

**Date: 20051006**

**Docket: IMM-9198-04**

**Citation: 2005 FC 1367**

**Montréal, Quebec, October 6, 2005**

**PRESENT: THE HONOURABLE JUSTICE JOHANNE GAUTHIER**

**BETWEEN:**

**ABBAS SAIEDY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP**

**AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Saiedy seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board ("RPD") rejecting his claim as a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the "Act").

[2] Mr. Saiedy, a citizen of Iran, sought protection in Canada on the grounds of religion, political opinion and membership in a particular social group namely, Muslims converted to Christianity.

[3] The applicant states that he began to be in conflict about his religion a few years before coming to Canada. He was able to obtain information about Christian teachings through a Christian Ministry radio broadcast. In the summer of 2002, he tried to borrow a bible from a Christian woman who refused, fearing that she would be persecuted for spreading Christian propaganda.

[4] In April 2003, he travelled to Germany to attend a conference and was subsequently allowed a leave of absence from his job at the Ministry of Finance to attend another conference in Canada on December 2, 2003. A few days later, on December 6, 2003, Mr. Saiedy allegedly called Tehran and spoke to the general manager at the Ministry of Finance to express his deep opposition to the Islamic regime. The said general manager would then have threatened that he would report him to the government. The applicant believed on that basis that he would be imprisoned upon his return to Iran.

[5] Furthermore, Mr. Saiedy, a couple of days after his arrival in Canada, converted to Christianity (by accepting Jesus as his saviour in his heart) and, after a few weeks of religious study<sup>[1]</sup>, he was baptised and became a member of the United Church.

[6] The RPD found that the applicant's evidence with respect to his telephone call to the general manager was not credible and that he would not be at risk with respect to his imputed political opinions if he returned to Iran. Although, in his written material, the applicant had argued that the RDP erred in noting that this finding was flawed, he did not insist on this argument at the hearing. Having carefully reviewed the evidence on file, the court is satisfied that the RPD committed no reviewable error in this respect.

[7] The RPD also found that the applicant had failed to demonstrate on a balance of probability and through credible and convincing evidence that he was a genuine convert. It raised several issues with respect to the applicant's testimony, one of which was that it was implausible that he would not have been able to find a copy of the bible in a Tehran book shop or on the internet. In this respect, the RPD relied on information contained in what has been referred to as the Christian Convert Package.

[8] The applicant challenges this finding on the grounds that he was not given a copy of these publicly available documents before the hearing and that the documents were not properly entered as exhibits at the hearing.

[9] Also with regard to the conclusion that his conversion was not genuine, the applicant submits that the RPD failed to consider what would happen to him in Iran even if he had converted for the sole purpose of bolstering his refugee claim in Canada. He adds that, in any event, this conclusion with respect to his conversion is patently unreasonable.

[10] Finally, the applicant says that the RPD breached procedural fairness when it forced him to proceed with an interpreter although he had expressed his desire to give his evidence in English.

[11] I shall analyse the two alleged breaches of procedural fairness first.

**a) Proceeding with a interpreter**

[12] At the hearing, the applicant was duly represented by counsel. There is no evidence before me that he ever indicated to the RPD the reason why he wanted to proceed in English rather than through the services of an interpreter (i.e. because he feared that a Muslim interpreter might consider him an apostate and cause harm to him and/or his family).

[13] At the pre-hearing, the RPD member and the applicant's counsel discussed the matter of interpretation. The presiding member stated:

PRESIDING MEMBER: I should just say because the claimant can understand this much English, that we deal with a lot of claimants that have good English, sufficient

for them to have gone on business conferences, et cetera. The difficulty in hearings is that sometimes when we go into more professional technical language that it's not -- it's layman's language but it's still relating to Immigration and refugee claims, but sometimes the claimants do not understand that and then they get confused about the question, so I would prefer that you feel totally comfortable in your first language and so that you're able to devote all of your time answering the questions, not trying to understand the question in English, but answering it because this is the only evidence that you'll be giving today and I think it's fair. So I'm going back on the record.

(Page 273 of the certified record)

[14] He later added that:

-- in the pre-hearing conference the panel made a decision to proceed with a Persian Farsi interpreter. The panel's main concern was not that the claimant cannot comprehend English and speak and write it, but that his level of competency may not be such that he would be able to hear all of the professional terms important.

I took note some of the ban (ph) definitions in the testing certificate for English from Tehran and that coupled with the vagaries of the hearing room and the fact that individual voices go up and down and the claimant has a very light voice I think in terms of natural justice, sir, it's better that we go through an interpreter, but I certainly do recognize your strengths in having learned and practised the English language.

