CITATION: A. B. *v.* CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION), 2009 FC 325, [2010] 2 F.C.R. 75 IMM-3497-08

A. B. (*Applicant*)

v.

The Minister of Citizenship and Immigration (*Respondent*)

INDEXED AS: A. B. v. CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION) (F.C.)

Federal Court, Gibson D.J.—Toronto, February 11; Ottawa, March 27, 2009.

Citizenship and Immigration — Status in Canada — Persons in Need of Protection — Judicial review of pre-removal risk assessment officer's conclusion applicant not described in Immigration and Refugee Protection Act, ss. 96, 97(1)(a),(b), not meeting definition of protected person — Applicant, Iranian, claiming refugee status in Canada based on political opinion but claim rejected — In pre-removal risk assessment (PRRA) application, applicant including rejection of Islam as new risk, indicating fearing treatment that might await him if returned to Iran — Whether PRRA officer mis-stating issue, applying proper test — Unquestionable that citizen of Iran who rejects Islam put at risk if returned to Iran — Even assuming individual who has rejected Islam, if required to return to Iran, remaining discreetly silent on rejection, person may well remain at risk of persecution if person's rejection coming to state authorities' attention — PRRA officer not addressing that risk — Therefore, officer's failure to address appropriate test regarding risk of persecu-tion, risk resulting in applicant being person in need of protection constituting reviewable error — Application allowed.

This was an application for judicial review of a pre-removal risk assessment officer's decision concluding that the applicant was not described in section 96 or paragraph 97(1)(*a*) or (*b*) of the *Immigration and Refugee Protection Act* and did not meet the definition of protected person. The applicant, Iranian, came to Canada where he claimed refugee status based on his political opinion supporting the Iranian People's Fedayeen (Majority) and his role in harbouring political fugitives. His claim was refused by the Immigration and Refugee Board based on the applicant's lack of credibility. In his pre-removal risk assessment (PRRA) application, the applicant included a new risk based on the fact that he had rejected Islam since coming to Canada and considered himself to be agnostic. Apart from his political opinions, the applicant feared the treatment that might await him if he were returned to Iran on the basis of this rejection. The PRRA officer stated that there was insufficient evidence that the applicant would be brought to the attention of authorities and that the applicant had not provided evidence that he would be compelled to bring his abandonment of Islam to the attention of authorities upon returning to Iran.

The main issue was whether the PRRA officer misstated the issue regarding the applicant's rejection of Islam when the officer described the test as whether the applicant's renunciation of Islam would be brought to the attention of the authorities and whether the applicant would be compelled to bring this fact to the attention of authorities in Iran. A secondary issue was whether the officer erred by applying for the purposes of section 96 of the Act a test of whether the applicant would be persecuted if his abandonment of Islam came to the attention of the authorities rather than applying the lower threshold of whether there was a "serious possibility" that he would be persecuted.

Held, the application should be allowed.

There could be no question that a citizen of a country like Iran who rejects Islam, whether or not he or she

adopts another religion, is put at risk if required to return to Iran. Even assuming that an individual who has rejected Islam, if required to return to Iran, will remain discreetly silent on that rejection, that person may well remain at risk of persecution if the circumstances are such that that person's rejection of Islam might come to the attention of state authorities. That risk was simply not addressed by the officer on the facts of this matter. Therefore, the officer's failure to address the appropriate test or issue regarding the risk of persecution or risk resulting in the applicant being a person in need of protection as described in section 97 of the Act constituted a reviewable error.

Given the conclusion on the first issue, there was no need to address the second issue regarding the threshold of risk under section 96 of the Act. Nevertheless, it was briefly stated that if a PRRA officer expresses having "serious doubts" on an applicant's alleged fear of persecution, the whole of the decision and the context within which those words appear must be examined. They refer to whether an applicant has met the legal criterion under section 96. They do not consti-tute a definition of the legal test to be applied thereunder.

STATUTES AND REGULATIONS CITED

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 2.
Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 96, 97.

