested and subsequently imprisoned. The applicant also contends that he was tortured and beaten for a period of several months.

[6] During his incarceration, the applicant states that he was taken to court and denied representation. He was accused of collaborating with American and Israeli agents and accused of anti-Islamic activities. Consequently, the applicant maintains that he was condemned to serve a sentence of seven (7) years in the Lakon prison, in the city of Rasht.

[7] In the spring of 2010, the applicant's brother died and the applicant affirms that he was permitted to leave the prison for four (4) days to attend his brother's funeral. His release was secured by his father, who pledged his rice factory as a guarantee that his son would return to prison.

[8] During his temporary release from prison, the applicant's father made arrangements for the applicant to flee Iran. He travelled to Turkey by foot and then made his way to Canada using a false Cypriot passport. The applicant arrived in Canada on May 13, 2010 and claimed asylum.

[9] In July of 2011, the applicant submitted an adjournment request ten (10) days prior to his hearing after receiving a letter from his psychologist, Dr. David Woodbury, which recommended that he undergo neurological testing. However, the adjournment request was refused by the coordinating member of the Board on July 12, 2011.

[10] The applicant's claim was heard by the Board on July 15, 2011.

Decision under Review

[11] In its decision, the Board also refused the applicant's adjournment request and decided to proceed with the disposition of his claim.

[12] The Board determined that the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act. The Board maintained that the determinative issue was the applicant's credibility. Essentially, the Board raised a number of inconsistencies and improbabilities with respect to the applicant's claim :

a) *Doubts about his arrest:*

a. Based on the documentary evidence, the Board found that the applicant's seven (7) year prison sentence was unusually harsh considering that many well-known journalists and academics who had also participated in the protests had received considerably lesser sentences and many ordinary individuals, like the claimant, had been released shortly after being arrested. The Board also concluded that the

applicant did not fit the profile of an activist or someone who would have been regarded as a serious threat to the regime to warrant such a harsh sentence;

b) *No corroborating documentation about his arrest, his release and his appeal of his prison sentence:*

b. The Board questioned him on why he was allowed to leave the prison for four (4) days if he was serving a seven (7) year prison sentence and whether he had to be accompanied by a guard. The applicant explained that he was allowed to leave without a guard and that his father's factory was put up as a guarantee. He submitted a letter from his father as evidence. The letter indicates that after his son fled the country, the applicant's father was detained and his factory was confiscated. The Board noted that the applicant had no documentation to show the agreement between his father and the authorities. There was also no document stating that the rice factory had been in fact confiscated. Considering the size of the factory (20-30 employees) and the fact that the applicant was allowed to leave prison, the Board concluded that it would be reasonable to expect that such an important arrangement would have been documented;

c. While the Board stated that it was aware that corroborative evidence is not a legal condition in refugee determination hearings, the Board affirmed that it was not unreasonable to expect the claimant to obtain some corroborative evidence that the authorities had allowed him to leave prison. The Board highlighted the fact that Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228 (the Rules) provides that the applicant bears the burden of submitting corroborative evidence;

d. The Board also noted that there was no official documentation regarding his alleged trial where he received a sentence of seven (7) years of imprisonment. As well, the Board noted that the applicant had no documentation concerning his appeal. Thus, the Board drew a negative credibility inference from the applicant's failure to provide such documentation;

e. The Board found that it was improbable that the applicant had been allowed to leave prison. In light of the fact that Iranian authorities deny permission to bury those who have died in prison, the Board found that the applicant's permission to leave the prison after being allegedly tortured would have been viewed by authorities as undesirable. In response to a document that indicated that a well-known blogger had been allowed to leave prison, the Board affirmed that the applicant's situation was not similar as he was not internationally-known;

f. The Board acknowledged that the applicant suffers from symptoms of post-traumatic stress disorder. However, given its conclusion on the applicant's credibility, the Board gave little probative value to Dr. David Woodbury's psychological report to support the applicant's allegations;

c) *No documentation concerning his brother's death:*

g. The applicant submitted a flyer which announced a memorial service for his brother on April 3, 2011. However, the Board stated that the announcement only mentioned a service to commemorate the anniversary of his brother's death and it did not state specifically that it was a one-year anniversary, as the applicant claimed. The Board concluded that the flyer was not an official document and gave it little probative value;