(Pages 274 and 275 of the certified record)

[15] In his affidavit, the applicant simply states that the presence of the interpreter made him nervous and anxious because as I mentioned it, he was afraid that the interpreter, a Muslim, might do him harm. However, he gave no specific example as to how this situation might in fact have had a negative impact on his evidence.

[16] The applicant relies on the decision of Justice O'Reilly in *Tshibangu v. Canada (M.C.I)*, [2004] F.C.J. No. 1994. In that case, the claimant, who was bilingual (but somewhat "rusted" in French), was not represented by counsel and had asked to testify in English. The court found that it was unfair to have forced him to do so in French without the help of any interpreter.

[17] I find that *Tshibangu, supra*, is distinguishable on its facts and that based on the evidence before me, there is simply no reason to conclude that there was a breach of procedural fairness.

b) The Christian Convert Package

[18] The applicant argues that the RPD breached principles of natural justice by relying in its reasons on the documents referred to as the Christian Convert Package to challenge the credibility of his testimony.

[19] The applicant relies on the transcript where the presiding member, at the very beginning of the hearing, only refers to exhibits R/A-1 and R/A-2. It is on that basis that he claims that the Package was never properly entered as an exhibit.

[20] The list of exhibits found at page 87 of the certified record and dated May 3, 2004 (date of the hearing) includes a reference to the Iran Christian Convert Package of July/03 and lists it as exhibit R/A-3. This exhibit is entered by hand, like many others found on the list of the claimant's documents at page 88. It is initialled by the presiding member.

[21] There is also a specific reference to this Package in the index entered as R/A-1.

[22] I agree with MacKay J. who found in *Nakhuda v. Canada (M.C.I.)*, [1995] F.C.J. No. 716 that there is no duty to provide copies of publicly available documents, especially those referred to in the index of reference material available at the Documentation Center, to a claimant prior to the hearing. In this case, a copy of the documentation was available at the hearing simply to facilitate reference to it during the arguments.

[23] As noted by the respondent, the Christian Convert Package and particularly the response to information request IRN34925.E was expressly referred to by the Refugee Protection Officer ("RPO") during the hearing when he confronted the applicant with the fact that this documentation indicates that bibles are widely available in Tehran. The applicant's counsel raised no exception or objection with respect to these documents at that time and the applicant did not request that he be given an opportunity to make further submissions in that respect after the hearing. In the particular circumstances of this case, I find that an objection should have been raised.

[24] Finally, at page 339 of the certified record, the presiding member stated that all documents and materials tabled were part of the evidence. This obviously included the copy of the R/A-3 which was specifically produced by the RPO.

[25] Considering all of the evidence on file, the court is not satisfied that the Christian Convert Package was not properly entered as an exhibit. I conclude that the applicant has not established a breach of procedural fairness in that respect.

c) Conversion

[26] Having reviewed the evidence, I conclude that even if a few minor findings of the RPD with respect to the genuineness of the applicant's conversion are questionable, its conclusion in that respect was not irrational or illogical and was open to it on the evidence.

[27] In any event, I find that even if I had concluded that this specific finding contained a reviewable error, this would not have been sufficient to justify quashing the RPD's decision because the RDP did assess the risk faced by Mr. Saiedy in Iran, regardless of whether he genuinely converted.

[28] In effect, the RPD concluded, based on Mr. Saiedy's testimony, that if he were to return to Iran, he would be discreet about his conversion and would therefore be of no interest to the authorities. According to the RPD, although the documentary evidence indicates that a Muslim who commits apostasy in Iran faces serious consequences in theory because by law apostasy carries a death sentence, the evidence with respect to the *de facto* treatment of Iranians accused of apostasy is not that clear. The RPD found that it would certainly be dangerous for a person to carry a baptismal certificate inside Iran as proof of Christian conversion. It also concluded, however, that ordinary converts to Christianity who are discreet about their faith, are of no interest to the authorities, even if they can expect to experience some social and cultural ostracism.

[29] The applicant has not challenged this particular finding except to say that some documentary evidence he produced, demonstrates that some Muslims who converted did face a more serious possibility of persecution in Iran. There is no evidence that these persons have the same profile as the applicant.

[30] The role of the court is not to re-weigh the documentary evidence and the applicant has not satisfied me that there was no evidence whatsoever that supported to finding. As a matter of fact, during the submissions before the presiding member, it was clear even to the applicant's counsel that there was contradictory evidence as to the *de facto* treatment of Muslim converts.

[31] The parties did not present any question for certification and the court finds that this case turns on its own facts.

ORDER

THIS COURT ORDERS that:

The application is dismissed.

**"Johanne Gauthier"**

JUDGE