CASES CITED

APPLIED:

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, [2002] 2 S.C.R. 522, 211 D.L.R. (4th) 193, 40 Admin. L.R. (3d) 1; *Mutangadura v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 298; *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, 78 Imm. L.R. (3d) 163, 387 N.R. 149.

CONSIDERED:

Sadeghi v. Canada (Minister of Citizenship and Immigration), 2002 FCT 1083; *Golesorkhi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 511; *Zhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1066; *Irivbuggo v. Canada (Minister of Citizenship and Immigration)* (2000), 3 Imm. L.R. (3d) 263, 182 F.T.R. 47 (F.C.T.D.); *Saiedy v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1367; *Kazemian v. Canada (Solicitor General)*, 2004 FC 874; *Ghavidel v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 939, 64 Imm. L.R. (3d) 278.

AUTHORS CITED

U.S. Department of State. *Country Reports on Human Rights Practices – 2007, Iran*. Washington: Bureau of Democracy, Human Rights, and Labor, March 11, 2008, online: <http://www.state.gov/g/drl/rls/hrrpt/2007/100595.htm>.

APPLICATION for judicial review of a pre-removal risk assessment officer's decision concluding that the applicant was not described in section 96 or paragraph 97(1)(*a*) or (*b*) of the *Immigration and Refugee Protection Act* and did not meet the definition of protected person. Application allowed.

APPEARANCES

Micheal T. Crane for applicant.
Stephen H. Gold for respondent.

SOLICITORS OF RECORD

Micheal T. Crane, Toronto, for applicant.
Deputy Attorney General of Canada for respondent

The following are the reasons for order and order rendered in English by

GIBSON J.:

Introduction

[1] These reasons follow the hearing of an application for judicial review of a decision of a pre-removal risk assessment [PRRA] officer (the officer) whereby the officer concluded:

I find that the applicant is not described in section 96 or paragraphs 97(1)(a) or (b) of the *Immigration and Refugee Protection Act* . The applicant does not meet the definition of protected person and his application for protection is therefore not allowed.

The decision under review is dated June 23, 2008.

Preliminary matter

[2] At the hearing of this application, the Court and counsel for the applicant engaged in a discussion of whether it would be appropriate and in the best interests of justice to delete from these reasons and the Court's order flowing from these reasons all personal identifiers with respect to the applicant given the time that he or she has been absent from his or her country of citizenship and given certain of his or her activities during that period. Counsel for the applicant requested an opportunity following the hearing to consult with his client and to provide appropriate representations in writing to the Court with a copy of those representations going to counsel for the respondent. The basis of the applicant's concern will become apparent from a review of later paragraphs of these reasons. In the result, at the close of hearing, decision was reserved and time was provided for counsel to consult with his client and to provide representations to the Court. Counsel for the respondent was, of course, provided with an opportunity to respond to any such representations.

[3] In due course, counsel for the applicant provided written representations requesting that the Court "sanitize" its reasons so as not to disclose the applicant's identity. In the same representations, counsel indicated that he was not seeking to have the Court file sealed. His concern rather was with the practice of the Court to publish reasons such as these on its Web site, thus making them readily accessible and identifiable with the applicant if the applicant's name and other personal identifiers appear on the face of the reasons. Counsel for the respondent advised the Court that he took no position on the request.

[4] In *Sierra Club of Canada v. Canada (Minister of Finance)*,[1] Justice Iacobucci, for the Supreme Court of Canada, wrote at paragraph 53 of his reasons:

> Applying the rights and interests engaged in this case to the analytical framework of *Dagenais* and subsequent cases discussed above, the test for whether a confidentiality order ought to be granted in a case such as this one should be framed as follows:
>
> A confidentiality order under Rule 151 should only be granted when:
>
> (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[5] Applying the foregoing test to the facts of this matter, particularly in light of the position taken by counsel for the respondent, I am satisfied that the salutary effects of modifying these reasons to delete personal identifiers of the applicant outweigh its deleterious effects, including the public interest in open and accessible court proceedings. In the result, without formal order of the Court, the applicant is identified in the style of cause on these reasons and in the order that will reflect the outcome from these reasons simply as "A. B." and other consequential changes have been made throughout the reasons and will be made, if re-quired, in the Court's order. Masculine pronouns will be used throughout the balance of these reasons. That use is for convenience and readability only, and is not intended to reflect the gender of the applicant.

