Federal Court  Cour fédérale

Date: 20220519

Docket: IMM-5239-20

Citation: 2022 FC 745

Ottawa, Ontario, May 19, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

WAHIDULLAH SHARIF
KAWKABA SHARIF
HOSSAI SHARIF
MAIMONA SHARIF

Applicants

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Wahidulla Sharif (the "Principal Applicant"), his spouse Kawkaba Sharif ("Ms. Sharif"), his mother Maimona Rahima ("Ms. Rahima") and his daughter Hossai Sharif ("Hossai") (collectively the "Applicants") are citizens of Afghanistan. In 1993, the Applicants fled

Afghanistan. They settled in Pakistan where they claimed and acquired refugee protection. In March 2014, the Applicants travelled to the United States of America ("USA"). They eventually arrived in Canada, where, in July 2014, they applied for refugee protection.

[2] On July 8, 2014, the Refugee Protection Division concluded that the Applicants are neither *Convention* refugees nor persons in need of protection as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["*IRPA*"]. The RPD based its decision solely on the Applicants' lack of credibility. The Applicants now seek judicial review of the RPD decision pursuant to s. 72(1) of the *IRPA*. For the reasons set out below, I dismiss the application for judicial review.

II. Genesis of the refugee claims under review

[3] The Principal Applicant claims he resided in Pakistan from 1993 to 2005 and from 2008 to 2014. The remaining Applicants claim they resided solely in Pakistan from 1993 to 2014.

[4] The Applicants claim to fear the Taliban, the pro-Taliban militias and others because of the Principal Applicant's alleged work in the film industry. The Principal Applicant claimed, before the RPD, that he founded his own studio, Farukhzad Films Studio, in 2002; starred in and directed many movies; and was "well known" within the film industry. He claimed that religious hardliners considered many of his movies to be too modern or "westernized". The Principal Applicant claims that in 2005, unknown males assaulted him. During the attack, the unknown males apparently shouted that his movies were "destroying Islamic values". He says the attack left him severely injured. As a result, he left Pakistan and returned to Afghanistan. However, the

Principal Applicant says that because of his work in the film industry he also became a target of persecution in Afghanistan. As a result, he moved back to Pakistan in 2008 where he worked as a salesperson in a clothing store. The Principal Applicant claims that he secretly continued to write movie scripts until 2014.

[5] Hossai, the Principal Applicant's daughter, claimed before the RPD that she feared persecution from the Taliban because of her association with the Female Human Rights Organization ("FEHRO") where she claims to have been the Communications Officer from 2013 to 2014. She says that, in January 2014, the Taliban targeted FEHRO's staff, which led FEHRO to suspend its activities. In addition, Hossai claimed that that her ex-husband and/or his family would harm her if she were to return to Afghanistan or Pakistan, because of her decision to seek asylum in Canada.

[6] I note that the Principal Applicant's two sons successfully applied for refugee protection in Canada in 2014. They based their claims on death threats they received from the Taliban because of their work with NGOs in Afghanistan. They are now permanent residents of Canada. There is no indication in the materials that the sons ever claimed, or were granted, asylum in Pakistan.

[7] I also note that the Applicants' were initially found to be ineligible to make refugee claims by operation of s. 104(1)(d) of the *IRPA*, because, in 2004, they were included in a "refugees living abroad" sponsorship application by family members living in Canada ("2004 application"). In 2007, for purposes of the 2004 application, Canadian officials summoned the

Applicants for interviews in Pakistan. Canada rejected the Principal Applicant's 2004 application because he failed to attend the interviews. Canada rejected the remaining Applicants' asylum claims because they lacked credibility.

III. Decision under review

[8] On November 2, 2018, the Minister of Citizenship and Immigration (the "Minister") filed a Notice of Intent to Intervene (by way of documents only) at the hearing before the RPD regarding the issue of integrity. The Minister expressed concern about discrepancies between the Applicants' answers to questions given in 2007 and their positions advanced in 2014.

[9] The RPD found, on a balance of probabilities, that the Applicants had not presented sufficient credible or trustworthy evidence to establish that the allegations made had actually occurred. Set out below are some of the credibility findings made by the RPD.

