Date: 20060309

Docket: IMM-3995-05

Citation: 2006 FC 302

Ottawa, Ontario, March 9, 2006

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PARVIZ NADJAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of a pre-removal risk assessment Officer (Officer) dated May 9, 2005 (Decision), wherein the Officer determined that the Applicant would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Iran.

BACKGROUND

[2] The Applicant, Parviz Nadjat, is a citizen of Iran. He was born on May 1, 1943, and is of Azari ethnicity.

[3] He first came to Canada in 1997 but returned to Iran when his application for permanent residence was rejected. He returned to Canada in March 1999, and filed a refugee claim immediately upon arrival.

[4] In his refugee claim, the Applicant stated that he had been arrested by the Iranian authorities in February 1999 for drinking alcohol in his bakery. He was detained, fined, and received fifty lashes on his back.

[5] Upon his release, the Applicant alleged that his ordeal led him to join a Kurdish group opposed to the governing regime in Iran, and to supply the group with bread from his bakery.

[6] The Applicant stated that he fled Iran when he saw the Iranian authorities raid the location which was the meeting place of the Kurdish group to which he belonged, and he feared that he would be denounced by those who had been arrested.

[7] The Applicant's claim was denied by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) on December 15, 1999. In its reasons, the CRDD found that, although it believed the Applicant's allegation that he had been arrested and lashed by the Iranian authorities, it did not find credible the evidence he had adduced to support his claim of belonging to a Kurdish opposition group. The Applicant did not seek leave to apply for judicial review of the CRDD's decision.

[8] In March 2000, the Applicant submitted an application for an exemption allowing him to apply for permanent residence from within Canada on humanitarian and compassionate grounds. Though he made further submissions in support of this application until July 2004, he presented no evidence relating to his mental health. Citizenship and Immigration Canada (CIC) denied this application on April 22, 2005. The Applicant did not seek judicial review of the CIC decision.

[9] The Applicant initially applied for a post-claim review under the Post Determination Refugee Claimants in Canada Class (PDRCC) in December, 1999. His application was treated as a PRRA application when the new Act came into force.

[10] The Applicant's final submissions in support of the PRRA were made on May 1, 2005. He adduced evidence relating to his mental health in the form of two psychological assessments outlining his deteriorating mental condition and the trauma he suffered at the hands of the Iranian authorities. These assessments linked his current psychological condition with the torture he had been subjected to previously and the prospect of returning to Iran.

DECISION UNDER REVIEW

[11] In her reasons, the Officer acknowledged the Applicant's current psychological condition and did not dispute the existence of his subjective fear of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Iran. However, she found that the Applicant's subjective fear was not grounded in objective risk.

[12] The Officer made the following significant findings:

(a) There was no evidence to support the Applicant's claim that he personally would face discrimination because of his Azari ethnicity;

(b) There was no probative evidence to support the Applicant's claim that attendees of the Kurdish opposition group were arrested, or that the Iranian authorities are actively seeking the Applicant because of his involvement with this group in 1999;

(c) Although the Applicant was lashed in 1999, there was no evidence to suggest that he would face further punishment for having drunk alcohol upon his return to Iran;

(d) There was insufficient evidence to establish that the Applicant faced a danger of torture or mistreatment for having left Iran illegally;

(e) There was insufficient evidence relating to the Applicant's history of psychological treatment;

(f) The Applicant's current mental condition does not give his claim a nexus to a Convention ground or demonstrate that he is likely to face torture, a risk to life, or a risk of cruel and unusual treatment and punishment.

