Federal Court  Cour fédérale

Date: 20211208

Docket: IMM-6535-19

Citation: 2021 FC 1384

Ottawa, Ontario, December 8, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JAMSHAD SHOKRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Jamshad Shokri, seeks judicial review of a decision of the Refugee Appeal Division ("RAD") confirming the determination of the Refugee Protection Division ("RPD") that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant's refugee claim was rejected by the RPD on the basis that he lacked credibility with respect to his fear of persecution from Iranian authorities due to his Bahá'í faith. On appeal, the RAD upheld the RPD's decision because of credibility concerns based on the Applicant's lack of religious knowledge and material omissions from his Basis of Claim ("BOC") form. The RAD also found that new evidence submitted by the Applicant was inadmissible.

[3] The Applicant submits that the RAD's decision was unreasonable, in particular because it erred in its assessment of the new evidence submitted by the Applicant, in its credibility findings, and by failing to consider whether a hearing ought to have been held.

[4] For the reasons that follow, I find that the RAD unreasonably refused to admit the new evidence submitted by the Applicant on appeal, including an affidavit from the Applicant explaining the discovery of the new evidence, legal documents found in the Applicant's mailbox, and a letter from the Applicant's father explaining how the documents were found. I therefore grant this application for judicial review.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 39-year-old citizen of Iran. In April 2016, he began attending Bahá'í spiritual meetings twice a month, held in private to avoid being discovered by Iranian authorities.

[6] In December 2017, the Applicant's aunt invited him to visit her in Canada. On March 1, 2018, one of the attendees of the Bahá'í meetings disappeared. Fearing for his life, the Applicant left Iran on March 4, 2018, and applied for a visitor visa to Canada.

[7] On May 1, 2018, the Applicant arrived in Canada. On May 30, 2018, the Applicant received a phone call from his mother informing him that members of the Revolutionary Guard in Iran had come to the Applicant's workshop and the family home looking for him. The members of the Revolutionary Guard had detained the Applicant's father for several hours and told him they were aware of the Applicant's involvement in the private Bahá'í gatherings.

[8] On July 22, 2018, the Applicant made a claim for refugee protection in Canada on the basis that he fears persecution in Iran because of his Bahá'í faith.

B. *The RPD Decision*

[9] In a decision dated June 7, 2019, the RPD rejected the Applicant's claim for refugee protection on the basis that he lacked credibility. The RPD made the following findings with respect to its credibility concerns:

(a) Despite claiming to have been a Bahá'í member for nearly three years, the Applicant lacked understanding of a core holiday in the Bahá'í faith. When asked if he observes any special holidays or festivals, the Applicant failed to discuss Ridván, the largest Bahá'í holiday, and its significance to the Bahá'í faith.

(b) There were material omissions in the BOC narrative with respect to the Iranian authorities' interest in the Applicant and the RPD found the reasons for the omissions to be unsatisfactory.

(c) The Applicant delayed claiming refugee protection for two months when he arrived in Canada.

(d) The Applicant provided no documentation regarding his practice of the Bahá'í faith in Canada. Following the RPD hearing, the Applicant submitted a letter from his uncle and his uncle's Bahá'í membership card. The letter confirmed the Applicant is also a member. The RPD placed little weight on the letter and membership card, and found insufficient evidence that the Applicant would be perceived as a follower of the Bahá'í faith if he returned to Iran.

[10] The RPD dismissed the Applicant's claim because it doubted the veracity of the Applicant's evidence, including his practice of the Bahá'í faith in Iran, and that the Iranian authorities sought his whereabouts as a result of his Bahá'í faith.

C. *The RAD Decision*

[11] On June 27, 2019, the Applicant appealed the RPD's decision to the RAD and sought to admit the following new evidence:

(i) Affidavit from the Applicant (the "Affidavit");

(ii) Summons, Karaj Revolutionary Court, issued January 2, 2018 (the "Summons");

(iii) Warning Letter, Ministry of Interior, dated May 11, 2018 (the "Warning Letter");

(iv) Court Order, Karaj Revolutionary Court, dated December 26, 2018 (the "Court Order");

(v) Letter of Support from Applicant's father (the "Letter of Support"); and

(vi) WhatsApp Screenshots of documents sent by the Applicant's father (the "Screenshots").