A. *PA's Occupation and Place of Residence*

[10] As noted earlier, the Principal Applicant's Basis of Claim ("BOC") form and narrative indicate that the he worked in the movie industry until 2008 and, thereafter as a salesperson. These documents also indicate that the PA lived in Pakistan from 1993 to 2005 and from 2008 to 2014, and in Kabul, Afghanistan, from 2005 to 2008. The Principal Applicant also testified to such facts. However, the RPD noted that many of the statements made by Ms. Sharif, Ms. Rahima and Hossai during the 2007 interviews (for the 2004 application) either contradict or are inconsistent with the Principal Applicant's assertions. The RPD specifically noted:

- They said that the Principal Applicant worked in a clothing store, but never mentioned that he was involved in any capacity in the film industry;
- They said that the PA had not moved out of the family house in Pakistan, contrary to the assertion that the PA lived in Kabul from 2005 to 2008;
- They never mentioned that the Principal Applicant was assaulted in 2005;

[11] The RPD also noted that in the handwritten notes of his BOC narrative, the Principal Applicant wrote that he lived in Kabul from 2011 to 2013, and then moved back to Pakistan from 2013 to 2014. This contradicted his testimony and his BOC form and narrative, in which he indicated that he lived exclusively in Pakistan between 2008 and 2014.

[12] The RPD concluded that if the Principal Applicant was indeed involved in the film industry, owned his own film studio, and was severely injured in 2005 due to his work, which led him to flee Pakistan for his safety, the other three Applicants would have mentioned these facts during the 2007 interviews. The RPD concluded that the allegations that the Principal Applicant worked in the film industry and owned a studio in either Afghanistan or Pakistan were not credible.

B. *Principal Applicant's Absence at the 2007 Interviews*

[13] The RPD observed that during the 2007 interviews, Ms. Sharif, Ms. Rahima and Hossai mentioned that the Principal Applicant knew about the 2004 application but deliberately chose not to attend the interviews. They also indicated that the Principal Applicant advised them that he was not interested in leaving Pakistan.

[14] Before the RPD, the Principal Applicant initially testified that he did not attend the 2007 interviews because he was not interested in coming to Canada, as he had an office in Kabul, contacts and business opportunities. He later testified that he did not attend the interviews because he was making a movie and the roads were blocked.

[15] The RPD found the Principal Applicant's testimony to be inconsistent. The RPD also concluded that if the Principal Applicant was severely beaten in 2005, as alleged, he would have attended the 2007 interviews with the other Applicants. The RPD concluded that the assertion that the Principal Applicant was attacked in 2005 because of his involvement in the film industry lacked credibility.

C. *Insufficient Trustworthy Evidence to establish that Principal Applicant was the Owner of a Film Studio*

[16] The RPD acknowledged that the Principal Applicant filed some documents related to Farukhzad Film Studio: movie posters, CD covers, business cards, pictures, and a "proposal" which included a list of the office staff at the studio. The RPD found that this evidence was insufficient to establish the existence, operation and size of the studio. The RPD noted that the Principal Applicant's mother, Ms. Rahima, was unable to name any of the alleged films produced, directed or starred in by him. The RPD concluded that the Principal Applicant failed to present objective evidence to demonstrate that he was involved in the movie industry in any capacity.

D. *Passport Entries Inconsistent with Other Documents and Testimony*

[17] Ms. Sharif, Ms. Rahima and Hossai all stated in their respective BOC forms that they remained in Pakistan from 1993 to 2014. They claimed they did not return to Afghanistan during that time. However, the RPD noted that their passports indicated that they had returned to Afghanistan a number of times between 1993 and 2014, including for extended periods.

[18] Passport entries which raised concerns for the RPD included the following:

- The Principal Applicant alleged that he was assaulted in Pakistan in 2005. However, his passport stamps indicate that he did not enter Pakistan between February 2004 and September 2010;
- The Principal Applicant's daughter, Hossai, filed a marriage certificate which is evidence that she married in Pakistan on February 24, 2014. However, her passport indicates that she was in Afghanistan between January 18, 2014 and March 5, 2014.

[19] When asked to explain these discrepancies, both the Principal Applicant and Hossai replied that oftentimes, when they crossed the border between Afghanistan and Pakistan, there were no security or border officers. The passports would therefore, not be stamped. The RPD acknowledged this explanation was possible, but, given the many other credibility concerns decided to attach a negative inference to the Applicants' credibility.

E. *Failure to Claim Asylum in 2005 and 2006 in the USA*

[20] The RPD noted that Ms. Sharif, Ms. Rahima and Hossai all visited the USA in 2005 and 2006 after the alleged attacks on the Principal Applicant. The RPD found that, given the severity

of that attack, it would have been reasonable to expect that they would have claimed asylum in the USA at that time.