PERTINENT LEGISLATION

[13] The relevant provisions of the Act read as follows:

95. (1) Refugee protection is conferred on a person when (a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons; (b) the Board determines the person to be a Convention refugee or a person in need of protection; or (c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection. (2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4). 96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	95. (1) L'asile est la protection conférée à toute personne dès lors que, selon le cas : a) sur constat qu'elle est, à la suite d'une demande de visa, un réfugié ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection; b) la Commission lui reconnaît la qualité de réfugié ou celle de personne à protéger; c) le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3). (2) Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4). 96. A qualité de réfugié au sens de la Convention - le réfugié - la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner. 97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays

97. (1) A person in need of protection is a person in Canadawhose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. 108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances: (a) the person has voluntarily reavailed themself of the protection of their country of nationality; (b) the person has voluntarily reacquired their nationality;	dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes - sauf celles infligées au mépris des normes internationales - et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. 108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants : a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité; b) il recouvre volontairement sa nationalité; c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality; (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or (e) the reasons for which the person sought refugee protection have ceased to exist. 108(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1). 108(3) If the application is allowed, the claim of the person is deemed to be rejected. 108(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada; e) les raisons qui lui ont fait demander l'asile n'existent plus. 108(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1). 108(3) Le constat est assimilé au rejet de la demande d'asile. 108(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[14] Section 7 of the *Canadian Charter of Rights and Freedoms* (Charter) reads as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

ISSUES

[15] The Applicant raises the following issues:

1. Did the Officer err in law in failing to consider the "compelling reasons" exception to the paragraph 108(1)(*e*) change of conditions cessation clause in the circumstances of this case?

2. Did the Officer err in law in failing to exercise her jurisdiction and determine whether returning the Applicant to Iranamounted to cruel and unusual punishment pursuant to paragraph 97(1)(*b*) of the Act?

ARGUMENTS

1. Did the Officer err in law in failing to consider the "compelling reasons" exception to the section 108(1)(*e*) change of conditions cessation clause in the circumstances of this case?

Standard of review

The Applicant

[16] The Applicant submits that the standard of review for a PRRA decision when considered globally is reasonableness *simpliciter*. (*Figurado v. Canada (Solicitor General) (F.C.)* 2005 FC 347 (T.D.); *Zolotareva v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274 (T.D.); *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 (T.D.); *Shahi v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1826 (T.D.))

The Respondent

[17] The Respondent made no submissions as to the applicable standard of review.

The Compelling Reasons Exception

The Applicant

[18] The Applicant acknowledges that he made no argument as to the applicability of the "compelling reasons" exception to the paragraph 108(1)(*e*) change of conditions cessation clause in his submissions before the Officer. However, he now argues that it is not incumbent on him to directly raise the issue of compelling reasons in order to be entitled to an assessment under this exception. (*Yamba v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 457 (F.C.A.); *Mai v. Canada(Minister of Citizenship and Immigration)* 2004 FC 142 (T.D.))

[19] The Applicant says that the fifty lashes inflicted by the Iranian authorities amount to torture, and that the combination of this previous experience of torture and the psychological distress he now suffers at the prospect of being deported to Iran constitute "compelling reasons" for the purposes of paragraph 108(1)(*e*) of the Act.

[20] The Applicant submits that the positive credibility findings the Officer made regarding his claim to have been tortured and the medical evidence he adduced to establish the deterioration of his mental health obliged her to determine whether compelling reasons existed in this case. (*Arguello-Garcia v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 635; *Shahid v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 251; and *Yamba*)

[21] The Applicant cites *Mai* in support of the argument that an officer's failure to properly examine whether previous torture, cruel treatment or punishment amount to compelling reasons is a serious issue.

[22] The Applicant states that by failing to assess whether the compelling reasons provision of the Act should be applied to the facts of this case, the Officer committed a reviewable error.

The Respondent

[23] The Respondent submits that the Applicant's interpretation of paragraph 108(1)(*e*) of the Act is incorrect, and that this provision does not create an independent avenue by which protection can be conferred upon an Applicant.

[24] The Respondent argues that paragraph 108(1)(*e*) applies only to applicants upon whom refugee protection has already been conferred, and that the use of the word "subsequently" in the definition of "protected person" in subsection 95(2) of the Act is consistent with this interpretation.

