

Mohammadi v. Canada (Minister of Citizenship and Immigration)

Between
Seyed Ata Mohammadi, applicant, and
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 203
2001 FCT 61
Docket IMM-1432-00

Federal Court of Canada - Trial Division
Toronto, Ontario
Lutfy A.C.J.

Heard: February 6, 2001.
Judgment: February 13, 2001.
(11 paras.)

Aliens and immigration — Admission, refugees — Refugee Division, reasons — Evidence.

Application by Mohammadi for judicial review of the decision of the Convention Refugee Determination Division that he was not a Convention refugee. Mohammadi claimed that he had a well-founded fear of persecution as a result of his opposition to the government of Iran. Mohammadi presented a certificate from the United Nations High Commissioner for Refugees that indicated that he was considered a refugee of Iran. It was issued in 1994 while Mohammadi was in India. He argued that the Division failed to refer to this document in its reasons.

HELD: Application dismissed. The certificate from the Commissioner was of little significance to the determination of the status of Mohammadi as a Convention refugee. The Division was not required to refer to it in its reasons.

Counsel:

Paul VanderVennen, for the applicant.
David Tyndale, for the respondent.

1 **LUTFY A.C.J.** (Reasons for Order):— The applicant, Seyed Ata Mohammadi, raises two principal arguments in challenging the decision of the Convention Refugee Determination Division that he is not a Convention refugee. The applicant claims a well-

founded fear of persecution as a result of incidents which occurred during his participation in the Mojahedin opposition to the government of Iran, his country of citizenship.

2 First, the applicant argues that the tribunal erred in failing to refer to a certificate issued by the United Nations High Commissioner for Refugees.

3 In December 1994, the UNHCR issued a certificate which reads as follows:

This is to certify that Mr. SEYED ATA MOHAMMADI a national of IRAN is on the basis of available information considered to be a refugee within the Mandate of the Office of the United Nations High Commissioner for Refugees.

Any assistance provided to Mr. MOHAMMADI during his stay in India would be greatly appreciated.

This certificate is valid for a period of 6 months.

4 In *El-Bahisi v. Canada (Minister of Employment and Immigration)* (1994), 72 F.T.R. 117, Justice Denault found that the tribunal erred in failing to consider a document issued by the United Nations Relief and Works Agency attesting to the claimant's status as a Palestinian refugee in Gaza. Justice Denault relied on a passage in the Handbook on the Procedures and Criteria for Determining Refugee Status (Office of the United Nations High Commissioner for Refugees, 1992) at paragraph 143, which deals with persons, specifically Palestinians, in receipt of protection or assistance from an agency of the United Nations under Article 1(D) of the 1951 Convention relating to the Status of Refugees. Also in *El-Bahisi*, there is no suggestion in the decision that the certificate was temporary or no longer in force when the Palestinian's claim for refugee status was considered by the C.R.D.D. In view of these two factual differences, the decision in *El-Bahisi* can be distinguished from this case.

5 In October 1994, the applicant in this proceeding left Iran for India. He describes his stay in India in his personal information form as tenuous:

Upon my arrival in India I approached the United Nations High Commissioner for Refugees and in December 1994 I was recognized as a refugee by the UNHCR. However, as I had entered India illegally I was under threat of deportation to Iran. As my father and my brother Seyed-Shahram were already in Canada, the UNHCR contacted the Canadian Embassy in New Delhi where I requested refugee status. Unfortunately, to UNHCR officer's and to my surprise Canada refused to accept me, and provided no reason for the excuse.

6 In April 1995, shortly before the expiration of the temporary certificate, the applicant moved to Pakistan where he lived with no legal status until 1999, when he sought Convention refugee status in Canada.

7 This certificate was produced at outset of the refugee hearing. However, no direct reference was made to the certificate during the testimony or the submissions.

8 Before this Court, neither counsel could describe fully the meaning of the six-month certificate. Counsel for the applicant acknowledged that none of the documentary evidence shed any light on the evidentiary value of the certificate. Neither counsel was able to point to any specific provision in the Handbook on the Procedures and Criteria for Determining Refugee Status which explained this temporary, six-month certificate. The burden was on the applicant to establish the materiality of this document and he failed to do so.

9 On the basis of the record in this proceeding, I am satisfied that the applicant's UNHCR six-month certificate issued in 1994 was of little, if any, significance to the determination of his status as a Convention refugee in 2000. The certificate does not attest to his status as a Convention refugee. At best, it suggests that the applicant received some international protection for a short period of time, after which he was required to leave India. I find no reviewable error in the tribunal's failure to refer to this document in its written reasons.

10 The applicant also challenges the tribunal's credibility findings. I adopt fully the careful analysis by counsel for the respondent that the tribunal's eight findings of contradictions or implausibilities were reasonably open to it on the record. The applicant has fallen far short of establishing any reviewable error in the tribunal's reasons for its negative finding of credibility.

11 Accordingly, this application for judicial review will be dismissed. Neither party suggested the certification of a serious question.

LUTFY A.C.J.