[12] On October 10, 2019, the RAD dismissed the Applicant's appeal, confirming the RPD's decision. The RAD found all of the new evidence submitted by the Applicant to be inadmissible, and found credibility to be the determinative issue. The RAD made the following findings:

(a) Contrary to the negative credibility inference drawn by the RPD from the Applicant's delay in making a refugee claim, the delay was found to be insignificant.

(b) The RPD correctly drew a negative credibility inference from the Applicant's lack of knowledge of the Bahá'í faith, given his high level of education, his family connection and his exposure to the Bahá'í community in Iran and in Canada. It was reasonable to expect the Applicant to have more than basic knowledge of the Bahá'í faith, such as knowledge of Ridván, the most important Bahá'í holiday.

(c) The RPD correctly found the Applicant's explanation for the omissions in the BOC form narrative to be unsatisfactory. Since it is noteworthy, the omission should have been included according to the BOC instructions.

(d) The RPD correctly found that the Applicant had provided no documentation regarding his practice of the Bahá'í faith in Canada. The RPD did not err by placing little weight on the letters from the Applicant's uncles who are members of the Bahá'í faith in the United States. This evidence is insufficient to establish that the Applicant is of the Bahá'í faith.

(e) The Applicant has not established his allegations of having converted from Islam to the Bahá'í faith with credible and trustworthy evidence and therefore does not meet the profile of minorities in Iran who may face persecution.

III. **Preliminary matter**

[13] The Respondent submits that the Applicant's further memorandum of argument raises several new issues that were not raised in the Applicant's leave memorandum, in which the sole issue raised was: "Did the Board Member err in not accepting new evidence for the Appeal which was pertinent to this case?" In his further memorandum of argument, the Applicant raises the following additional issues:

(i) Whether the RAD erred by failing to consider if a hearing ought to be heard;

(ii) Whether the RAD erred in its assessment of objective evidence;

(iii) Whether the RAD erred in determining that the Applicant's BOC omission was central to the claim; and

(iv) Whether the RAD applied the wrong test in determining that the Applicant lacked knowledge about his faith.

[14] As will be discussed below, I find the RAD's decision with respect to the admissibility of the Applicant's new evidence to be unreasonable. As such, there is no need to address the new issues raised by the Applicant.

IV. **Issue and Standard of Review**

[15] The sole issue in this application for judicial review is whether the RAD's decision is reasonable. In particular, whether the RAD erred in its assessment of the new evidence submitted by the Applicant.

[16] The parties submit that the standard of review is reasonableness. I agree (*Ifogah v Canada (Citizenship and Immigration),* 2020 FC 1139 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is

justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

V. **Analysis**

A. *Assessment of new evidence*

[19] Section 110 of *IRPA* governs appeals of RPD decisions to the RAD. Under subsection 110(3), the RAD generally "must proceed without a hearing, on the basis of the record of the proceedings of the [RPD]." Subsection 110(4) enumerates the exceptions to this general rule, in which a claimant may present evidence to the RAD that was not before the RPD:

Evidence that may be presented	**Éléments de preuve admissibles**
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to	**(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés,

have presented, at the time of the rejection.	dans les circonstances, au moment du rejet.

[20] If the proposed new evidence meets the criteria under subsection 110(4) of the *IRPA*, the RAD must then consider whether that evidence is in fact new, as well as credible, relevant, and material (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 ("*Singh*") at paras 38-49, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 ("*Raza*") at paras 13-15). These latter admission criteria are known as the "*Raza/Singh* factors."

[21] The Applicant submits that the RAD erred in its application of the *Raza/Singh* factors to the new evidence he sought to introduce. For the reasons below, I find that the RAD came to an unreasonable conclusion with respect to the admissibility of the new evidence, in particular the Affidavit, the Summons, the Warning Letter, the Court Order, and the Letter of Support.