[25] In support of this argument, the Respondent cites *Hassan v. Canada(Minister of Employment and Immigration)*, [1992] F.C.J. No 946 (C.A.), where the Federal Court of Appeal found that a compelling reasons analysis under subsection 2(3) of the former *Immigration Act* is only required where it is established that an applicant satisfied the Convention refugee definition at one point in time, but no longer falls within the scope of this definition because of a change in conditions.

[26] The Respondent states that the jurisprudence of this Court following *Hassan* (*Singh v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1044 (TD), *Canada (Minister of Citizenship and Immigration) v. J.R.D.*, 2001 FCT 421 (TD), *Ogbebor v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 490 (TD), *Perger v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 551, *Mbarde v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 609 (TD)) clearly establishes that two preconditions must exist before a "compelling reasons" analysis can be conducted:

(a) The claimant must establish that, at some point in time, he or she would have met the definition of Convention refugee or person in need of protection. Though this does not require the claimant to have actually been granted refugee status, the claimant's fear of return must be linked to an objective risk of persecution, torture, risk to life or risk of cruel and unusual punishment;

(b) There must be a determination that the claimant no longer meets the definition of Convention refugee because of a change in circumstances.

[27] The Respondent also cites *Brovina v. Canada(Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 771, where Justice Carolyn Layden-Stevenson wrote as follows at paragraph 5:

For the board to embark on a compelling reasons analysis, it must first find that there was a valid refugee (or protected person) claim and that the reasons for the claim have ceased to exist (due to changed country conditions). It is only then that the Board should consider

whether the nature of the claimant's experiences in the former country were so appalling that he or she should not be expected to return and put himself or herself under the protection of that state.

[28] The Respondent submits that the Applicant has not established the two necessary preconditions to trigger a "compelling reasons" analysis. The fact that he was lashed before he fled Iran is insufficient to bring him within the definition of Convention refugee or person in need of protection, and his refugee claim was never denied because of a change in circumstances.

[29] The Respondent concludes by stating that paragraph 108(1)(*e*) of the Act is inapplicable to the facts of this case, and therefore the Officer did not err by failing to consider it.

2. Did the Officer err in law in failing to exercise her jurisdiction and determine whether returning the Applicant to Iranamounted to cruel and unusual punishment pursuant to paragraph 97(1)(*b*) of the Act?

The Applicant

[30] The Applicant argues that the psychological trauma he would experience as a result of being returned to Iranamount to cruel and unusual punishment, and violate section 7 of the Charter. (*Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, *R. v. Morgentaler*, [1988] 1. S.C.R. 30, *United States of Americav. Burns*, [2001] 1 S.C.R. 283)

[31] He further submits that the likelihood of psychological trauma as a result of his being returned to Iran amounts to an objective risk, which the Officer failed to consider in restricting her risk-analysis to the probability of re-arrest.

The Respondent

[32] The Respondent argues that the Officer did consider whether the Applicant's mental health amounted to a risk under paragraph 97(1)(*b*) of the Act, but found that the evidence did not establish that his subjective fears warranted protection under paragraph 97(1)(*b*).

[33] The Respondent argues that it was not unreasonable for the Officer to reach the conclusion that the effects of removal did not constitute a risk under paragraph 97(1)(*b*) of the Act.

[34] The Respondent cites *Sman v. Canada(Minister of Citizenship and Immigration)*, 2002 FCT 891 in support of this argument. In that case, the Court rejected the claimant's argument that his subjective irrational fears created a presumption that there was an objective basis for his fear. At paragraph 22, Justice J.D. Denis Pelletier wrote as follows:

[...] the issue is not the applicant's subjective fear since the CRDD's decision is effectively a decision that there is no objective basis for his fear of future persecution. As a result, his claim fails, whether he has a subjective fear of persecution or not.