h. The Board also noted the absence of a death certificate in the applicant's file. The Board was not satisfied with the applicant's explanation on this issue. The Board concluded that the system for registering individuals in Iran appeared to be quite modern and that departments do exist to record the vital statistics of its citizens. As such, the Board drew a negative inference from applicant's failure to present his brother's official death certificate or his *shenasnameh* with a stamp indicating that the bearer is deceased;

i. The Board also noted that the applicant's Personal Information Form (PIF) indicated that it was his sister who had passed away and that his brother was living. The Board observed that an amendment was made to the applicant's PIF which provided the correction that it was his brother who had passed away. While this may have been a simple error, the Board nevertheless drew a negative inference from the applicant's failure to provide official documentation regarding his brother's date of death;

d) *Doubts concerning the applicant's political involvement:*

- The Board concluded that the applicant was not credible about his political involvement. The Board noted that no activities prior to the post-election period of 2009 were included in his PIF or his IMM5611 form. However, this was incongruent with the applicant's testimony that, prior to the 2009 elections, he had participated in discussions, that he had supported Mousavi, and that he had worked on his campaign by putting up posters and by holding a meeting of 40-50 people in his home;

- The Board also noted certain inconsistencies regarding the applicant's account of the meeting he held in his home. The applicant mentioned that the meeting was held under the Green Movement in the months preceding the election. However, the Board noted that the Green Movement refers to a series of actions after the 2009 Iranian presidential elections, in which protesters demanded the removal of President Ahmadinejad from office. The Board noted that the movement was officially founded after the election of June 12, 2009. As well, the Board affirmed that the documentary evidence shows that the Guardian Council only permitted Mousavi to run for the presidency on May 20, 2009;

[13] With regards to the applicant's claim that he would suffer persecution as a failed asylum seeker if he were to return to Iran, the Board referred to a document from 2005 issued by the Canada Border Services Agency (Board's decision, paragraph 20), which states that at no point during the removal process are Iranian authorities or other receiving authorities advised that an individual has made a refugee claim in Canada. The Board further stated that it preferred this evidence over other documents in the file as it was from a Canadian source. Thus, the Board concluded that the applicant would not face a risk as a failed refugee if he were to return to Iran.

Issues

[14] The issues in this case are the following:

1) Were the Board's credibility findings unreasonable?
2) Did the Board violate the duty of natural justice by failing to adjourn the hearing?

Statutory Provisions

[15] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION	NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER
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 fear, unwilling to avail themself of the protection of each of those countries; or

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*) 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.

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.

Person in need of protection

Personne à protéger

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

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

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

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

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

(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,

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

[16] As well, the following provisions of the *Refugee Protection Division Rules* are applicable in these proceedings:

DOCUMENTS ESTABLISHING IDENTITY AND OTHER ELEMENTS OF THE CLAIM	DOCUMENTS D'IDENTITE ET AUTRES ELEMENTS DE LA DEMANDE D'ASILE
Documents establishing identity and other elements of the claim	Documents d'identité et autres éléments de la demande
7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.	**7.** Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

CHANGING THE DATE OR TIME OF A PROCEEDING

CHANGEMENT DE LA DATE OU DE L'HEURE D'UNE PROCÉDURE

Application to change the date or time of a proceeding

Demande de changement de la date ou de l'heure d'une procédure

48. (1) A party may make an application to the Division to change the date or time of a proceeding.

48. (1) Toute partie peut demander à la Section de changer la date ou l'heure d'une procédure.

Form and content of application

Forme et contenu de la demande

(2) The party must
(*a*) follow rule 44, but is not required to give evidence in an affidavit or statutory declaration; and
(*b*) give at least six dates, within the period specified by the Division, on which the party is available to start or continue the proceeding.

(2) La partie :
a) fait sa demande selon la règle 44, mais n'a pas à y joindre d'affidavit ou de déclaration solennelle;
b) indique dans sa demande au moins six dates, comprises dans la période fixée par la Section, auxquelles elle est disponible pour commencer ou poursuivre la procédure.

If proceeding is two working days or less away

Procédure dans deux jours ouvrables ou moins

(3) If the party wants to make an application two working days or less before the proceeding, the party must appear at the proceeding and make the application orally.

(3) Si la partie veut faire sa demande deux jours ouvrables ou moins avant la procédure, elle se présente à la procédure et fait sa demande oralement.

