Federal Court  Cour fédérale

Date: 20211025

Docket: IMM-7231-19

Citation: 2021 FC 1135

Ottawa, Ontario, October 25, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

GHOLAM SAKHI SOLTANI
SEDIGHE QAYOMI
HAMED SOLTANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants, Gholam Sakhi Soltani, Sedighe Qayomi, and Hamed Soltani seek judicial review of a decision by a migration officer at the Canadian Embassy in Abu Dhabi [the "Officer"], refusing the Applicants' Convention Refugee Abroad Application for resettlement from Iran.

[2] The Style of Cause is amended to add the Applicants, Sedighe Qayomi and Hamed Soltani.

II. Background

[3] Mr. Soltani is a citizen of Afghanistan who resettled in Iran 35 years ago. He was sponsored by a "group of five" for resettlement in Canada, alleging persecution in Iran and Afghanistan. Mr. Soltani has a daughter and grandchildren in Canada and other children elsewhere.

[4] On September 2, 2019, he was interviewed by a migration officer in Abu Dhabi.

[5] A procedural fairness ["PF"] letter dated September 10, 2019 was sent outlining that, at the interview, there was an interpreter present who was fluent in both English and Farsi, and that the Applicants did not indicate that he had difficulty understanding. The letter continued by stating that he was unable to demonstrate that he had a well-founded fear of persecution, and that Mr. Soltani and his dependants repeatedly said that their primary motivation for seeking resettlement to Canada was his son's education, as well as being able to see his children and grandchildren.

[6] The Officer notes that Afghanistan and Iran are not in a state of war or civil war, Mr. Soltani has been working and living in Iran for 35 years, his son has been accepted into University, and the Taliban and Daesh do not control the city of Kabul, where the Applicants'

relatives live. The Officer was concerned that he did not meet the requirements for resettlement, but sent the PF letter in order to provide them with an opportunity to address these concerns.

[7] In response, former counsel for the Applicants noted that there was fear of persecution due to the conversion of Mr. Soltani's eldest son, who lives in Germany, to Christianity, and that this would cause the family in Iran or Afghanistan to be targeted and be in danger from the death penalty. The letter also stated that they were afraid to bring this up at the interview because they feared that the Iranian interpreter would report their son's conversion to Iranian authorities. Finally, in the response to the PF letter, it was stated that the son who was accepted into University was refused admission due to being of Afghan origin.

[8] The Applicants received a letter dated November 21, 2019, where the Officer determined that the Mr. Soltani and his family did not meet the requirements of either the Convention refugee abroad class (*Immigration and Refugee Protection Regulations*, SOR/2002-227 rr 139, 144 & 145 [*IRPR*]) or the country of asylum class (*IRPR* rr 139, 146 & 147).

[9] The Officer said that the Applicants are not subject to prosecution for crimes in either Iran or Afghanistan, nor have they been pressured, arrested, or tortured by Iranian authorities, or that they would face similar treatment in Afghanistan because of their son's conversion to Christianity. They note that they read the response to the PF letter, but that their concerns are not assuaged. They note that his daughter in Canada was not able to sponsor them due to not working, and that, as noted above, in the interview they repeatedly mentioned personal

motivations for wanting to come to Canada. The Officer concludes they are not Convention refugees.

[10] They, as above, note that Iran or Afghanistan are not in a state of war or civil war, and for the same reasons listed above concluded that they do not meet the requirement of the asylum class.

[11] The Applicants allege that their former counsel made mistakes in his representation. The Applicants retained new counsel. The Applicants informed former counsel of their concerns regarding incompetence or negligence and the former counsel filed a letter with the Court in response.

III. Issues

[12] The issues are:

A. Was there a breach of the Applicants' procedural fairness?

B. Was the decision of the Officer reasonable?

IV. Standard of Review

[13] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], makes it clear that reasonableness is the applicable standard of review in cases such as this, and nothing in this case would suggest otherwise.

[14] For matters of procedural fairness, the important factor is whether the process was fair, and not whether it was reasonable or correct (*Mamand v Canada (Minister of Citizenship and Immigration)*, 2021 FC 818 at para 19).

V. Analysis

A. *Was there a breach of the Applicants' procedural fairness?*

[15] The Applicants argued that there was a breach of procedural fairness because:

a) the interpreter was Iranian, and he is Afghani so his procedural fairness was breached due to language difficulties;
b) his former counsel did not raise the concern about the interpreter that, his procedural fairness was breached;
c) his former counsel did not tell him to disclose his son's conversion to Christianity, his procedural fairness was breached.