[35] The Respondent further cites cases in which the European Court of Human Rights and the United Nations Committee Against Torture have rejected similar arguments regarding the alleged psychological impact of removal. (*Cruz Varas v. Sweden*, (20 February 1991), Case No. 46/1990/237/307 (E.C.H.R.), *G.R.B. v. Sweden* (2 June 1997) Communication No. 83/1997 (U.N.C.A.T.), *B.S.S. v. Canada* (7 March 2001), Communication No. 183/2001 (U.N.C.A.T))

ANALYSIS

Compelling Reasons

[36] The Respondent says that a "Compelling Reasons" analysis under section 108(4) of the Act was not required, and did not arise on the facts of this case.

[37] According to the Respondent, this is because the express wording of section 108(4) makes it clear that it is intended to be an exception to the cessation provision found in section 108(1)(*e*), so that section 108(4) does not create an independent avenue by which protection can be conferred for "compelling reasons."

[38] Under section 108(4), a person ceases to be a Convention refugee in need of protection if the reasons for the fear of persecution or need of protection have ceased to exist. The Respondent's argument is to the effect that, because section 108(4) creates an exception to section 108(1)(*e*), the exception only comes into play after refugee protection has already been conferred. The Respondent says this interpretation is supported by the definition of "protected person" in section 95(2) where the use of the word "subsequently" reflects an intent that the cessation provision in section 108(1) - and, by necessary extension, the compelling reasons to those cessation provisions in section 108(4) - will apply only if refugee protection has been conferred.

[39] The Respondent points out that the Federal Court of Appeal decision in *Hassan* at para. 3 dealing section 2(3) of the former *Immigration Act*, supports this analysis of section 108(4) of the Act. What is more, the principles of *Hassan* have been applied in numerous subsequent cases which make it clear that there are two preconditions that must exist before a compelling reasons analysis is necessary:

a. A claimant must establish that, at some point in time, he or she would have met the definition of Convention refugee or person in need of protection (even though this does not require the actual conferral of such status); and

b. There must have been a determination that the person no longer meets the definition of Convention refugee or person in need of protection because of a change in circumstances.

[40] In support of this position the Respondent invokes *Singh* at para. 6, *J.R.D.* at para. 17, *Ogbebor* at para. 35, *Perger* at para. 15, and *Mbarbe* at para. 49.

[41] The Respondent also relies upon *Brovina* at paras. 5-6 for authority that the situation has not changed under the Act, so that section 108(4) continues to be an exception to the cessation provision and the principles in *Hassan* continue to apply.

[42] The Respondent also argues that this approach is consistent with the approach of other nations who have adapted a "compelling reasons" exception to cessation in Article 1c(5) of the *Convention Relating to the Status of Refugees*.

[43] As the Respondent points out, the Applicant cannot satisfy the conditions found in the governing jurisprudence because there has never been a finding that he had a valid refugee or protected person claim. The fact that he was lashed before he left Iran is not sufficient to give him the status of Convention refugee or protected person.

[44] Also, the Applicant's claim for protection was not denied because of a change in circumstances; it simply never had an objective basis.

[45] The Applicant's answer to this position is that the acceptance of the lashing by the Officer means that the Applicant did suffer previous persecution that was atrocious and appalling but that, in any event, there is jurisprudence to support the application of broader humanitarian principles in the context of section 108(4) of the Act.

[46] In particular, the Applicant relies upon the decision of Justice Luc Martineau in *Suleiman v. Canada(Minister of Citizenship and Immigration)*2004 FC 1125, for the recognition and application by this Court of a broader humanitarian approach to the application of section 108(4). The Applicant draws the Court's attention to the following paragraphs in Justice Martineau's reasons in *Suleiman*:

16. It must not be forgotten that subsection 108(4) of the Act refers only to "compelling reasons arising out of previous persecution, torture, treatment or punishment". It does not require a determination that such acts or situation be "atrocious" and "appalling". Indeed, a variety of circumstances may trigger the application of the "compelling reasons" exception. [See Note 2 below] The issue is whether, considering the totality of the situation, i.e. humanitarian grounds, unusual or exceptional circumstances, it would be wrong to reject a claim or make a declaration that refugee protection has ceased in the wake of a change of circumstances. "Compelling reasons" are examined on a case-by-case basis. Each case is a "cas d'espèce". In practice, this means that each case must be assessed and decided on its own merit, based on the totality of the evidence submitted by the claimants. As was decided by the Federal Court of Appeal in *Yamba v. Canada (Minister of Citizenship and Immigration)* (2000), 254 N.R. 388, at paragraph 6, in every case in which the Board concludes that a claimant has suffered past persecution, where there has been a change of country conditions to such an extent as to eliminate the source of the claimant's fear, the Board is obligated to consider whether the evidence presented establishes the existence of "compelling reasons".

Note 2: In this regard, as stated by Rouleau J. in *Elemah v. Canada(Minister of Citizenship and Immigration)*, 2001 FCT 779; [2001] F.C.J. No. 1123 (T.D.) (QL), at para. 28; "The Court, in *Obstoj, supra*, did not establish a test which necessitates that the persecution reach a level to qualify it as "atrocious" and "appalling". Rather, the Board must thoroughly consider all the documentary and oral evidence, including the nature of the incidents of torture and the medical reports provided by the parties in order to assess, as is stated in the legislation, if there are "compelling reasons" not to return him [my emphasis]. MacKay J. in *Kulla v. Canada(Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1347 (T.D.) (QL), at para. 6, has framed in a similar manner the issue the Board must address where the "compelling reasons" exception is raised.

17. Accordingly, it would be hazardous to list all the circumstances which may warrant the application of the "compelling reasons" exception or to establish a rigid test (notably based on the level of atrocity). However, besides the general indications contained in the Handbook or flowing from *Obstoj* and the jurisprudence, James C. Hathaway's comments at page 204 provide some guidance:

The exemption clause in the Convention is not ... structured to provide general humanitarian relief based on factors such as family circumstances or infirmity, but focuses squarely on compelling circumstances which are linked to past persecution. Atle Grahl-Madsen suggested that the existence of a psychological distance between the refugee and her former home, the continued unpopularity in the country of origin of the views or personal characteristics of the refugee, or the severing of familial, social and other linkages between the refugee and her state of origin are the sorts of concerns which warrant exemption from return. In contrast, essentially economic motivations or considerations of personal convenience are not sufficient.

18. The following comments found in Lorne Waldman's Immigration Law and Practice, looseleaf, Vol. 1, at paragraph 8.94, are also helpful:

Where a refugee suffers continuing psychological trauma arising from past persecution, and associated in his or her mind with the home country, cessation would not be warranted if repatriation would cause the refugee emotional suffering. It is this consideration that leads Goodwin-Gill to argue that the clause should be liberally applied. Similarly, if supporters of the former persecuting regime pose a threat to the physical or emotional well-being of the refugee in the home country, cessation would not operate.

19. The degree, to which a refugee claimant lives his anguish upon thought of being forced to return from where he came, is subject to the state of his psychological health (strength). The formulative question to ask in regard to "compelling reasons" is, should the claimant be made to face the background set of life which he or she left, even if the principal characters may no longer be present or no longer be playing the same roles? The answer lies not so much in established [page38] determinative conclusive fact but rather more to the extent of travail of the inner self or soul to which the claimant would be subjugated. The decision, as all decisions of a compelling nature, necessitates the view that it is the state of mind of the refugee claimant that creates the precedent -- not necessarily the country, the conditions, nor the attitude of the population, even though those factors may come into the balance. Moreover, this judgment does not involve the imposition of Western concepts on a subtle phenomenon with roots in the individuality of human nature, an individuality which is unique and has grown in an all-together different social and cultural environment. Therefore, consideration should also be given to the claimant's age, cultural background and previous social experiences. [See Note 3 below] Being resilient to adverse conditions will depend on a number of factors which differ from one individual to another.

...

