

Mehrabani v. Canada (Minister of Citizenship and Immigration)

Between
Daryoosh Solhjoui Mehrabani, applicant, and
The Minister of Citizenship and Immigration, respondent

[1998] F.C.J. No. 427
Court File No. IMM-1798-97

Federal Court of Canada - Trial Division
Toronto, Ontario
Rothstein J.

Heard: April 2, 1998
Judgment: April 3, 1998
(4 pp.)

Aliens and immigrants — Admission, refugees — "Political opinion" defined.

Application for judicial review. The applicant was a citizen of Iran who worked as a supervisor of a cycling team involved in fund-raising. The applicant was summoned to give information after he told an inspector assigned to investigate embezzlement activities of officials about a large discrepancy between funds raised and those announced by officials of the cycling federation. Thereafter, the president of the federation suggested that the applicant could be killed and the inspector was killed in suspicious circumstances. The applicant, fearful for his life, came to Canada and claimed Convention refugee status based upon political opinion. The panel of the Immigration and Refugee Board rejected the claim finding that the applicant did not fall within the definition of a Convention refugee since embezzlers sought to harm him because of evidence he had about their criminal activities and not because of his political opinion.

HELD: Application dismissed. It was reasonable for the Board to find that the applicant failed to establish a nexus to a Convention ground and that the action by the state against the embezzlers demonstrated that the knowledge and actions of the applicant did not constitute a challenge to the authority of the ruling regime. The applicant might well be in need of protection but not for a Convention reason.

Counsel:

Peter J. Reiner, for the applicant.
Sally Thomas, for the respondent.

1 **ROTHSTEIN J.** (Reasons for Order):— The applicant is a citizen of Iran. As a supervisor of a cycling team he was involved in fund raising for needy people. There was a large discrepancy between the funds raised and those announced by officials of the cycling federation.

2 The applicant told an inspector with the Department of Finance about the discrepancy. The inspector was investigating embezzlement activities involving highly placed officials in Iran and he thought the cycling discrepancy was a part of this embezzlement.

3 The two major factions in Iran, the Rafsanjani and Khamenei groups, fought over the issue of embezzlement, each one alleging that the other engaged in this activity.

4 The applicant was summoned to appear to provide information about the cycling fund discrepancy. After the applicant gave evidence, the president of the cycling association attempted to silence the applicant by suggesting he could be killed. The Finance inspector was killed in suspicious circumstances. The applicant provided evidence of some further threats.

5 The applicant was again summoned to appear and give evidence about the embezzlement, but he was now fearful for his life. At the same time he was scheduled to go to Europe with his cycling team. He decided to go on the cycling trip with his team and not testify. After the cycling trip, the applicant came to Canada and claimed Convention refugee status.

6 The applicant's refugee claim is based upon political opinion. In its April 7, 1997 decision, the panel of the Immigration and Refugee Board rejected the claim. The panel concluded that the applicant may well need protection, but that he did not come within the definition a Convention refugee. The panel said that the embezzlers who the applicant feared do not seek to harm him because of his political opinion, but rather because he has evidence against them of their criminal activities.

7 Of significance to the panel is evidence that the state had taken action against some of the embezzlers, executing one and imprisoning others. The panel found that this evidence established that denouncing corruption was not seen as a challenge to the government authority. The panel found that the necessary link between the embezzlement scandal and political opinion was not established.

8 The facts of the present case are close to those in *Mousavi-Samani v. Canada* (Minister of Citizenship & Immigration), Court file IMM-4674-96, September 30, 1997 per Heald D.J. At paragraph 11 the learned Judge states:

In my view, it was also reasonable for the Board to conclude that the applicants had not established a nexus to a Convention ground. The Board's finding that the actions of the applicants did not constitute a challenge to the authority of the Iranian regime to govern was a reasonable

finding on the record. I so conclude because it was based on the Board's findings of fact that the state took strong action against some of the corrupt officials, thus publicly denouncing corruption.

I must come to the same conclusion. The panel in this case also found that action by the state against the embezzlers demonstrated that the knowledge and actions of the applicant here do not constitute a challenge to the authority of the Iranian regime. It was open to the panel on the evidence before it to come to such a conclusion.

9 Applicant's counsel pointed to other evidence which suggested the applicant might be subjected to harm if he return to Iran. While this may be the case, the applicant must still demonstrate that such harm is connected to his political opinion, or one of the other criteria described in the definition of Convention refugee, and has he failed to do that.

10 The panel reasons are well drafted. Relevant law was cited and its analysis and conclusion are, in my opinion, unassailable. At the same time, this was clearly a difficult and frustrating case for the panel as its reasons demonstrate. It is also a difficult and frustrating case for this Court.

11 There is no indication of any credibility concern with respect to the applicant the panel's reasons indicate that he may well be in need of protection, albeit not for a Convention reason. I fully expect that the respondent will review the matter in accordance with applicable law having regard to humanitarian and compassionate considerations and the risk of harm to the applicant if he is to return to Iran.

12 The judicial review is dismissed. An order will be withheld for seven days to enable the parties to submit a question for certification if they choose to do so.

ROTHSTEIN J.