Factors

Éléments à considérer

(4) In deciding the application, the Division must consider any relevant factors, including

(4) Pour statuer sur la demande, la Section prend en considération tout élément pertinent. Elle examine notamment :

(*a*) in the case of a date and time that was fixed after the

a) dans le cas où elle a fixé la date et l'heure de la procédure

Division consulted or tried to consult the party, any exceptional circumstances for allowing the application;
(*b*) when the party made the application;
(*c*) the time the party has had to prepare for the proceeding;
(*d*) the efforts made by the party to be ready to start or continue the proceeding;
(*e*) in the case of a party who wants more time to obtain information in support of the party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;

(*f*) whether the party has counsel;
(*g*) the knowledge and experience of any counsel who represents the party;
(*h*) any previous delays and the reasons for them;
(*i*) whether the date and time fixed were peremptory;

(*j*) whether allowing the application would unreasonably delay the proceedings or likely cause an injustice; and
(*k*) the nature and complexity of the matter to be heard.

Duty to appear at the proceeding

(5) Unless a party receives a decision from the Division allowing the application, the party must appear for the proceeding at the date and time fixed and be ready to start or

après avoir consulté ou tenté de consulter la partie, toute circonstance exceptionnelle qui justifie le changement;
b) le moment auquel la demande a été faite;
c) le temps dont la partie a disposé pour se préparer;
d) les efforts qu'elle a faits pour être prête à commencer ou à poursuivre la procédure;
e) dans le cas où la partie a besoin d'un délai supplémentaire pour obtenir des renseignements appuyant ses arguments, la possibilité d'aller de l'avant en l'absence de ces renseignements sans causer une injustice;
f) si la partie est représentée;

g) dans le cas où la partie est représentée, les connaissances et l'expérience de son conseil;
h) tout report antérieur et sa justification;
i) si la date et l'heure qui avaient été fixées étaient péremptoires;
j) si le fait d'accueillir la demande ralentirait l'affaire de manière déraisonnable ou causerait vraisemblablement une injustice;
k) la nature et la complexité de l'affaire.

Obligation de se présenter aux date et heure fixées

(5) Sauf si elle reçoit une décision accueillant sa demande, la partie doit se présenter à la date et à l'heure qui avaient été fixées et être prête à commencer ou à

continue the proceeding. poursuivre la procédure.

Standard of Review

[17] With regards to the first issue raised by the applicant, it is trite law that the standard of reasonableness applies to the Board's credibility findings. As such, the Board must be afforded deference by the Court (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Aguebor v Canada (Minister of Employment and Immigration)* (FCA), (1993) 160 NR 315, 42 ACWS (3d) 886).

[18] With respect to the second issue of whether the Board violated the duty of natural justice by failing to adjourn the hearing, the case law has established that the applicable standard of review is the correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Dunsmuir*, above).

Analysis

1) Were the Board's Credibility Findings Unreasonable?

[19] The applicant submits that it was unreasonable for the Board to make the negative credibility findings that it did. Specifically, the applicant advances that the Board erred in not properly considering the applicant's explanations concerning his lack of corroborative evidence in light of the country conditions of Iran. The applicant further argues that the Board made incorrect assumptions about the situation in Iran. Furthermore, the applicant contends that findings of implausibility should only be made in the clearest of cases. However, in the present case the evidence demonstrates otherwise. Lastly, the applicant maintains that the Board erred in giving little probative value to the psychological report prepared by Dr. Woodbury.

[20] The respondent disagrees and submits that the Board's conclusion on credibility was reasonable in light of the number of omissions and inconsistencies in the applicant's claim and in light of the serious lack of corroborative evidence. The respondent also argues that the psychiatric report prepared by Dr. Woodbury cannot possibly serve as a cure-all for any and all deficiencies in a claimant's testimony.

[21] Having considered the arguments advanced by the parties, the Court reminds that the Board is best placed to assess the testimony and evidence submitted in the file. The Board may make adverse findings when an applicant has failed to produce evidence corroborating his or her testimony when their credibility is in doubt. The Board is presumed to have taken all of the evidence into consideration. It is trite law that the Board is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 598 at para 1 and *Velinova v Canada (Minister of Citizenship and Immigration)*, 2008 FC 268, [2008] FCJ No 340. In this case, as in many cases, documentary evidence contains excerpts that are favourable and others that are unfavourable (*Owusu v Canada (Minister of Citizenship and Immigration*) [1998] FCJ No 300). The Court cannot substitute its judgment to that of the Board's and reweigh or reconsider the explanations offered by the applicant in order to reach another conclusion (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 787, [2009] FCJ No 911; *Kumar v Canada (Minister of Citizenship and Immigration)*, 2009 FC 643, [2009] FCJ No 811). The Court will only interfere in unusual circumstances and there are none that exist here.