F. *Hossai's Claim*

[21] The RPD had concerns about Hossai's testimony regarding threats upon FEHRO staff. It concluded her testimony was unclear about whether she was personally threatened. While Hossai stated in her BOC form and narrative that she was in charge of communications with FEHRO and gave television and media interviews, she was unable to answer the RPD's questions regarding FEHRO's programs and institutions.

[22] The RPD found that Hossai's allegation that her former husband, or his family, would harm her if she returned to Afghanistan or Pakistan, because she made a refugee claim in Canada is contradicted by other evidence offered by her. In an affidavit from Hossai's former husband, dated September 2014, he states that he supports Hossai's departure from Pakistan. The RPD also noted that, contrary to assertions made by Hossai, it appeared from his affidavit that her former husband, who also worked at FEHRO, had a progressive attitude toward women and would not have demanded that Hossai return to Pakistan, under threat of violence.

[23] Finally, Hossai claimed that women like her who return from western countries are often the target of blackmail and extortion. The RPD concluded, however, that there existed insufficient credible or trustworthy evidence that Hossai would be the subject of blackmail or extortion, upon her return to Pakistan.

IV. Issues

[24] The Applicants raise two issues for consideration:

A. *Did the RPD breach the duty of procedural fairness owed to the Applicants?*

B. *Was the RPD's decision reasonable in the circumstances?*

V. Relevant provisions

[25] The relevant provisions are ss. 96, 97 and 104(1)(d) of the *IRPA*, reproduced in the schedule attached to these reasons.

VI. Analysis

A. *Standard of review*

[26] In *Canada* (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 ["*Vavilov*"], the Supreme Court of Canada confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption (*Vavilov* at para 17).

[27] "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). To set aside a decision, the reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Most importantly, the reviewing court

must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

[28] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69, [2019] 1 FCR 121 at paras 34-35).

B. *Did the RPD breach the duty of procedural fairness owed to the Applicants?*

[29] The Applicants contend they were the victims of several breaches of procedural fairness. First, they say that Canadian immigration officials in Pakistan should not have interviewed the Principal Applicant's brother in 2007 without giving him prior notice. Second, they say procedural fairness was breached when Ms. Sharif, Ms. Rahima and Hossai were interviewed in 2007 without an explicit waiver from the Principal Applicant of his right to be present and affording him an opportunity to make written submissions. Third, the Applicants contend the RPD breached procedural fairness when it questioned Hossai regarding the programs and institutions of FEHRO without providing notice to her that she would we questioned on such "extrinsic information". Fourth, the Applicants contend the incompetence of their first counsel resulted in a denial of natural justice in that he failed to submit documents crucial to the success of the case. Finally, the Applicants contend they suffered prejudice to their ability to properly present their claims due to unreasonable delay by the RPD. The failure by the RPD to complete questioning within a reasonable time led, according to the Applicants, to inconsistent and inaccurate testimony or statements from them.

[30] I reject all of the Applicants' contentions regarding alleged breaches of procedural fairness or natural justice.

[31] The first two allegations of breach of procedural fairness concern the process undertaken in relation to the 2004 asylum claim and the 2007 interviews. The 2007 interview process is unrelated to the present application. The interview of the Principal Applicant's brother did not result in any negative credibility findings. Furthermore, the Principal Applicant voluntarily decided not to attend for his interview. The Respondent cannot be faulted for conducting a thorough investigation, nor can it be faulted for not hearing the Principal Applicant's response to parts of that investigation when he chose not to be present. The Applicants are attempting an impermissible collateral attack on the decision related to their 2004 application (*Canada (Attorney General) v TeleZone Inc*., 2010 SCC 62, [2010] 3 SCR 585 at paras 60-61; *Farhadi v Canada (Citizenship and Immigration*), 2014 FC 926 at paras 30 to 32). If the Applicants wished to challenge the procedural fairness of the interview process leading to the decision on their 2004 application, they should have done so by seeking judicial review of that decision.

[32] Second, there is no merit to the allegation the RPD breached procedural fairness by posing questions to Hossai concerning her involvement in, and knowledge about, FEHRO's programming and institutions. She was, according to her, its Communications Officer. No one would be any better placed than her to answer the questions posed by the RPD. Once again, the RPD cannot be faulted for doing its job. Furthermore, the questions asked by the RPD related to documents filed by the Applicants. Those documents did not constitute "extrinsic evidence", as

contended by the Applicants (*Feng v Canada (Citizenship and Immigration*), 2014 FC 386 at para 15; *Begum v Canada (Citizenship and Immigration*), 2013 FC 824 at para 37).