(1) The Affidavit

[22] The Affidavit submitted by the Applicant includes an explanation of how the Applicant asked his father to check on his workshop after the RPD rejected his refugee claim. On July 12, 2019, the Applicant's father found three legal documents addressed to the Applicant in the workshop's mailbox: the Summons, the Warning Letter and the Court Order. The Affidavit outlines how these documents were not in the Applicant's mailbox when he left Iran in March 2018, and that had he known of their existence, he would have submitted them with his refugee claim. The Affidavit further notes that when the Applicant's parents discovered the Applicant is

facing prison time in Iran, the Applicant's father decided to send him a letter of support with details about how he found the three legal documents.

[23] The RAD made the following determination regarding the Affidavit:

> I find that the Appellant's Affidavit is inadmissible as new evidence on appeal. The Appellant explains in his memorandum that the Affidavit is evidence of his feelings, thoughts and impressions of the RPD decision. Affidavits are not a means to re-testify or respond to questions raised by the RPD or concerns with the decision. The RAD Rules require that the Appellant provide a memorandum, including full and detailed submissions regarding, among other things, the errors that are the grounds of the appeal. I find that the statements made by the Appellant in the Affidavit are attempts to alter or recast testimony already given, and therefore it does not meet admissibility requirements under s. 110 (4) of IRPA and the *Singh/ Raza* factors.

[24] The Respondent submits that there was no basis for the RAD to admit the Affidavit in whole or in part because it contains the Applicant's attempt to recast the testimony and because the RAD found the Applicant's reasons for failing to adduce the new evidence sooner to not be credible.

[25] The Applicant contends that the Affidavit cannot be characterized as an attempt to alter or recast the testimony because it contains relevant new information regarding events that occurred after the RPD hearing, which directly relates to the other new evidence submitted. The Applicant argues that the RAD failed to explain how the statements in the Affidavit do not meet the newness element of the *Raza/Singh* test.

[26] While I accept that certain portions of the Affidavit could be construed as an attempt to recast the Applicant's testimony from the RPD hearing, I do not find the entirety of the Affidavit to be inadmissible. I agree with the Applicant that the Affidavit explains events that occurred after the hearing as well as how the Applicant obtained the three legal documents submitted as additional evidence. The Affidavit provides context to understand the other pieces of new evidence. I find it was thus unreasonable for the RAD to wholly disregard it.

(2) The Legal Documents

[27] The Applicant submits that the RAD failed to provide adequate reasons for its finding that the Summons, the Warning Letter, and the Court Order are inadmissible as new evidence. The Summons, dated January 2, 2018, requires that the Applicant appear before the Karaj Revolutionary Court on April 9, 2018 for "lack of business license for illegal minorities (the heretical sect of Bahá'ísm)." The Warning Letter from the Ministry of Interior, issued in May 2018, requires the Applicant to remove his belongings from his workshop within 24 days. The Court Order from the Karaj Revolutionary Court, dated December 26, 2018, states that the Applicant has not appeared in court based on the Summons and that in his absence, the Applicant has been fined and sentenced to 6 months in prison.

[28] The RAD provided the following explanation with respect to the three legal documents:

> [9] I find that the summons, warning letter and court order are all inadmissible as new evidence. These three documents predate the rejection of the claim; however, the Appellant explains in his memorandum that these documents were not discovered until the Appellant's father collected his workshop mail on July 12, 2019, a

> month after his RPD hearing. The Appellant left Iran on March 4, 2018. I do not find it to be credible that the Appellant's father would wait a year and a half to collect the mail and discover, as described in the Appellant's memorandum, three extremely important documents.
>
> [10] I also find, based on the objective information before me, on a balance of probabilities, that if the Appellant was truly wanted, the authorities in Iran would have taken steps, other than simply sending letters to the Appellant's work mailbox in order to contact him.
>
> [11] I have considered the source and circumstances of this proposed new evidence and find that they do not pass the credibility factor outlined in *Singh/Raza*.

[29] The Respondent argues that the Applicant's basis for admitting new evidence stemmed from a narrative the RAD found to be not credible. The Applicant submits that the RAD unreasonably used a plausibility determination to impugn the authenticity of the documents. In *Yang v Canada (Citizenship and Immigration),* 2018 FC 1075 at paragraph 20 (citing *Valtchev v Canada (Minister of Citizenship and Immigration),* 2001 FCT 776 at para 7) this Court held that implausibility findings can only be made in the clearest of cases:

> A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [Citation omitted.]