[22] In the present case, the Board noted several inconsistencies and implausibilities in the applicant's claim and determined that his credibility had been compromised. After reviewing the Board's decision, the Court finds no reviewable error. In light of the applicable standard of reasonableness, the Court must defer to the Board's negative credibility findings.

2) Did the Board Violate the Duty of Natural Justice by Failing to Adjourn the Hearing?

[23] The applicant maintains that the Board violated its duty of natural justice when it refused to grant an adjournment of the hearing. In refusing the adjournment request, the applicant contends that the Board failed to consider the factors set out in subsection 48(4) of the Rules (*Ramadani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 211, [2005] FCJ No 251; *Modeste v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1027, [2006] FCJ No 1290; *Golbom v Canada (Minister of Citizenship and Immigration)*, 2010 FC 640, [2010] FCJ No 855; *R.M.Q.M. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1150, [2011] FCJ No 1429). Further, the applicant submits that the Board erred in attributing little probative value to the psychological report prepared by Dr. Woodbury, dismissing his assessment and by adopting the recommendations of the applicant's general physician instead. The applicant argues that the neurological testing could have corroborated his account and allowed the Board to better appreciate his claim.

[24] The respondent is of the opinion that there was no breach of procedural fairness under subsection 48(4) of the Rules. The respondent submits that a party's right to an adjournment is not absolute, but rather, it falls within the discretion of the Board (*Prassad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560, [1989] SCJ No 25). As well, the respondent reminds that it is also recognized that the Board must quickly deal with all the proceedings before it,

as per section 162(2) of the Act. The respondent propounds that the Board considered the relevant factors to refuse the applicant's application in paragraphs 18 and 19 of its reasons. As such, the respondent advances that the Board was justified to deny the adjournment request and that there was no breach of the Rule of *audi alteram partem* or of procedural fairness (*Kandasamy v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1492, 194 FTR 319; *Ching v Canada (Minister of Citizenship and Immigration)*, 2005 FC 132, [2005] FCJ No 181; *Sherlock Albertson Hardware v Canada (Minister of Citizenship and Immigration)*, 2009 FC 338, [2009] FCJ No 421).

[25] The Court recalls that the power to grant a postponement request is within the Board's discretion. Pursuant to the Federal Court of Appeal's decision in *Vairamuthu v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 772, 42 ACWS (3d) 108, the Court may only criticize a Tribunal for having denied a request for adjournment if it is clear that a breach of natural justice or fairness has resulted from the decision. When a Tribunal refuses an adjournment, the Court will thus analyze the circumstances specific to each case in order to determine if there was any breach of the principle of natural justice (*Julien v Canada (Minister of Citizenship and Immigration*) 2010 FC 351 at para 28, [2010] FCJ No 403)

[26] The Court also reminds that the factors listed in subsection 48(4) of the Rules are not exhaustive or conjunctive. As well, each case must be assessed according to its own circumstances (*Escate v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1052 at para 13, [2010] FCJ No 1347 [*Escate*]). Moreover, in the case of *Gittens v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 373, [2008] FCJ No 473, the Court stated that subsection

48(4) should not be interpreted as a direction to systematically provide a formulaic consideration of each enumerated point whether relevant or not.

[27] In the case at bar, the Court observes that the refusal for an adjournment was first considered by the coordinating member of the Board who stated the following for the refusal on July 12, 2011 (Tribunal Record, pp 80-81):

> Après avoir pris en considération l'article 48 des Règles de la SPR et la Directive #6,
>
> le Tribunal rejette la présente demande pour les motifs suivants :
>
> 1) Les demandeurs sont au Canada depuis mai 2010
> 2) La CISR ne fait droit aux demandes de changement de la date ou de l'heure a une procédure que dans des cas exceptionnels ou si les circonstances le justifient
> 3) La CISR doit fonctionner avec célérité
> 4) Rien dans la preuve soumise ne démontre que les demandeurs ne sont pas en mesure de comprendre la nature des procédures
> 5) Le Tribunal estime qu'un examen médical n'apportera rien de plus à ce qui est déjà mentionné dans la lettre du psychologue et qui sera pris en considération par le Commissaire assigné. Le Commissaire qui entendra ce dossier pourra qualifier les demandeurs comme étant des personnes vulnérables s'il le juge à propos.

