

Federal Court



Cour fédérale

Date: 20140226

Docket: IMM-3755-13

Citation: 2014 FC 182

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 26, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

HADI MOHEBBI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Hadi Mohebbi, who was born a Muslim and is a citizen of Iran, has twice been baptized a Christian: the first time in Iran and a second time in Canada. He claimed refugee protection on the ground that should he return to Iran he has a well-founded fear of persecution by reason of his religion, pursuant to section 96 of the *Immigration and Refugee Protection Act* (IRPA) and the *UN Convention Relating to the Status of Refugees*, and that there are substantial grounds to

believe he would be subject to a threat to his life or to a risk of cruel and unusual treatment or punishment under section 97 of the IRPA.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) denied his claim. The panel determined that Mr. Mohebbi was not credible with regard to his conversion to Christianity when he was still in Iran and that he was not a refugee “sur place.” This is the judicial review of that decision.

I. Sections 96 and 97 of the IRPA

[3] For the purposes of this case, it is important to distinguish between sections 96 and 97 of the IRPA. Although the onus is on a claimant to establish a claim under section 96, a serious possibility of persecution must be established, which involves a less stringent burden of proof than that of balance of probabilities. The fear of persecution must be subjective as well as objective.

[4] Under section 97, the burden of proof is that of the standard of proof in civil cases, which is the balance of probabilities (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 CFA 1, [2005] FCJ No 1 (QL) and *FH v McDougall*, 2008 SCC 53, [2008] 3 SCR 41). However, an objective basis for the fear is sufficient. Subjective fear is immaterial. (*Ghasemian v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266 and *Yang v Canada (Citizenship and Immigration)*, 2012 FC 849, [2012] FCJ No 961(QL)).

[5] *Ghasemian, Yang* and a number of other decisions are also important in reviewing a sur place claim. The perspective of refugee law is forward looking. It may be that some of the applicant's allegations of fear of persecution are based on facts which occurred after he left his country and may also be based on activities outside that country. Lack of good faith is not a factor to consider.

II. Activities in Iran

[6] Given that I intend to allow this application for judicial review on the ground that the analysis of Mr. Mohebbi's sur place refugee claim was inadequate, there is no need for me to go into greater detail on this aspect of the claim. I am satisfied that the decision that Mr. Mohebbi was not credible with regard to his conversion to Christianity in Iran, and that he had no subjective fear, is not unreasonable. He was very vague and ambiguous about the conversion process in Iran, which supports the conclusion that he was not credible.

III. Activities in Canada

[7] However, the situation in Canada is different. It is established that Mr. Mohebbi was baptised here, that he attends church regularly and displays his religious faith on a Facebook page under his own name. In addition to evidence given by his father and the father of a friend indicating that the Iranian authorities had been making inquiries about him, it is certainly possible that they are aware of his activities.

[8] The RPD's analysis was insufficient in this regard. At paragraph 40 of its decision, the panel stated:

... The Tribunal is well aware that the documentary evidence in general supports the fact that apostasy is considered a crime for which the death penalty is the sentence under the Sharia law that prevails in Iran.

The panel further stated:

[41] The Tribunal is also aware that the documentary evidence indicates that there is harassment, discrimination, and persecution of people who do not follow the religion as it is imposed by the state, Iran being ruled by a theocratic government.

[42] The legal structure in Iran considers that the conversion is a renouncement of the Islam religion and is therefore considered like apostasy. An apostate is liable to a death sentence.

[9] However, the panel added that converts are rarely sentenced to death. The panel cited a report by the UK Border Agency indicating that threats are viewed as a means of putting pressure on converts to get them to repent and convert back to Islam. In addition, as the report notes: "intense pressure and serious human rights abuses occur regularly..."

[10] Essentially, the panel concluded that Mr. Mohebbi would have to be discreet in Iran. However, it is not for the panel to determine how a person should practise their religion. Mr. Mohebbi submits that he is an evangelical Christian whose duty is to spread the Good News of the Gospel. Given that no analysis was done on this subject, I consider the decision to be unreasonable.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, dated May 6, 2013, in RPD File Number: MB2-01025, is set aside.
3. The matter is referred back to the RPD for rehearing before a differently constituted panel.
4. The matter raises no serious question of general importance for certification.

“Sean Harrington”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3755-13

STYLE OF CAUSE: HADI MOHEBBI v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 6, 2014

REASONS FOR ORDER AND ORDER: HARRINGTON J.

DATED: FEBRUARY 26, 2014

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