

Federal Court



Cour fédérale

**Date: 20220511**

**Docket: IMM-2599-21**

**Citation: 2022 FC 689**

**Ottawa, Ontario, May 11, 2022**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**MARYAM ADOS and MASOUD SAYAHI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] finding the Applicants not to be Convention refugees or persons in need of protection.

[2] The core of the Applicants' case is the submission that the RAD made unreasonable conclusions regarding the genuineness of their Christian faith and breached procedural fairness by raising new credibility concerns without notifying the Applicants or providing them with an opportunity to respond.

## II. Background

[3] The Applicants are husband and wife and citizens of Iran. The basis of their claim is that they converted to Christianity. Thereafter, they were subjected to Iranian police (Basij) intimidation including being followed to bible study class, and the police visiting their parents' homes and their own workplaces. They allege their fathers and members of their bible class were arrested and detained. After fleeing Iran, their parents' homes were again visited by Iranian authorities.

[4] The RPD drew a negative credibility finding from the Applicants' inability to explain aspects of their conversion and from the female Applicant's inability to convey a sufficient grasp of aspects of a key biblical episode. The male Applicant failed to demonstrate his understanding of what it meant to be a Christian believer.

[5] The RPD concluded that both spouses provided insufficient testimony to establish their identities as genuine Christian converts.

[6] The RPD also found the Applicants' evidence about their church attendance in Canada to be inconsistent with the testimony of their church witness.

[7] The RPD also rejected the Applicants' *sur place* claim, again for reasons of insufficiency of evidence.

[8] Upon appeal to the RAD, it found that, while it disagreed with parts of the RPD's analysis, it accepted the RPD's credibility conclusions.

[9] The RAD found that the Applicants had failed to establish that they were practising Christians, or had been pursued by Iranian authorities or that they were genuine converts in Canada.

[10] In this judicial review the Applicants raise the issues of a) the reasonableness of the RAD decision; b) the breach of procedural fairness by the RAD raising a new issue of credibility (the issuance of a passport while in hiding); and c) the incompetence of previous counsel.

### III. Analysis

#### A. *Standard of Review*

[11] There is no issue that the RAD's decision is to be assessed on the standard of reasonableness in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, except with respect to the issue of procedural fairness.

[12] On the issue of procedural fairness, I adopt the analysis of Justice de Montigny in *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*,

2020 FCA 196 at para 35, that what matters on this issue is whether procedural fairness has been met.

B. *Reasonableness*

[13] The RAD's adverse credibility finding regarding the male Applicant's testimony of his Christian faith was grounded in the RPD's expertise and opportunity to assess credibility. The RAD reasonably found that while the RPD erred in some aspects of its credibility analysis, it did not err in its overall credibility conclusion and therefore it was unnecessary to remit the matter back to the RPD.

[14] While another decision maker might have reached a different conclusion based on whether the questions asked were confusing or if the responses were reasonable in those circumstances, there was a sound basis for the negative conclusion. There was nothing unreasonable or unfair in the questions. In this regard, I adopt Justice Fothergill's analysis of credibility assessments for religious knowledge which he set forth in *Kao v Canada (Citizenship and Immigration)*, 2018 FC 1204 at paras 18-21.

[15] The male Applicant's answers can be fairly said to be vague and focused on broad unspecific principles.

C. *Procedural Fairness*

[16] The Applicants allege unfairness in the RAD's reliance on non-credibility for an Iranian passport that was issued for the female Applicant while the Applicants were allegedly in hiding. The matter had not been canvassed by the RPD.

[17] The critical issue is whether what occurred was unfair given the issues in the case. If the RAD simply confirmed the finding of the RPD based on information of which the Applicants were aware in the record but which was not specifically discussed by the RPD, there is no breach of procedural fairness.

[18] In this case, the passport issue merely supplemented the RAD's already stated conclusion on credibility. It added nothing material to the RAD's analysis and conclusion. In these circumstances, a reference to it was not unfair.

D. *Incompetence*

[19] The allegation is that the appeal was negatively impacted by former counsel's failure to disclose a new support letter from the Applicants' church. The Applicants cannot make out a lack of competence claim that justifies overturning the RAD decision.

[20] Firstly, the letter is at best equivocal on the main issues in this judicial review. Secondly, the Applicants failed to follow this Court's protocol regarding allegations against counsel.

[21] The failure to follow this protocol is sufficient to dismiss the claim that the RAD decision should be set aside (see *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 21).

[22] While the church's letter may explain why the Applicants were not baptized during the COVID-19 pandemic, it does not assist on the important issues of involvement in church activities or the Applicants' failure to be baptized between when they arrived in Canada in August 2017 and when the pandemic began in March 2020.

#### IV. Conclusion

[23] For all these reasons, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT in IMM-2599-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2599-21

**STYLE OF CAUSE:** MARYAM ADOS and MASOUD SAYAHI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 10, 2022

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** MAY 11, 2022

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