

Indexed as:

**Rostamzadeh-Jahan v. Canada (Minister of Employment and
Immigration) (F.C.A.)**

**Between
Esmaeel Rostamzadeh-Jahan, Appellant, and
The Minister of Employment and Immigration, Respondent**

[1993] F.C.J. No. 23

150 N.R. 318

38 A.C.W.S. (3d) 571

Appeal No. A-981-90

Federal Court of Appeal
Toronto, Ontario

Stone, Desjardins and Décary JJ.

Heard: January 12, 1993

Judgment: January 15, 1993

(5 pp.)

[Ed. note: A corrigendum was released by the Court on February 9, 1993. The correction has been incorporated in this document.]

Immigration -- Aliens -- Admission, refugees -- Appeals -- Error in law.

This was an appeal by a 20-year-old citizen of Iran who claimed refugee status based on his religion and political opinion. He testified that he protested against government activities in front of revolutionary guards after his house was bombed and he had to flee his home town. The Board cast doubt on his glaring inconsistencies and disbelieved him with respect to the whole event and concluded that he went into hiding after failing his university entrance exams. The appellant said that it was against his religion to fight in the war.

HELD: The appeal was allowed and the matter referred back to the Board for a rehearing. The

Board erred in law in rejecting that part of his claim that dealt with religion on the basis that there was no evidence.

Daniel Kleiman, for the Appellant.
Robin Sharma, for the Respondent.

The judgment of the Court was delivered by

DESJARDINS J.-- The appellant, a 20 year old citizen of Iran, claimed refugee status on account of a well-founded fear of persecution on grounds of religion and political opinion.

With respect to his political opinion, the appellant testified that he had protested against government activities in front of revolutionary guards by tearing flyers distributed by them shortly after his house was bombed, in the summer of 1988, and that he had to flee his hometown of Auroumia after being pursued by them.

The Board members excused some of the inconsistencies in the appellant's testimony relating to certain dates on account of differences between the Iranian calendar and the one used in this country. They cast doubt however on that part of his testimony, which the Board qualified as containing a "glaring inconsistency", namely whether at the time the tearing of the flyers occurred, the appellant was on a summer vacation having just graduated from high school, or whether he was on leave from his military training with the army.

The Board members chose to disbelieve the appellant with regard to the whole event. On the basis of documentary evidence, to the effect that an estimated 300,000 or more young Iranians went into hiding or exile, they concluded, on a balance of probabilities, that the appellant, after learning that he had failed his university entrance exams, most likely went into hiding so as to avoid the draft.

Since there was evidence on the record, with respect to the appellant's inconsistent statements, the conclusion reached by the Board members was reasonably open to them and cannot be interfered with by this Court.

With regards to his claim based on freedom of religion, the appellant testified that he had objection on religious grounds to fight in the Iran-Iraqi war. What he said was the following:

Q. So how long were you in the military?

A. Three months.

Q. And then you were granted leave to go and see your family?

A. Yes.

PRESIDING MEMBER: So you did not fulfil your time in the services, required time?

THE CLAIMANT: During the period of time that I was there I was under training and it was supposed that I would finish this period of time and then I would be sent to the proper division of the army when it was over.

Q. So when you were there in the military did you fight the Iran/Iraqi War?

A. No.

Q. And did you believe in fighting this war?

A. No.

Q. Why?

A. Because even in the principles of the religion, in the Holy Book of Kiran, it doesn't say that two brothers because of their religious relation they can fight.

Q. So, in other words, because the Iraqis are Muslims you don't believe in fighting with them?

A. Yes.

Q. Can you speak up and can you expand on the questions that I ask you? Instead of just saying yes or no, can you just expand a little bit?

A. Because the Iraqis are also Muslims and I do not believe that simply because of somebody's ideology or even if there is what they claim for piece of land, so many people, what I thinks is millions of people have been killed in this war.¹

He added in re-examination:

Q. Sometimes it sounds as if it's cross-examination. Anyway. When he was asking questions about the principles of Holy Kiran and the practice of Islam by Khomeini, during his questioning you emphasized that even though the Prophet Muhammad (phonetic) said that somebody could be punished or killed for stealing, committing a crime, but according to Prophet Muhammad you do not kill your Muslim brothers.

A. No, we don't.

Q. Okay. So that was one of your major reasons for not participating in this

war?

A. Yes, almost this was.²

Although the appellant did not explicitly refer to the fact that he may have been a conscientious objector, the Board members understood him to say that "it would be contrary to his religious belief to fight in the war".³ Yet they concluded that:

No evidence was introduced to establish that the claimant has a well-founded fear of persecution for reasons of his religion or that he was prevented from practising his religion.⁴

The Board, in our view, erred in rejecting that part of his claim which dealt with religion, on the basis that there was no evidence. In view of the appellant's testimony, the Board was bound to consider the evidence before them and decide the claim. They erred in law in failing to do so.

The appeal will therefore be allowed, the decision of the Immigration and Refugee Board dated August 23, 1990 will be set aside and the matter will be referred back for rehearing and redetermination by a differently constituted panel.

DESJARDINS J.

1 AB 30

2 AB 58-59

3 AB 95

4 AB 99