Background

[6] The applicant filed only a very brief and non-substantive affidavit on this application for judicial review. That being said, he annexed to that affidavit "a copy of the documents filed on the PRRA application". He attested that his fears if he were faced with having to return to his country of nationality, Iran, remain essentially the same as those expressed in the documents filed on his PRRA application. The factual background that follows is essentially not in dispute.

[7] The applicant is a national of Iran. He fled Iran and arrived in Canada in July 1997. He claimed Convention refugee status against Iran based on his political opinion as demonstrated by his support for the Iranian People's Fedayeen (Majority) and his role in harbouring political fugitives. The Convention Refugee Determination Division (the CRDD) of the Immigration and Refugee Board rejected the applicant's claim. It found the applicant not to be credible.

[8] The applicant asserted one new risk on his PRRA application. In a solemn declaration filed on that ap-plication, he declared:

> I have rejected Islam since I came to Canada.
>
> I consider myself to be agnostic at least although by some definitions I would be atheist.

[9] In submissions covering the applicant's PRRA application, the applicant's then representative

wrote:

The issue of [the applicant's] abandoning Islam is more complex. This transformation has taken place gradually over ten years in Canada. [The applicant] has not been near a mosque in years. [The applicant] is an apostate or heretic in the eyes of the fanatic clerics who control Iran. Setting aside the first issue [the applicant's fear based on his alleged political opinion and his further allegation that his testimony in that regard was credible] the question becomes, what treatment might [the applicant] expect in Iran as someone who has rejected Islam?

The decision under review

[10] The officer very succinctly disposes of the first issue before him or her, that is to say the applicant's fear based upon his alleged political opinion. The of-ficer writes:

The Federal Court in *Kaybaki* has stated, the PRRA application cannot be allowed to become a second refugee hearing. The PRRA Process is to assess new risk developments between the hearing and the removal date.

As the applicant does not provide any additional information on [the applicant's] circumstances as they relate to the above noted risk, nor does [the applicant] submit any additional evidence that [the applicant] is personally at risk because of [the applicant's] political opinion, I find that the applicant does not face more than a mere possibility of persecution for the above noted risk. With respect to s.97, based on the evidence submitted I do not find it likely that the applicant would face a risk of torture, risk to life, or risk of cruel and unusual treatment or punishment in Iran. [Citation omitted.]

[11] The officer disposes of the second issue before him or her, that is to say the applicant's new risk based upon his rejection of Islam since coming to Canada, almost equally succinctly. He or she writes:

While I acknowledge the documentary evidence presented by the applicant indicating that Christian leaders and activists have been detained and questioned by Iranian authorities, the applicant does not indicate that [the applicant's] is a religious activist or a leader.

I have read and considered the documentary evidence provided by the applicant. The articles are from various online sources and concern conditions on apostasy in Iran. The applicant also provides broad-based human rights conditions articles from the Department of State. While acknowledging that the Government of Iran harasses and sometimes persecutes apostates, as well as other faith communities such as the Baha'i and that Iran does not ensure the right of its citizens to change their faith and that apostasy (conversion from Islam) can be punishable by death, I have insufficient evidence that the applicant would be brought to the attention of authorities. While I acknowledge [the applicant's] statement that [the applicant] is "for sure agnostic, possibly atheist", the applicant has not provided evidence indicating that [the applicant] would be compelled to bring [the applicant's] abandonment of Islam to the attention of authorities upon returning to Iran.

While I do acknowledge documentary evidence of Iran's poor human rights record, I do not find there is more than a mere possibility the applicant would face a risk of persecution on any of the Convention grounds. I find it unlikely [the applicant] would face a risk to life, of torture or a risk of cruel and unusual treatment or punishment from Iranian authorities. [Emphasis added.]

As noted, I have added emphasis in the second paragraph of the foregoing quotation. Of particular note is the officer's approach demonstrated by his or her use of the phrase "[the applicant] would be compelled to bring".