[33] With respect to alleged counsel incompetence, there has been no effort on the part of the Applicants to comply with this Court's practice direction titled *Protocol Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court, March 7, 2014* ("Practice Direction"). The Practice Direction establishes the conditions an applicant must meet in order to plead counsel incompetence as a basis for judicial review. Those conditions are set out in *Tapia Fernandez v Canada (Citizenship and Immigration)*, 2020 FC 889 at paragraph 22:

> Current counsel must notify former counsel of the allegation, advise former counsel that they have seven days to respond, and provide former counsel with both a signed authorization from the applicant releasing privilege and a copy of the Protocol. Current counsel should wait for a response before filing and serving the Application Record. Any application that raises allegations against former counsel must be served on former counsel. If the Court grants leave, current counsel must provide a copy of the order granting leave to former counsel forthwith.

The Applicants have not provided evidence that these conditions are met. They therefore cannot plead counsel incompetence. See, (*R. v G. (B.D.)*, 2000 SCC 22, [2000] 1 SCR 520 at paras 26 to 29).

[34] Finally, the Applicants' unreasonable delay argument is without merit. The Federal Court of Appeal has held that "the unreasonable delay argument cannot be perceived as a fertile basis for setting aside decisions of tribunals" (*Hernandez v Canada (Minister of Employment and Immigration*) (FCA), 154 N.R. 231, [1993] FCJ No. 345 at para 4). There is no evidence that a 6-

year-delay in rendering a decision is excessive in the circumstances. This Court has found much longer delays, including an eleven-year delay, did not meet the threshold of abuse of process due to a lack of prejudice resulting from the delay (*Chabanov v Canada (Citizenship and Immigration)*, 2017 FC 73 at para 65; *Bouekassa v Canada (Citizenship and Immigration)*, 2021 FC 655 at para 37). The Principal Applicant has not produced any evidence to corroborate his allegation of prejudice resulting from the delay. The requirements necessary to demonstrate unreasonable delay have not been met (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 at paras 156 to 160). There is no evidence to demonstrate that any of the RPD's questioning was inappropriate, nor did the Applicants offer any evidence regarding the purported psychological distress suffered by the Principal Applicant as a result of the delay.

C. *Was the RPD's decision reasonable?*

[35] The Applicants contend the RPD fettered its discretion by placing unreasonable reliance on the Minister's evidence, which was submitted as part of its 2018 application to intervene. The Minister's intervention provided a comparison between Ms. Sharif's, Ms. Rahima's and Hossai's statements made during their 2007 interviews and the Applicants' respective passports and BOC forms and narratives. The RPD did not improperly fetter its discretion in considering the Minister's evidence contained in its notice for intervention. The RPD was entitled to consider this highly relevant evidence, which demonstrated numerous inconsistencies, discrepancies and omissions within the Applicants' claims.

[36] The Applicants contend that the Minister's intervention should have been barred by the doctrine of *issue estoppel*, as it raised the same arguments as those raised in the Minister's attempt to vacate the current refugee application on the basis that it was barred by the 2004 application. With respect, this argument is misplaced and misapplies the doctrine of *issue estoppel*. This doctrine applies to preclude re-litigation of an issue which has been conclusively and finally decided in previous litigation between the same parties or their privies (*Apotex Inc. v Merck & Co*., 2002 FCA 210, [2003] 1 FC 243 at para 26). The Minister's intervention did not attempt to re-litigate an issue that had previously been decided, but rather attempted to oppose the Applicants' claims on the basis of credibility concerns. The credibility of the Applicants' allegations is a new issue that had not been conclusively and finally decided in a prior proceeding between the parties.

[37] The Applicants further contend that the RPD placed disproportionate reliance on their passports, despite their testimony that their passports stamps were not complete and accurate. The Applicants assert that the inconsistencies between their passports and other evidence were not central to their claim. They contend that the contents of their passports should have been given little to no weight. I disagree with the Applicants' assertions regarding the passport stamps. Clearly, the RPD was entitled to consider the passport stamps in conjunction with the other evidence regarding the whereabouts of the Applicants at various times. For example, consider the Principal Applicant's assertion in was in Pakistan when stamps showed he was in Afghanistan; Hossai's assertion she was in Pakistan getting married when the passport stamps indicate she was in Afghanistan; and, the other two Applicants' assertions that they had not

returned to Afghanistan since moving to Pakistan when the passport stamps told a different story. This evidence was highly relevant. It was the role of the RPD to weigh it and not this Court.