[16] The dialect Mr. Soltani speaks is Dari, which is similar, but different to Farsi, and there are distinctions of accent and vocabulary, citing *Mujadidi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 979 at paragraph 7, and other cases for support that the interpretation made the decision procedurally unfair. Further, Mr. Soltani voiced that his anxiety to fully disclose his case – given the presence of an Iranian – breached his procedural fairness, as he was not able to fully present his case.

[17] A review of the transcript does not indicate any translation issues. Nor did Mr. Soltani at any time voice his concerns regarding his anxiety about presenting his case in the presence of an Iranian (Farsi interpreter.) On the general application form, English was indicated as the preferred language for the interview, and he answered that no interpreter was requested. Further, Mr. Soltani indicated that his mother tongue was Persian. The interview notes confirm that Mr. Soltani indicated that he had no difficulty understanding the interpreter during the interview.

[18] There was no breach of fairness to the Applicants because of the interpretation issue or the interpreter being Farsi. Interpretation must be adequate, but does not have to be perfect, and any concerns must be raised by the Applicant at the first opportunity (*Caneo v Canada (Minister of Public Safety and Emergency Preparedness)*, 2021 FC 748 at para 22). In the instant case, Mr. Soltani confirmed that he understood the interpreter at the interview. He did not mention his concern about the interpreter's impartiality. If any concerns had been raised then, they could have been addressed. There is no indication on review of the transcript of any translation concerns.

[19] I find that both of these issues should have been raised at the time, and see no procedural unfairness as argued by the Applicants regarding the translation or the translator being Farsi.

[20] The second procedural fairness issued raised was the competency of former counsel. The Applicants said that former counsel was "privy to all necessary information" and that they failed to submit those facts, relying only on country conditions. Additionally, the failure of former counsel to mention the elder son's conversion to Christianity resulted "in the Officer's

unwillingness to consider this significant factor." The Officer, in their reasons, gives little weight to the explanations given regarding the omission in the interview because they had never before asserted that the son had converted to Christianity. He then states that this resulted in the Officer not being obligated to consider his son's baptism certificate.

[21] The threshold for a finding of incompetency is high (*Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1148 at para 30 [*Ibrahim*]). The test for setting aside a decision due to counsel incompetence is a three-part test:

> 1. The representative's alleged acts or omissions constituted incompetence;
>
> 2. There was a miscarriage of justice in the sense that, but for the alleged conduct, there is a reasonable probability that the result of the original hearing would have been different; and
>
> 3. The representative be given notice and a reasonable opportunity to respond…
>
> (*Yang v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1189 at para 16; *Ibrahim* at para 29)

I find that only the third part of the test has been met in this case, as there was a letter sent to the former counsel giving them a chance to respond, which they did, and denied any incompetence. In response to the allegations against them, former counsel deny any incompetence and explain that " the Applicant in question reviewed and signed all the information in the application forms, said application was prepared according to the information provided by the applicant. …It is our opinion that regardless of nationality, someone who is representing the Canadian Government should not be prejudicial towards anyone when they are interpreting" (Per correspondence dated

February 12, 2020 from former counsel). I do not agree with the Applicants that the alleged omissions or acts were incompetent given the record before me.

[22] Similarly, I do not find that there was a miscarriage of justice that, but for the incompetence alleged, there is was a reasonable possibility the result would have been different. Even if the Applicants' former counsel had disclosed the son's religion, there was no reasonable possibility the outcome would be different given the Officer found that the primary reason for seeking resettlement was to see their children and grandchildren in Canada, based on their answers to the questions posed. This is not a miscarriage of justice given the Applicants' own evidence of family reunification.

[23] Simply not submitting facts about the out-of-country religious conversion cannot necessarily be deemed incompetent; if that were the case, any time an applicant sought for new evidence to be considered, they would simply change lawyers and blame former counsel. As I note in *Tapia Fernandez v Canada (Minister of Citizenship and Immigration)*, 2020 FC 889 at paragraph 37, counsel have been found incompetent for preventing a refugee claimant from presenting critical evidence. However, I do not see that as the case here. The former counsel, in their letter, said that the Applicants reviewed and signed all the information submitted. I accept this.

[24] I do not find any incompetence of counsel based on the information before me. Mr. Soltani was responsible for the information, as well as telling counsel of any concerns he had regarding the interpreter's nationality. He did not, and now cannot blame counsel.