The issues

[12] The officer's summary disposition with regard to the applicant's claim based upon political opinion was not in dispute on this application for judicial review. Counsel for the applicant urges that the officer misstated the issue before him or her regarding the applicant's rejection of Islam when he or she described the test or issue as whether the applicant and his renunciation of Islam would be brought to the attention of the authorities and whether he would be compelled to bring his abandonment of Islam to the attention of authorities in Iran. Counsel urges that the test or issue is not one of the applicant's willingness or capacity to remain discreet but rather is whether or not the applicant's abandonment of Islam is likely to come to the attention of Iranian authorities by whatever means including inquiries or investigations by or on behalf of those authorities. Counsel urges that decisions of this Court on this test or issue reflect divided opinion, that the latter statement of the test or issue is correct and the officer's adoption of the first version of the test or issue constitutes a reviewable error.

[13] As a secondary issue, counsel for the applicant urges that the officer erred in a reviewable manner in applying, for the purposes of section 96 of the *Immigration and Refugee Protection Act*,[2] a test of whether or not the applicant would be persecuted if his abandonment of Islam came to the attention of authorities rather than the lower threshold of whether there is a "serious possibility" that the applicant would be persecuted.

Analysis

(a) Would be brought to the attention or compelled versus come to be known to Iranian authorities

[14] Counsel for the applicant referred me first to *Sadeghi v. Canada (Minister of Citizenship and Immigration)*[3] where Justice Rouleau had before him a judicial review of a decision of the CRDD concerning a 37-year-old citizen of Iran. One of the issues before Justice Rouleau was framed in the following terms [at paragraph 11]:

> 1) Whether the CRDD misconstrued the foundation of the Applicant's claim by considering that the Applicant's religious commitment to Christianity was central to his fear of persecution on religious grounds rather than the fact of his conversion to Christianity and how this would be perceived by the authorities in Iran.

Justice Rouleau commented at paragraph 17 of his reasons:

> It appears from the CRDD's reasons that the panel considered the degree of the applicant's religious commitment to Christianity as central to its analysis of whether his fear of persecution on religious grounds is well founded.

Justice Rouleau quotes at length from the CRDD's reasons concluding the quotation with the following paragraph [at paragraph 17]:

> So for all these reasons, the claimant is shown not to be a credible witness and to have failed to present a credible claim of feared persecution from Iran, a country he left about 19 years ago. The claimant has not shown that he has taken up the practice of the Christian faith since he has arrived in Canada in such a way as to

persuade me that that is the faith he would follow if he returned to Iran. [Emphasis in both of the foregoing quotes is Justice Rouleau's.]

[15] Justice Rouleau concludes with respect to the last-quoted paragraph from the CRDD's reasons [at paragraph 18]:

> With respect, the panel is mistaken. The question is not whether the applicant is so deeply committed to Christianity that he would, if he were to return to Iran, practice that religion there at risk of receiving the attention of the authorities. Rather, the central issue to the well-foundedness of the applicant's fear of persecution on religious grounds is the fact of his conversion to Christianity and the attitude of the Iranian government, the putative persecutor, should his conversion come to be known to the Iranian authorities. Indeed, the consequences for the applicant if his conversion to the Christian faith were known by the Iranian authorities are very serious. The documentary evidence tendered at the hearing makes it very clear that apostasy is a serious crime in Iran and may be punishable by death. The CRDD panel utterly failed to address this question and does not seem even to have recognized that the problem existed in Iran. In my view, the panel clearly exaggerated the import of a few apparent implausibilities which it succeeded in detecting in the testimony of the applicant, and this caused it to forget the substance of the facts on which the applicant based his claim. Consequently, the panel erred in failing to ask itself a question that was crucial to the decision that it reached. [Emphasis added.]

[16] On this basis alone, Justice Rouleau allowed the application for judicial review that was before him.