[28] At the Board's hearing which was held on July 15, 2011, the applicant further requested an adjournment. The Board made the following comments in paragraphs 18 and 19 of its decision:

> [18] […] Counsel had requested a postponement of the hearing in order to obtain a neurological report on the claimant however the request for a postponement had been denied prior to the hearing by the co-ordinating member. At the hearing however counsel reiterated his request for a neurological report. During the hearing the claimant stated that he was being treated by a Farsi speaking doctor to whom he had told his story of torture in Iran. The claimant testified that he had been sent to a head doctor but was unable to state whether this was a neurologist or a psychiatrist. He then stated that he had the medication that he received from this specialist and produced from his bag the medication he was currently receiving. This included Vitamin A, antidepressant medication (cipralex) and pain medication. The panel finds that the claimant had these symptoms for the duration of time that he has been in

> Canada and that if a neurological report had been indicated, his physician would have requested one given the fact that his medical file (Exhibit P-7) indicates that other consultations had been requested, including a request to be seen by a urologist and an ophthalmologist.
>
> [19] The psychologist's report had stated that the claimant's global assessment functioning is at a level of 35 (on a scale of 100) which is a major impairment in functioning. At the hearing the panel found that the claimant was able to recall events and to speak in detail about what had allegedly happened to him. The panel found that he spoke in a coherent manner and did not display any difficultly with concentration. The panel noted only a slight disinterest in his manner. The panel finds that, although the claimant may be suffering from symptoms of post traumatic stress disorder, given the panel's conclusion on the credibility of the claimant, the panel gives little probative value to Dr. Woodbury's psychological report to support the claimant's allegations.

[29] The Court observes that the coordinating member of the Board clearly considered section 48 of the Rules when making its decision. As well, while the Board did not specifically outline the factors included in subsection 48(4) of the Rules in its decision, its remarks on the applicant's request clearly demonstrate that consideration was given to the criteria listed in subsection 48(4) of the Rules. The Board considered the time the applicant had to prepare for the proceeding (48(4)(*c*)) and whether allowing the application would unreasonably delay the proceedings or likely cause an injustice (48(4)(*j*)).

[30] The Court also observes that the Board noted that the applicant had been seeing his general practitioner, Dr. Ahmad, in Gatineau once every two (2) to three (3) months since his arrival (Tribunal Record, p 307), and that this doctor did not request that any neurological exams be conducted. Moreover, it is noteworthy that the Board did not discard the applicant's request from the outset and stated the following on page 309 of the Tribunal Record: "[o]kay. So it's Dr. Ahmad that signed all the requests for consultation. I suggest that we'll go ahead with the hearing, we'll see how

it goes and at the end if I feel there's a need for a neurological evaluation we can perhaps look into that later on."

[31] Finally, on page 340 of the Tribunal Record, the Board mentioned the following at the end of the hearing: "[a]s far as the neurological report I don't think it will be necessary, I think the claimant has had these symptoms for many years, last two years and I think there was time to have done this neurological evaluation before. He's seen a specialist Dr. Richardson who he said was a specialist, either a psychiatrist or a neurologist."

[32] In the present case, and in light of the evidence on record, the applicant has not convinced the Court that he has suffered any injustice from not having undergone neurological testing. The applicant has not demonstrated that the Board's refusal to grant an adjournment adversely affected him or prevented him from presenting his claim in an adequate manner. The applicant has not satisfied the Court that the documents he intended to file would have been determinative and would have led the Board to deem his narrative credible (*Escate*, above, para 18).

[33] In conclusion, the Court finds that no duty of fairness was breached and that the Board's credibility findings were reasonable. For these reasons, the Court finds that this application for judicial review will be dismissed.

[34] As neither party has proposed a question for certification, none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed;

2. There is no question for certification.

"Richard Boivin"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5627-11
STYLE OF CAUSE:	Mousa Javadi v MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	February 15, 2012
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	February 29, 2012

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