B. *Was the decision of the Officer reasonable?*

[25] The Applicants submitted that the Officer made an error in law by looking to past events rather than engaging in a forward-looking analysis, as refugee claims must be. They assert that this is shown in the reasons, where the Officer notes that there was no indication of pressure, arrest, or torture, and no charges filed against him in either Iran or Afghanistan. The Applicants' submissions is that the country condition documents show there is a well-founded fear of future persecution, and that the Officer has cherry-picked the parts of the country condition documents they cite.

[26] Mr. Soltani also submitted that the Officer overlooked human rights violations by Iran toward Afghan refugees. He says that they are not nationals of Iran, and his children are stateless. He also claims that as Shia Muslims they are targeted and may be killed by extremist religious groups. He notes that it is well documented that Afghan refugees face persecution in Iran, citing various reports by NGOs. He stated that when the Officer asked the interpreter to translate something, Mr. Soltani's wife said to point out they are Shia and targeted because of it. He asserts that the Officer then ignored this information. Specifically, he says that they would be targeted because of their religious sect and their son's religion, and that this is not generalized violence. He asserts that the Officer ignored evidence that his son has been pulled out of University, presumably violating his human rights to an education. Mr. Soltani argued that, because he was sponsored and it is a resettlement program, he is entitled to join his family. He said that it was unreasonable for the decision-maker to just decide he only wanted to go to

Canada to reunite with his daughter. The reasons is that he said yes he first intended to reunite with his daughter but had multiple intentions that the Officer did not consider.

[27] The Applicants are not "entitled" to come to Canada when sponsored. They must go through the steps as set out in *IRPA* and the Regulations. If Mr. Soltani has multiple intentions for wanting to come to Canada, then it should have been given as evidence in his application material or when he was interviewed. He cannot not now, in hindsight, say the Officer was not reasonable in considering his multiple intentions when the Officer found that he was coming to Canada to be with his daughter and grandchildren in Canada. The Officer did not ignore any evidence. The Applicants now also submit that their lack of education was a factor. I find that they were represented by counsel, and the lack of education now asserted does not make the decision unreasonable. The onus is on the Applicants to put their best foot forward, and not on the Officer to ascertain what other evidence the Applicants could possibly provide. The Applicants did not elaborate regarding mentioning being Shia, and had never previously mentioned it, so it is difficult to see how it was unreasonable for the Officer to not dig any further.

[28] The Respondent states that the Global Case Management System ("GCMS") notes reveal that the Officer considered the country condition documents, and that the disagreement is over the weight placed on it.

[29] It is true that refugee claims are based on forward-looking risk, rather than past events. However, the fact that the Officer also looked to past events does not necessarily mean that the

Officer did not consider the potential for forward-looking risk of persecution. Past events may be a good indication of whether there are conditions that could mean that looking forward, persecution is a real possibility. As Justice O'Keefe said:

> I agree with the applicants that the test for a well-founded fear of persecution is forward-looking, but when an applicant puts forward past incidents as the basis for his claim, the Board must assess these incidents, since evidence of past persecution is one of the most effective means of showing that a fear of future persecution is objectively well-founded.
>
> (*Natynczyk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 at para 71)

[30] In the case of Mr. Soltani, the Officer found that he had been living in Iran for 35 years with few problems, and then inferred that there would not likely be any persecution in the future. The Applicants failed to establish a well-founded fear based on the conversion of the son to Christianity because there is no evidence that they were being targeted. I find that the Officer considered forward-looking risk, and thus, their conclusion on this point was reasonable. They committing no error

[31] There is no evidence that the Officer overlooked any human rights issues present in the record. Rather, they came to a conclusion that the Applicants did not agree with, and the Applicants are now asking the Court to reweigh the evidence. This is not the role of the Court on Judicial Review (see *Vavilov,* above, at para 125).

[32] For these reasons, I will not grant the application.

[33] The Applicants indicated at the hearing that they had a certified question. The question is:

> When a person applies under the Private Sponsorship of Refugees living Abroad for resettlement in Canada, when that person has no permanent residence status in the second country, will that person be required to prove that he would fear persecution in that second country, or only he needs to prove that he fears persecution upon return to his country of citizenship?

[34] The Respondent argued that this question is not determinative, and therefore should not be granted.

[35] In order for a question to be certified, it must arise from the case before the Court and raise a serious question of general importance which would be dispositive of an appeal (*Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).This question is not determinative, as this decision is highly fact-driven. I will not grant this as a certified question.

JUDGMENT IN IMM-7231-19

THIS COURT'S JUDGMENT is that:

1. The Style of Cause is amended and the Applicants are now Gholam Sakhi Soltani, Sedighe Qayomi, and Hamed Soltani;
2. The Application is dismissed;
3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7231-19
STYLE OF CAUSE:	SOLTANI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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