[38] The Applicants also plead that the use of fraudulent documents by refugee claimants cannot be fatal to the reliability of all their documents, and is peripheral to the determination of general credibility. With respect, the Applicants mischaracterize the RPD's decision. There is (1) no evidence that the passports or the stamps they contain were fraudulently obtained, and (2) there is nothing in the decision that suggests that the RPD impugned the reliability of the Applicants' other documents on this basis.

[39] The Applicants further submit that the RPD failed to consider relevant evidence. They say the RPD unreasonably dismissed the evidence of the Principal Applicant's sons' successful application for refugee protection. They contend that even a cursory review of this evidence would have shown the RPD that the sons' claims related to the same chain of events as the Applicants' bases of claim. They contend the RPD conducted itself unreasonably in making an adverse credibility finding based on Hossai's lack of knowledge regarding FEHRO. They say the RPD ignored the Hossai's testimony, which suggested that her "involvement in FEHRO's operations may indeed have been relatively superficial".

[40] With respect to Hossai's husband, the Applicants say the RPD ignored evidence that "painted a different picture", including:

- Evidence that Hossai's former husband left FEHRO immediately after the marriage ended in 2014;

- Evidence that Hossai harbored little attachment to her former husband, as she was preparing to leave Pakistan even before they were married;
- Screenshots of text messages allegedly sent by Hossai's former husband in 2018, in which he threatens her.

[41] The Applicants also plead that the RPD unduly focused on the discrepancies between the Principal Applicant's passport and his other documents to conclude there exists insufficient credible evidence to prove among others, that the Principal Applicant worked in the film industry.

[42] The arguments advanced by the Applicants in paragraphs 39, 40 and 41, *supra*, constitute an invitation by the Applicants to this Court that it re-weigh the evidence, something the Court is not permitted to do on judicial review. Furthermore, it is trite law that administrative decision-makers are presumed to have considered the entirety of the evidence, and are not required to comment on every piece of evidence (*Florea v Canada (Minister of Employment and Immigration*), [1993] FCJ No 598 ["*Florea*"] at para 1). I also note that the RPD did address the Principal Applicant's sons' successful application for refugee protection. The RPD reasonably noted that each refugee claim must be decided on its own merits and that as such, it was not bound by the Principal Applicant's sons' successful claim or the evidence filed in support of their claims.

[43] Finally, the Applicants claim that their s. 7 of the *Charter* rights would be breached if they were to be removed from Canada. They contend that while the present application does not

fall within the context of a deportation order, this Court has confirmed that s. 7 rights can be engaged at any stage prior to the actual removal of an individual (*Torre v Canada (Citizenship and Immigration)*, 2015 FC 591 ["Torre"] at para 70). This argument is irrelevant in the circumstances because the Applicants were not, and are not, scheduled to be removed from Canada. Moreover, I note that the Applicants misunderstand this Court's decision in *Torre*. Contrary to that asserted by the Applicants, the Court, in *Torre*, specifically indicates that an individual's s. 7 rights are only engaged at the removal stage (at paras 69 to 71).

[44] Even if this Court were to accept some the Applicants' arguments, the result would remain the same, as a number of important credibility findings made by the RPD are left unchallenged. Those unchallenged findings include:

- While the Principal Applicant alleged that he had been working in the movie industry since 2002, when interviewed in 2007, Ms. Sharif, Ms. Rahima, Hossai, and the Principal Applicant's brother-in-law all indicated that he worked as a salesperson in a clothing store;
- While the Principal Applicant alleged that he was assaulted in Pakistan by Islamic fanatics in 2005 because of his movies, Ms. Sharif, Ms. Rahima, Hossai, and the Principal Applicant's brother-in-law never mentioned this event during their interviews in 2007;
- The Principal Applicant alleged that he lived in Pakistan from 1993 to 2005 and from 2008 to 2014. However, in his handwritten notes filed on February 10, 2020, he stated that he lived in Kabul, Afghanistan from 2011 to 2013. This inconsistency is impossible to reconcile;

- Ms. Sharif, Ms. Rahima and Hossai alleged that they resided solely in Pakistan from 1993 to 2014. However, their passports indicate numerous entries into Afghanistan, often for extended periods of time;
- At the RPD hearing, the Principal Applicant testified that he did not attend the 2007 interviews because he was no longer interested in coming to Canada as he had an office and contacts in Kabul. However, he later testified that he did not attend the 2007 interviews because he was making a movie and that it was difficult to get to the interviews because roads were blocked. This discrepancy is not insignificant;
- The Principal Applicant alleged that he worked in many movies and that he was well known in the movie industry. However, his own mother could not name any of his movies. Furthermore, she was unable to explain why she was unable to do so;
- Hossai claimed that she worked as a Communications Officer with FEHRO, and that her position involved giving television and media interviews. However, she was unable to answer questions regarding FEHRO's programs and institutions. One would expect a Communications Officer to be aware of such key information.

