

Date: 20070212

Docket: IMM-2930-06

Citation: 2007 FC 158

Ottawa, Ontario, February 12, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

MOSTAFA EJTEHADIAN

Applicant

**and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, Mr. Ejtehadian, seeks judicial review of a decision of the Immigration and Refugee Board (IRB) dated April 20, 2006, rejecting his request for asylum as a Convention Refugee and as a person in need of protection.

[2] The Applicant was born in Teheran, Iran on August 14, 1962 and is a citizen of that country. He completed thirteen years of education and worked as a publisher and translator. Until 2004, the Applicant was Shia Muslim.

[3] In 1978, the Applicant visited his brothers in the United States who were studying in Utah, and remained there until 1981, during which time he met members of the Mormon Church. After this, the Applicant returned to Iran and completed his military service.

[4] In August of 2004, while in Vancouver on a visitor's visa, the Applicant met members of the Mormon Church who rekindled his interest in the faith. He had become disillusioned with the Shia Muslim faith and how it was being practiced in Iran. He discussed the possibility of his conversion to Christianity with his wife, who agreed. He was subsequently baptized as a member of the Mormon Church and later became a priest in the Church.

[5] Upon learning of the Applicant's conversion, the Applicant's father-in-law demanded that he abandon his membership in the Mormon Church or divorce his daughter.

[6] The Applicant claims that should he return to Iran, in order for him to proselytize or even practice his religion, he would run the risk of violating the laws against apostasy and thus could face imprisonment or death.

[7] The Applicant made his refugee claim on September 2, 2004, and his hearing took place on February 14, 2006, in Halifax.

[8] The IRB acknowledged that the Applicant's claim was a *sur place* refugee claim. The IRB determined that as the claimant had not provided "credible or trustworthy evidence", he was neither a "Convention Refugee" nor a "person in need of protection" by reason of risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture.

[9] The IRB found that the Applicant had been a non-practicing adherent of the Muslim faith at the time he left Iran. The IRB determined that it is only as a result of his contact with Mormons and his conversion and membership in the priesthood of the Church of Jesus Christ of Latter Day Saints, that he now alleges a risk of persecution or serious harm as a result of the apostasy laws, should he return to Iran. The IRB accepted that apostasy and proselytizing of Christians to Muslims in Iran could result in the Applicant's death.

[10] The IRB articulated its understanding of how it must conduct its assessment of a refugee *sur-place* claim. At page 4 of its reasons the IRB wrote:

As a *sur-place* claim, the panel must examine the claimant's motives, which led to the decision to convert. There is no doubt that the claimant since his arrival in Canada has become a member of the Mormon Church. Was this conversion a legitimate conversion, as the claimant alleges, or was it simply as a means to remain in Canada and claim refugee status?

[11] The IRB's articulation of the test in a *sur-place* claim is incorrect. In a refugee *sur-place* claim, credible evidence of a claimant's activities while in Canada that are likely to substantiate any potential harm upon return must be expressly considered by the IRB even if the motivation behind the activities is non-genuine: *Mbokoso v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1806 (QL). The IRB's negative decision is based on a finding that the Applicant's conversion is not genuine, and "nothing more than an alternative means to remain in Canada and claim refugee status." The IRB accepted that the Applicant had converted and that he was even ordained as a priest in the Mormon faith. The IRB also accepted the documentary evidence to the effect that apostates are persecuted in Iran. In assessing the Applicant's risks of return, in the context of a *sur-place* claim, it is necessary to consider the credible evidence of his activities while in Canada, independently from his motives for conversion. Even if the Applicant's motives for conversion are not genuine, as found by the IRB here, the consequential imputation of apostasy to the Applicant by the authorities in Iran may nonetheless be sufficient to bring him within the scope of the convention definition. See *Ghasemian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266, at paragraphs 21-23, and *Ngongo c. Canada (M.C.I.)*, [1999] A.C. F. No 1627 (C.F.) (QL).

[12] Applying the wrong legal test is an error of law reviewable on the standard of correctness. By articulating the incorrect test and conducting the assessment of the Applicant's *sur-place* claim as it did, the IRB committed a reviewable error.

[13] For the above reasons, the application for judicial review will be allowed. The decision of the IRB will be set aside and the matter returned to the IRB for reconsideration by a differently constituted panel.

[14] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the Act, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is allowed.
2. The matter is sent back to the Board for re-consideration by a differently constituted panel to be decided in accordance with the above reasons for decision.
3. No serious question of general importance is certified.

Judge

“Edmond P. Blanchard”

FEDERAL COURT
SOLICITORS OF RECORD

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