22. While the Board acknowledged that Mr. Suleiman suffers from symptoms of clinical depression and post-traumatic anxiety, in view of its finding that the high standard set in *Obstoj* was not met, the Board failed to determine whether repatriation in Tanzania would cause him undue emotional suffering, so as to constitute, considering all the circumstances of this case and the gravity of the past persecution, "compelling reasons" justifying the applicants' refusal to avail themselves of the protection of their country.

While *Obstoj* and *Hassan* refer to "exceptional circumstances", as I have explained earlier, it is by no means an invitation to apply the "compelling reasons" exception in a systemic manner or without regard to the effects past persecution has had on an individual claimant and his family. In the case at bar, the Board found the applicants' evidence credible. That which, alone and objectively, may not be considered grave or serious enough to constitute "compelling reasons", may in fact, in the particular circumstances of the claimant and his family in the state they find themselves, be nevertheless viewed as grave or serious enough to project an image of anguish, unreasonable to conceive the possibility of return. While it is not necessary that I express a definite opinion, in, at least a prima facie fashion, the death of a cousin and the brunt of the maltreatment described above can certainly in the principal claimant's mind, due to his delicate state, bring undue hardship to bear. Therefore, the Board should have thoroughly examined this evidence in order to make a proper assessment with regard to subsection 108(4) of the Act.

[47] I do not believe that Justice Martineau's decision in *Suleiman* has any application to the facts of the present case or can be read to change the law embodied in *Hassan* and its progeny.

[48] This is because the issues raised in the present case were not before Justice Martineau in *Suleiman*. In *Suleiman*, the Board actually considered the applicability of the "compelling reasons" exception found in section 108(4). In other words, the Board in *Suleiman* accepted past persecution against the applicants in that case but, as Justice Martineau found, "the Board determined that, in light of the changed country conditions, the applicants' fear of persecution is not objectively well-founded ... ." In *Suleiman*, the Board proceeded precisely in accordance with established authority and embarked upon a compelling reasons analysis because it had found "there was a valid refugee (or protected person) claim and that the reasons for the claim have ceased to exist (due to changed country conditions."

[49] The only issue before Justice Martineau in *Suleiman* was whether, in finding the compelling reasons exception was not applicable in that case, the Board had been too restrictive and had erred "in inferring that the test in *Obstoj*, necessitates that the persecution reach a level to qualify it as 'atrocious' and 'appalling' for the 'compelling reasons' exception to apply." In other words, Justice Martineau was dealing with the **level** of past persecutory conduct required in a situation where the Board had accepted past persecution but had refused protection because of change of country conditions.

[50] In my view, there is nothing in *Suleiman* that changes the general jurisprudence of this Court derived from *Hassan* and that requires a finding that the claimant has at some point qualified as a refugee, but the reasons for the claim have ceased to exist.

[51] All of the quotations in *Suleiman* from Mr. Hathaway and Mr. Waldman make it clear that compelling circumstances (at whatever level of atrocity is required) have to be linked to past persecution and are intended to address situations where, to quote Mr. Waldman, "a refugee suffers continuing psychological traumas arising from past persecution ... ." The quotations assume cessation of refugee status before a compelling reasons analysis comes into play.

[52] In the present case, although the Applicant's lashing by Iranian authorities has been accepted, there has been no finding that such acceptance qualified him as a refugee but

for a change in circumstances. The Applicant merely asserts that the psychological trauma resulting from the lashing and treatment by Iranian authorities should give rise to a compelling reasons analysis under section 108(4) as a separate and distinct avenue for seeking protection, rather than an exception that should be considered where past persecution sufficient to qualify for refugee protection has been established and accepted but refugee status should not be conferred because the "reasons for the claim have ceased to exist."

[53] The Applicant says that his past treatment at the hands of Iranian authorities did so qualify in this case. But he has been through a refugee claim and, presumably, if that had been the case the reasons of the CRDD would have reflected that position and, in the event of disagreement, the Applicant would have applied for review, which he did not.