[17] Counsel for the applicant took me to the U.S. Department of State *Country Reports on Human Rights Practices – 2007, Iran* dealing with the Islamic Republic of Iran and released on March 11, 2008. In that document [at page 23], which was before the officer, the following appears:[4]

> Citizens returning from abroad occasionally were subjected to searches and extensive questioning by government authorities for evidence of antigovernment activities abroad. Recorded and printed material, personal correspondence and photographs were subject to confiscation.

Counsel noted that the applicant had been absent from Iran and in Canada for close to 12 years and urged that it would not be unreasonable to assume that the applicant might well be closely examined if he were required to return to Iran after such a protracted absence in Canada. Indeed, counsel acknowledged, given the openness of this Court and, in particular, the extensive postings on its Web site, it is not beyond the realm of possibility that independent inquiries could be pursued to determine, or to confirm, the reason for the applicant's return, thus raising the possibility that the applicant's renunciation of Islam might conceivably come to the attention of Iranian authorities.

[18] Justice Phelan recently arrived at a conclusion similar to that of Justice Rouleau, in *Sadeghi*, above, in *Golesorkhi v. Canada (Minister of Citizenship and Immigration)* [5] where he wrote at paragraphs 17 and 18:

> Lastly, the Applicant argues that the decision is unreasonable. A critical component of this argument is the finding of the Officer that the Applicant would not go to church once he was in Iran and therefore his conversion would not be known and he would not suffer persecution.

If this was the principal reason for the decision of absence of risk, I would agree that the decision is legally infirmed. This "quiet Christian" analysis is flawed because religious persecution can exist where a claimant is prevented from practicing his religion due to fear. It is no answer to a claim of risk of religious persecution to say that there is no risk if one does not practise one's religion or cannot practise it openly. [Citations omitted.]

This finding by Justice Phelan was not determinative on the facts before him because the PRRA officer there concluded that the applicant's evidence simply failed to establish that the applicant was indeed a Christian. While Christianity is not the issue here, the applicant's limited evidence that he had repudiated Islam was accepted by the officer.

[19] Counsel for the applicant urged that Justice Zinn reached a similar conclusion in *Zhu v. Canada (Minister of Citizenship and Immigration)*,[6] relying on the same authorities as did Justice Phelan. I cannot agree. In that case, the Refugee Protection Division had held that the applicant's appreciation of Christianity was so limited that her needs could be satisfied in a state-sanctioned church rather than with the underground Protestant church she claimed to follow. Justice Zinn rejected this proposition and concluded at paragraph 17 of his reasons:

This is not to suggest that the sincerity of a claimant's religious conviction cannot be tested with reference to the claimant's familiarity with the dogma or creed invoked. In my view, in this case, after accepting the sincerity of the Applicant's conviction, the RPD erred when it went on to articulate a rather elaborate conception of religious freedom which entirely discounts the subjective aspect of religious belief in holding that the legitimacy of a person's belief can and should be measured against his or her level of religious sophistication.

I am satisfied that this particular authority in no way supports the position urged on behalf of the applicant here.

[20] Of greater similarity to the test or issue enunciated in *Sadeghi*, above, and *Golesorkhi*, above, are the following excerpts from the decision of Justice Sharlow, then of the Trial Division of the Federal Court of Canada, in *Irripugge v. Canada (Minister of Citizenship and Immigration)*[7] where she wrote at paragraphs 50, 52 and 53 of her reasons:

Counsel for Mr. Qiu interprets the CRDD's statement as an expression of a general principle that a person who is forced to worship in secret or risk arrest is not subject to persecution on the basis of religion. . . .

. . .

Counsel for the Crown argued that Mr. Qiu's evidence did not establish, as a matter of fact, that his right to practice his religion has been interfered with. He notes that Mr. Qiu had never been arrested or even threatened with arrest, and that Mr. Qiu did not indicate expressly that he was not content to worship in secret with his family.

That is an incomplete description of Mr. Qiu's evidence. Mr. Qiu said that he has not been arrested because the authorities are unaware of his religious practices, and that he and his family have adopted the practice of worshipping in secret in order to avoid arrest. Mr. Qiu was not asked directly whether he would have worshipped publicly if he could, but he said that in Canada, he has attended church.

