Date: 20070417

Docket: IMM-892-07

Citation: 2007 FC 397

OTTAWA, Ontario, April 17, 2007

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

ASHRAF EBADI GHAVIDEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for the stay of a removal order that was originally scheduled to be executed on March 11, 2007 and was deferred temporarily pending this order. The underlying application for judicial review concerns a Pre-Removal Risk Assessment (PRRA) decision rendered on February 22, 2007.

[2] The applicant is an Iranian citizen who came to Canada in September 2002 to visit her son who is a Canadian citizen.

[3] On February 14, 2003, she made a refugee claim alleging a risk of persecution because of her son's political activities in Iran and because she owned a hair salon. On January 6, 2005, the Refugee Protection Division of the Immigration and Refugee Board refused her claim.

[4] In June of 2005, the applicant submitted a PRRA application alleging a risk because of involvement in the Christian church. The applicant was born a Muslim but has been interested in Christianity since when she lived in Iran. The PRRA officer found that the applicant would not be at risk if she returned to Iran and noted that the applicant's involvement in Christianity was limited to a general interest.

[5] On November 26, 2006, the applicant was baptized at the Coquitlam Alliance Church in Coquitlam, B.C.

[6] On February 12, 2007, the applicant submitted a second PRRA application alleging risk as a Muslim who converted to Christianity and a risk from spousal abuse.

[7] This second PRRA was rejected on February 22, 2007. The officer held that there was no evidence to support the applicant's claim of spousal abuse. With respects to her allegation of risk based on her conversion to Christianity, the officer accepted that she was a genuine convert but held that she did not provide evidence that she would be at risk upon return to Iran.

[8] To succeed on an application for a stay of a removal order, an applicant must meet the tripartite test set out in *Toth v. Minister of Employment and Immigration* (1988), 86 N.R. 302 (F.C.A.) [*Toth*].

[9] The first part of test requires the applicant to satisfy the Court that there is a serious issue to be tried with respect to the second PRRA by showing that the issues underlying the application for leave and judicial review raise at least an arguable case (*Rahman v. Minister of Citizenship and Immigration*, [2001] F.C.J. No. 106 (QL), *Molnar v. Minister of Immigration and Citizenship*, 2001 FCT 325 [*Molnar*]).

[10] The applicant made three points with respect to a serious issue:

(1) the officer failed to observe procedural fairness by failing to hold an interview;

(2) the officer failed to properly assess the evidence before her, specifically the evidence about whether the applicant will practice her faith publicly upon her return to Iran; and,

(3) the officer made the decision without regard for the evidence contained in Ebrahim Gaffari's affidavit.

[11] Relying on *Zokai v. Minister of Citizenship and Immigration*, 2005 FC 1103, the applicant submits that the officer was required to hold an interview since she requested one and because the officer's decision turned on an adverse credibility finding. The respondent submits that the officer's decision did not turn on an adverse credibility finding and, therefore, the officer was not required to hold an interview.

[12] I agree with the respondent that the decision in this case does not turn on an adverse credibility finding. The officer clearly accepted the applicant's conversion as genuine and her decision turned on the evidence regarding the nature of the applicant's practice as a Christian. Consequently, the alleged breach of procedural fairness does not raise a serious issue.

[13] The second issue raised by the applicant is the question of whether the officer failed to properly assess the evidence concerning whether the applicant would practice her faith publicly. After reviewing the documentary evidence, the officer

concluded that there were a number of factors which put Iranian Christians at risk, one of which is being an apostate who converted to Christianity from a Muslim background and who is public about the conversion and another factor is engaging in proselytizing.

[14] The officer assessed the possibility that the applicant would openly and actively proselytise in Iran and concluded that there was no evidence of the applicant going out of her way to proselytize. The officer specifically noted that the applicant had not converted her son and her brother, both of whom live in Canada. The officer also referred to the fact that Benjamin Egli, a pastor at the applicant's church, did not state in his affidavit that the applicant was required to proselytize her faith. The officer weighed this against evidence in the applicant's affidavit that she had been talking to her neighbour about the church and that the neighbour had begun attending church services, as well as evidence from the websites of the Coquitlam Alliance Church and the Christian Missionary Alliance indicating that Alliance congregations prioritize evangelization and missionary work. The officer reasonably concluded that the applicant would not be at risk because she had not established that she would be public about her conversion or would proselytize.

[15] The applicant also argued that there is a serious issue to be tried because the officer made the decision without regard for the evidence contained in the affidavit of Ebrahim Gaffari, the executive director of Iranian Christians International, which was attached as an exhibit to the applicant's affidavit.

[16] I do not find that this raises a serious issue. The officer stated that she had considered all the evidence submitted by the applicant, including Ebrahim Gaffari's affidavit. It is well-established that the officer can choose to give more weight to objective documentary evidence about country conditions than to evidence submitted by an applicant.

[17] The applicant has also failed to satisfy the second part of *Toth* test which requires an applicant to satisfy the Court that she faces the likelihood of harm if the stay is refused (*Acharige v. Minister of Citizenship and Immigration*, 2006 FC 240 at para. 45). This Court has, on numerous occasions, emphasized that the harm cannot be speculative (*Akyol v. Minister of Citizenship and Immigration*, 2003 FC 931; *Molnar*).

[18] The applicant submits that a risk to life or safety constitutes irreparable harm (*Sivakumar v. Minister of Citizenship and Immigration*, [1996] 2 F.C. 872). As evidence that she faces a risk to life or safety, the applicant relies on documentary evidence regarding country conditions, including Ebrahim Ghaffari's affidavit, that allegedly indicate that she would face possible arrest, detention, torture, and even death if returned to Iran.

[19] The respondent submits that the Ghaffari affidavit should be given no weight by the Court because it is not a sworn statement and because it is irregular both in terms of its content and its form. I agree that the document cannot be considered an affidavit because Ghaffari did not swear to the truth of its contents. The irregularities of the documents make it unreliable and I give it no weight for the purposes of determining whether there is evidence of irreparable harm.

[20] The remaining evidence as to irreparable harm, consisting of documents relating to the general human rights situation in Iran, indicates that the human rights situation is poor and that religious minorities face harassment in Iran. It also indicates that leaders of evangelical movements are at risk of persecution. It does not, however, support a finding that Christians generally face a threat to life or security.

[21] The risk to life or safety faced by the applicant is very much speculative. The documentary evidence on country conditions simply does not support such a finding and the applicant has not provided any evidence that she is particularly at risk, for example that she is likely to take on a leadership role within a Christian congregation upon her return to Iran. The applicant has failed, on the balance of probabilities, to establish that she would likely face irreparable harm if the stay of removal is not granted.

[22] The third part of the *Toth* test is the balance of convenience. The balance of convenience general favours the respondent since it is in the public interest to enforce removal orders. Since the applicant has failed to establish a serious issue and a risk of irreparable harm, the balance of convenience favours the respondent.

[23] For these reasons, the application for a stay of the applicant's removal order should be dismissed.

ORDER

THIS COURT ADJUDGES that the motion to stay the applicant's removal from Canada is dismissed.

"Max M. Teitelbaum"

Deputy Judge