[54] And I can find no such determination in the PRRA Decision being reviewed as part of this application, which is why section 108(4) never came up. For this reason, I do not believe the Officer can be said to have erred in relation to section 108(4). The PRRA Decision and the CRDD decision seem to be clear that circumstances have not changed in Iran, but the Applicant has no objective fear of persecution and no need of protection. The Officer's approach was correct on this point. There was no reviewable error.

Risk Under 97(1)(*b*) of the Act

[55] The Applicant goes on to argue that "As the PRRA officer failed to consider whether the Applicant's mental health brought him within the application of compelling reasons, so she did with respect to section 97(1)(*b*) of IRPA."

[56] The Applicant's argument here is that the medical evidence before the Officer stated that his mental deterioration was directly connected to the deportation itself, and not to any further arrest or torture he might experience inIran. He complains that the Officer simply ignored this evidence and this issue.

[57] The Applicant also says that the medical evidence concerning his medical deterioration and possible suicide if he went back to Iran addressed objective risk because, although mental deterioration and suicide risks are connected to the deportation, they are risks that he faces in Iran.

[58] My review of the Decision leads me to conclude that the Officer paid close attention to the medical evidence, but there was no objective basis for the Applicant's fears. A claim under section 97 requires an objective basis to the alleged risk of torture, risk to life or risk of cruel and unusual treatment or punishment. See *Li v. Canada(Minister of Citizenship and Immigration)*, 2005 F.C.A.1 at para. 33.

[59] The Applicant seeks to establish an objective basis for his fear by saying that there is good reason and good medical evidence to support a 97(1)(*b*) claim in his deteriorating medical condition. In other words, his fear of deportation itself, even if objectively speaking there are no grounds to fear a return to Iran is sufficient to establish objective risk.

[60] This would mean that, under 97(1)(*b*), subjective fear could, even if groundless on an objective basis, constitute objective fear if the Applicant is so fearful of non-objective risks that his health is deteriorating.

[61] I do not believe this is the purpose of, or intent behind, section 97(1)(*b*). The Applicant's position is that the removal itself can trigger the application of 97(1)(*b*) irrespective of the objective risks that he faces in Iran. In effect this would mean that the Applicant could qualify under section 97(1)(*b*) if he is at risk from himself and his own fears, no matter how lacking in objectivity those fears actually are. I do not believe that the scheme of the Act, the intention of section 97(1)(*b*), or the jurisprudence concerning the need for objective risk when considering section 97 allow for such a conclusion. I believe the Officer handled the medical evidence appropriately and assessed the risk under section 97(1)(*b*) in accordance with the jurisprudence of this Court.

Conclusions

[62] I believe there are significant humanitarian and compassionate considerations that arise on the facts of this case. The Applicant is 62-years-old and the medical evidence adduced suggests that he is genuinely deteriorating and in poor mental condition. As the Federal Court of Appeal has observed, there are different procedures under the Act, and they are governed by different objectives and different considerations. See, for example, *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.) at paras. 16-17; and *Serri v. Canada(Minister of Citizenship and Immigration)*, (2 December 1997) File No. IMM-2193-96 (F.C.) at paras. 16-17.

[63] The facts available in this application reveal that the Applicant's real need to remain in Canada is based upon his declining mental health, and not the objective risk he faces in Iran. The purpose of a PRRA assessment is to determine whether the Applicant would face a well-founded fear of persecution or objectively-supported risk upon being returned toIran. See *Sherzady v. Canada(Minister of Citizenship and Immigration)*, 2005 FC 516 at paras. 1, and 14-16; and *Kim v.Canada(Minister of Citizenship and Immigration)*, 2005 FC 437 at para. 70.

[64] It would be unwise to strain the objectives of the PRRA process and to stretch the jurisprudence that has built up around it to attempt to accommodate considerations that need attention but are, perhaps, better dealt with under other provisions and processes of the Act.

[65] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Order. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party. Following that, an Order will be issued.

"James Russell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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