Here, of course, the issue is not risk of religious persecution flowing from secret or public practice of religion, but rather risk of persecution should the Government of Iran become aware of the

applicant's rejection of Islam without choosing to adopt the practice, whether secretly or publicly, of an alternative religion.

[21] Counsel for the applicant cites the following authorities from this Court which he urges adopt a narrower concept of religious freedom. In *Saiedy v. Canada (Minister of Citizenship and Immigration)*,[8] Madam Justice Gauthier wrote at paragraph 28 of her reasons:

> 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.

[22] Justice Gauthier upheld the RPD decision that was the subject of the judicial review before her. In essence then, I conclude that she adopted the "refrains from making known or publicizing" approach or test rather than the "might become known to Iranian authorities" approach or test as adopted by Justices Rouleau and Phelan.

[23] To the same effect as *Saiedy*, above, counsel for the applicant urged, Justice von Finckenstein wrote at paragraph 12 of his reasons in *Kazemian v. Canada (Solicitor General)*:[9]

> In light of the Applicant's own description of his approach to religion, his past experience in Iran and the absence of any evidence that he intends to proselytise, I don't see how it can be said that it is probable that he will be persecuted on the basis of his religion.

[24] Finally, in *Ghavidel v. Canada (Minister of Citizenship and Immigration)*[10] Justice de Montigny, after citing *Saiedy*, above, and *Kazemian*, above, wrote at paragraphs 9 and 17 and 18 of his reasons:

> On the second point, the Officer considered the evidence particular to the applicant, her own statements with respect to how she practices her faith, as well as her Pastor's sworn statement as to her religious involvement. She found that Ms. Ghavidel does not fall within the recognized ambit or risk for Christian converts in Iran.
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> . . .
>
> While it is no doubt true that the notions of proselytism and of being public about one's faith may be differently interpreted in Iran and in Canada, the applicant provided at best limited evidence of active and overt manifestations of her new faith while in Canada. The only evidence provided to show that she shares her faith with others is the fact that she discussed Christianity with a neighbour. Similarly, she disputes the negative inference drawn by the Officer from the failure of the pastor to mention that the applicant would proselytize upon her return, and counters with the assumption that "for a pastor who is a member of an evangelical church, proselytizing is required to be a committed Christian".
>
> Nevertheless, the assumptions upon which the applicant relies are not supported by the evidence. The Officer's failure to accept the assumptions of fact proposed by the applicant does not constitute a reviewable error. Indeed, the pastor says nothing about proselytizing activities in his affidavit, despite the details he gives about the applicant. It was not patently unreasonable for the Officer, on the basis of the evidence that was

before her, to conclude that sharing one's faith with neighbours does not imply the kind of activities that would put the applicant at risk in Iran, even when taking into consideration the dire situation of human rights in that country and the precarious fate of religious minorities and particularly of Muslim converts to Christianity.

[25] In general terms, counsel for the respondent simply rejects the notion that there is any conflict between the lines of authority just cited. With great respect, I disagree. There can be no question that a citizen of a country like Iran who rejects Islam, whether or not he or she adopts another religion, is put at risk if required to return to Iran. The late Justice Rouleau and Justice Phelan and perhaps, certainly less directly, others cited on behalf of the applicant, expressed a view that that is not the end of the matter. Even assuming that an individual who has rejected Islam, if required to return to Iran, will remain discreetly silent on that rejection, I am satisfied that he or she may well remain at risk of persecution if the circumstances are such that his or her rejection of Islam might come to the attention of state authorities. That risk was simply not addressed by the officer on the facts of this matter.

[26] Against whatever standard of review is applicable, whether it be correctness or reasonableness, I am satisfied that the failure to address the appropriate test or issue regarding risk of persecution or risk resulting in the applicant being a person in need of protection as described in section 97 of the *Immigration and Refugee Protection Act*, results in reviewable error and this application for judicial review will thus be allowed.