[45] Taken cumulatively, these contradictions, inconsistencies and omissions regarding crucial elements of the Applicants' claims support a negative conclusion about the Applicants' credibility (*Lawani v Canada (Citizenship and Immigration),* 2018 FC 924 ["*Lawani*"] at para 22). The flaws alleged by the Applicants, even if meritorious, are peripheral to the merits of the decision (*Vavilov* at para 100).

VII. Conclusion

[46] A refugee claimant's lack of credibility is determinative. If an applicant is not believed, there is no need to consider other issues such as objective and subjective fear, state protection, or internal flight alternatives (*Singh v Canada (Citizenship and Immigration*), 2014 FC 414 at para 14). In the present case, all Applicants were found to be lacking in credibility because of numerous inconsistencies and omissions in their evidence relating to events central to their claims. A lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Lawani* at para 24). As previously noted, many of the Applicants' arguments on this judicial review constitute an invitation to this Court to reweigh the evidence, which it must refrain from doing (*Vavilov* at para 125). The Applicants encourage this Court to conduct a line-by-line search for error, instead of considering the decision as a whole (*Vavilov, supra,* at para 102). The Applicants also fail to consider the general principle that administrative decision-makers are presumed to have considered the entirety of the evidence, and are not required to refer to each and every piece of evidence that was before them (*Florea, supra*).

[47] The RPD's decision is procedurally fair and reasonable. The RPD extensively examined the entirety of the evidence that was before it and justified each of its negative credibility findings. For the reasons set out above, this application for judicial review is dismissed.

A. *Proposed Question for Certification*

[48] The Applicants propose the following question for certification:

> "Does the operation of s. 104(1)(d) of the IRPA — pursuant to the Safe Third Country Agreement — infringes (*sic*) the section 7 Charter rights of the Applicants and similarly situated claimants?"

[49] The Applicants argue that the operation of paragraph 104(1)(d) of the *IRPA* does not accord with the stated purposed of the Safe Third Country Agreement. They say that the objective of this section is to "bar people from seeking protection in Canada who have unfounded claims or access to protection in another country". They contend that "s. 104 functions to deny a RAD appeal to certain claimants solely because they have immediate family members in Canada". According to them, the exception under s. 104(1)(d) enabled them to apply for refugee status, is not truly an exception if they are denied an appellate mechanism.

[50] The Respondent submits that paragraph 104(1)(d) of the *IRPA* does not relate to the Safe Third Country Agreement. Rather, it says it concerns the RPD's and/or the RAD's ability to suspend or terminate consideration of a claim if it is not the first claim received by an officer, in respect of a particular claimant. Accordingly, the Respondent notes that paragraph 104(1)(d) is not the provision that prevented the Applicants from appealing the RPD's decision to the RAD.

[51] I agree with the Respondent. The Applicants mischaracterize the function of paragraph 104(1)(d) of the *IRPA*. Section 104 is not related to the Safe Third Country Agreement.

JUDGMENT in IMM-5239-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. The Applicants' request that a question be certified for consideration by the Federal Court of Appeal is dismissed.

"B. Richard Bell"
Judge

SCHEDULE

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 2001, c 27**
Convention Refugee	**Définition du réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au

of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Notice of ineligible claim

104 (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (a.1) or (d), that is before or has been determined

Avis sur la recevabilité de la demande d'asile

104 (1) L'agent donne un avis portant, en ce qui touche une demande d'asile dont la Section de la protection des réfugiés est saisie ou dans le cas visé aux alinéas a.1) ou d) dont la

by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that

(d) the claim is not the first claim that was received by an officer in respect of the claimant.

Section de la protection des réfugiés ou la Section d'appel des réfugiés sont ou ont été saisies, que :

d) la demande n'est pas la première reçue par un agent.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5239-20
STYLE OF CAUSE:	WAHIDULLAH SHARIF, MAIMONA SHARIF, KAWKABA SHARIF, HOSSAI SHARIF v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 13, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	MAY 19, 2022

APPEARANCES:

Quinn Campbell Keenan	FOR THE APPLICANTS
Kevin Spykerman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Quinn Campbell Keenan Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT