Federal Court Cour fédérale

Date: 20120626

Docket: IMM-6990-11

Citation: 2012 FC 812

Ottawa, Ontario, June 26, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

HAMID REZA AHMADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision made on September 20, 2010 by a Pre-Removal Risk Assessment Officer that the applicant would not be at risk of persecution or harm if returned to his country of origin, Iran.

[2] For the reasons that follow, the application is dismissed.

BACKGROUND

[3] The applicant, Mr. Hamid Reza Ahmadi, claims to have been a supporter of the monarchist group “the Guardians of Eternal Iran”.

[4] During his military service in the Iranian Navy, he was asked to provide information at a meeting with the Navy’s counter-intelligence department. He refused to attend the meeting and went underground. He fled to Belgium in 1992. His family joined him there as they tried to obtain refugee status. The refugee claim was denied by Belgium.

[5] On 15 August 1996, the applicant arrived in Canada with his wife and children. They again claimed refugee status but their claim was denied in 1997. Leave for judicial review of that decision was denied. An application for an exemption from the in-Canada visa requirements was denied in May 1999.

[6] While living in Canada, the applicant says he has been an active opponent of the Iranian regime. He claims he fears for his safety if returned in Iran due to his pro-monarchist views, his history with the navy, his long absence from Iran and his involvement in public protests.

[7] The applicant submitted his application for a pre-removal risk assessment (“PRRA”) on 7 December 2010.

DECISION UNDER REVIEW

[8] The officer noted that in support of his application, the applicant submitted two photographs of himself in 2003 and 2009 demonstrations, his birth certificate, a criminal records check, submissions by his counsel and country condition documentation.

[9] The officer determined that the documents submitted constituted new evidence. The officer considered the applicant's pre-arrival to Canada experience. He found that the evidence did not demonstrate that the Guardians of Eternal Iran were still active in Iran, as the Refugee Protection Division had found in 1997. He also noted that the applicant made no written submissions of his own and that the evidence did not support his counsel's submissions. They were given little weight.

[10] The officer then looked at the applicant's post-arrival to Canada experiences. He found that counsel's submissions were imprecise as to the nature of the applicant's political opinion, that the applicant did not have the visibility most repressed protesters do in Iran as shown by the documentary evidence, that no evidence was provided to support his involvement in the anti-Iranian regime movement beside the two photograps, and that the evidence showed that his involvement in demonstrations was sporadic: two demonstrations 6 years apart.

[11] Finally, the officer found that the applicant did not establish that the Iranian authorities could be aware of his refugee claims in Belgium and Canada and that the documentary evidence showed that the applicant did not have the profile of usual targets of the Iranian regime. The officer found that the applicant was not at risk and his application was denied.

ISSUES

[12] This application raises two issues:

a. Did the officer consider all of the evidence?

b. Did procedural fairness require that the officer grant the applicant a hearing?

RELEVANT LEGISLATION

[13] Paragraph 113(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 reads as follows:

113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
[…]	[…]
(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l’estime requis compte tenu des facteurs réglementaires;

[14] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 states:

167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	167. Pour l’application de l’alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d’une audience est requise :
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a*) l’existence d’éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

(*b*) whether the evidence is central to the decision with respect to the application for protection; and	*b*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	*c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

STANDARD OF REVIEW

[15] The evaluation of the evidence by a PRRA officer, a question of fact, attracts the standard of review of reasonableness: *Matute Andrade v (Minister of Citizenship and Immigration)*, 2010 FC 1074 at para 23.

[16] The applicable standard of review to questions involving s.167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (hereafter the Regulations) is reasonableness as "whether the PRRA officer made findings on the applicant's credibility and, if so, whether he was required to hold a hearing based on the factors prescribed in section 167 of the Regulations are questions of mixed fact and law": *Matute Andrade*, above, at para 22; and *Adeoye v Canada (Minister of Citizenship and Immigration)*, 2012 FC 680 at para 7.

[17] The applicant here did not ask for a hearing. Had he done so, the PRRA officer would have been obliged to evaluate whether a hearing was warranted: *Montesinos Hidalgo v Canada (Citizenship and Immigration)*, 2011 FC 1334.

ANALYSIS

Did the officer consider all of the evidence?

[18] The applicant alleges that the officer disregarded some of the evidence. That is not apparent on the face of the decision. The applicant's complaint, it would seem, is that the officer did not give sufficient weight to the evidence said to have been disregarded. Deference is due to the decision maker's assessment of the facts and it is not the role of this Court to reassess the evidence: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 33; and *Augusto v Canada (Solicitor General)*, 2005 FC 673 at para 9.

[19] The officer considered the photographs submitted by the applicant in support of his claim to have participated in public demonstrations in Canada against the Iranian regime. The officer considered this evidence to evaluate how involved the applicant was in the opposition movement in order to determine risk. He also analysed the country conditions documents and arrived at the conclusion that only certain persons were targeted by the Iranian regime, and that the applicant did not have the profile of such a person: US Department of State, *2009 Human Rights Report: Iran*, 11 March 2010; Human Rights Watch, *Remembering Iran's Rights Abuses*, 4 May 2010; various Amnesty International documents on Iran, CTR at pages 134-145 of the Certified Tribunal Record. The applicant alleges that the US Department of State, *2009 Human Rights Report: Iran*, indicates that any form of protest is repressed in Iran. While this is true, the document speaks of protests <u>in</u> Iran. The applicant protested outside of Iran and thus he had to demonstrate that the Iranian

government would be aware of his political involvement. The officer found he had not done so. That was a finding open to the officer on the evidence.

[20] As indicated by the respondent, the present situation is distinguishable from the case of *Win v Canada (Citizenship and Immigration)*, 2008 FC 398, cited by the applicant, as the officer in that case disregarded material evidence. In this instance, the evidence did not demonstrate that the applicant had the profile of a typical target of the Iranian government: *Nejad v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1444 at paras 24-26. The officer reasonably concluded that the applicant had not demonstrated that he would be at risk if returned to Iran. Contrary to the applicant's contention, the decision is based on all of the evidence before the officer and not on abstract possible evidence not before him as claimed.

[21] It was open to the officer to require more evidence than that which was submitted and to note the lack of a personal statement by the applicant: *SK v Canada (Minister of Citizenship and Immigration)*, 2011 FC 788 at para 11; and *Ferguson*, above, at paras 26-32. The officer's conclusion fell within the range of acceptable outcomes as it was based on the facts and the law, and was justifiable, intelligible and transparent.

Did procedural fairness require that the officer grant the applicant a hearing?

[22] Section 167 of the Regulations establishes criteria to consider when granting an oral hearing: (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; (b) whether the evidence is central to

the decision with respect to the application for protection; and (c) whether the evidence, if accepted, would justify allowing the application for protection.

[23] This Court must first look at the decision to evaluate if a credibility finding was made. If so, it must determine what was at the heart of the decision to determine if the credibility finding was central and could have possibly changed the outcome of the decision: *Matute Andrade*, above, at paras 30-35; *Adeoye*, above, at para 7; and *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2012 FC 89 at paras 37-39.

[24] In the present case, the officer did not make any explicit credibility findings. Credibility findings, however, may be implicit in the decision and thus the Court must look beyond the words of the officer: *Matute Andrade*, above, at para 31.

[25] Here, it is possible that the officer doubted the applicant's credibility with regards to his political opinion. The officer's comments about the vagueness of the applicant's political opinion and the extent of his involvement in the protests are clues that he might not have entirely believed the applicant.

[26] Nevertheless, the officer's decision is based on the lack of evidence and the low probative value of the submissions made on the application (see *Ferguson*, above, at paras 26-32; and *Pulaku v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1048 at paras 29-30). Since the decision was based on the insufficiency of the evidence, credibility was not a central element of the decision: *Ahmad*, above, at para 39; and *Yousef v Canada (Minister of Citizenship and*

Immigration), 2006 FC 864 at para 36. If the officer had accepted that the applicant was as politically involved as his counsel had claimed, the insufficiency of the evidence regarding the applicant's risk would have still remained the central issue of the application. In the circumstances, the decision to not interview the applicant was reasonable.

[27] The parties did not submit a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is denied. No question is certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6990-11
STYLE OF CAUSE:	HAMID REZA AHMADI AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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