(b) The threshold of risk under section 96 of the *Immigration and Refugee Protection Act*

[27] In light of my conclusion on the first issue on this application for judicial review, I decline to address the second issue which, both counsel before me appear to agree, was of a secondary order of significance. Suffice it to say that, without engaging in any significant re-view of the issue, I adopt at the level of principle, the following statements by Justice Phelan in paragraphs 9 and 10 of his reasons in *Mutangadura v. Canada (Minister of Citizenship and Immigration)*:[11]

> One cannot become fixated on these words ["serious doubts"] or engage in matters of semantics without considering the whole of the decision and the context within which those words appear.
>
> As I read these words, they refer to whether the Applicant has met the legal criterion under s. 96, not a definition of the legal test to be applied under that provision. This view is reinforced by the fact that the Board refers to the legal test under s. 96 later in the judgment. [Citation omitted.]

Substituting a reference to the PRRA officer for the reference to the Board in the last sentence of the foregoing quotation, I am satisfied that the same could be said here.

Conclusion

[28] For the foregoing reasons, this application for judicial review will be allowed, the decision under review will be set aside and the applicant's application for a pre-removal risk assessment will be referred back to the respondent for redetermination by a different officer.

Certification of a question

[29] Counsel for the applicant urges certification of the following question:

In the context of persecution for reasons of religion under s. 96 of the *Immigration and Refugee Protection Act*, is [it] relevant that a claimant can or will be discreet about his or her faith vis-à-vis the agent of persecution?

In support of his recommendation, counsel cites the inclusion of "freedom of conscience and religion" among the fundamental freedoms enshrined in section 2 of the *Canadian Charter of Rights and Freedoms*.[12] Given that primacy of place, it is assumed that counsel urges that the principal issue raised on this application for judicial review is a serious question of general importance. The issue of whether or not an answer to the proposed question would be dispositive on an appeal from the order herein was simply not addressed.

[30] By contrast, counsel for the respondent urges against certification of the proposed question by reference to *Prophète v. Canada (Minister of Citizenship and Immigration)*[13] where Justice Trudel, on behalf of the Court, wrote at paragraphs 8 and 9 of her reasons:

> Taking into consideration the broader federal scheme of which section 97 is a part, answering the certified question in a factual vacuum would, depending on the circumstances of each case, result in unduly narrowing or widening the scope of subparagraph 97(1)(*b*)(ii) of the Act.
>
> For these reasons, we decline to answer this certified question. [Emphasis added.]

[31] Counsel for the respondent urges that the cases relied on at the hearing of this application, some of which are cited in the foregoing reasons, turned on their particular facts and that it cannot be said that those particular facts are the same or very similar to the facts here before the Court. Indeed, in the Court's view, there is a complete absence of factual background regarding the applicant's rejection of Islam in this matter to support the officer's conclusion that the applicant would not be at risk if he returned, voluntarily or involuntarily, to Iran.

[32] For the foregoing reasons, I prefer the position advocated by counsel for the respondent and decline to certify the question proposed by counsel for the applicant or, indeed, any question. While I regard this matter as one that raises a serious question of general importance, in the absence of a supporting factual background, I am satisfied that the concern expressed by Justice Trudel in *Prophète*, above, applies equally to this matter.

ORDER

THIS COURT ORDERS that this application for judicial review is allowed. The decision under review is set aside and the applicant's application for a pre-removal risk assessment is referred back to the respondent for redetermination by a different officer.

No question is certified.

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1 2002 SCC 41, [2002] 2 S.C.R. 522.

2 S.C. 2001, c. 27.

3 2002 FCT 1083, October 17, 2002.

4 At p. 122 of the applicant's record herein.

5 2008 FC 511, April 18, 2008.

[6] 2008 FC 1066, September 23, 2008.

[7] (2000), 3 Imm. L.R. (3d) 263 (F.C.T.D.), January 10, 2000.

[8] 2005 FC 1367, October 6, 2005.

[9] 2004 FC 874, June 14, 2004.

[10] 2007 FC 939, September 20, 2007.

[11] 2007 FC 298, March 20, 2007.

[12] being Part I of the *Constitution Act, 1982*, Schedule B, *Canadian Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44].

[13] 2009 FCA 31, 78 Imm. L.R. (3d) 163, February 4, 2009.