[30] The Applicant submits that the facts in the case are not "outside the realm" of what could be expected and that it was unreasonable for the RAD to dismiss the new evidence based on a lack of credibility, given that the Applicant had provided a sworn statement explaining how and when he obtained the three legal documents submitted as new evidence (*Dirieh v Canada (Citizenship and Immigration)*, 2018 FC 939 ("*Dirieh*") at para 29). The RAD also failed to assess the authenticity of the new evidence.

[31] In the case of *Dirieh*, the applicant submitted new evidence that postdated the RPD hearing and provided sworn evidence about why the document was not previously available. In *Dirieh*, the RAD was found to have unreasonably dismissed the applicant's request, in accordance with the decision of Justice Gascon in *Olowolaiyemo v Canada (Citizenship and Immigration)*, 2015 FC 895 ("*Olowolaiyemo*"), which affirms that "the RAD must specifically consider whether the new evidence was "reasonably available" and whether the document arose after the rejection of the claim by the RPD" (*Dirieh* at para 29, citing *Olowolaiyemo* at paras 16-24).

[32] The Respondent submits that the decision in *Dirieh* involved a panel that neglected to consider if new evidence was reasonably available, while in this case, the RAD specifically considered the Applicant's reasons for tendering new evidence and found them to be not credible, and thus found the new evidence to be inadmissible. Citing *Lawani v Canada (Citizenship and Immigration)* 2018 FC 924 at paragraph 24, the Respondent submits that the RAD found the presumption of truth was rebutted, and that this 'trickled down' to other aspects of the claim leaving little basis to give the Applicant's narrative or RPD testimony any weight:

> […] a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, 1990 CanLII 8017 (FCA), [1990] FCJ No 604 (FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 at para 17).

[33] In my view, I find that the RAD's reasoning with respect to the admissibility of the three legal documents is flawed. Despite how the three legal documents predate the rejection of the Applicant's refugee claim, the Applicant's sworn statement affirms that he obtained the legal documents after the RPD hearing and they were not "reasonably available" to him before then (*Dirieh* at para 29; *Olowolaiyemo* at para 21). While the RAD found that there were credibility concerns with the timing and ways in which the documents were obtained, I agree with the Applicant that the RAD failed to address the authenticity of the documents.

[34] Furthermore, I agree with the Applicant's submission that the RAD failed to consider other evidence in the record that indicated that the authorities did more than "simply" send letters to the Applicant's workshop in order to contact him. Based on the Applicant's BOC form and narrative, as well as his testimony during the RPD hearing, the Iranian authorities have questioned the Applicant's family, searched his family home and workshop, and detained his father in order to find him. The RAD also does not refer to the objective information, such as country condition information, that led the RAD to conclude that the Iranian authorities would have taken steps to contact the Applicant if he was "truly wanted."

[35] I therefore find that the RAD's decision to dismiss the three legal documents was unreasonable.

(3) The Letter of Support

[36] The RAD found the Letter of Support to be inadmissible for not bringing new evidence to the appeal since the father's explanation mirrors the statements contained in the memorandum presenting the new evidence to the RAD. The RAD further determined that even if the letter were allowed, it would be inadmissible for raising credibility concerns. I agree with the Applicant's submission that this conclusion is unreasonable because the Support Letter is a first-hand account of what occurred after the RPD hearing and corroborates the Applicant's position as to why the documents were submitted late.

[37] Finally, the RAD found the Screenshots to be inadmissible because no translation was provided. The Applicant does not take issue with this finding in their submission.

[38] Having determined that the RAD erred in its assessment of the new evidence, rendering its decision unreasonable, I do not find it necessary to address the other issues raised by the Applicant.

VI. **Conclusion**

[39] In my view, I find that the RAD unreasonably refused to admit the new evidence submitted by the Applicant upon appeal. I therefore grant this application for judicial review.

[40] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6535-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter is returned for redetermination by a differently constituted panel.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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