

Federal Court



Cour fédérale

Date: 20220712

Docket: IMM-973-21

Citation: 2022 FC 1023

Ottawa, Ontario, July 12, 2022

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

IMAN FAMENIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2018, Mr Iman Famenian sought refugee protection in Canada based on his fear of religious persecution in Iran as a Christian. He stated that he had been arrested, beaten and threatened after attending a church gathering there. The Refugee Protection Division dismissed Mr Famenian's claim due to a lack of credible evidence.

[2] In 2019, Mr Famenian appealed the RPD's decision to the Refugee Appeal Division. He submitted to the RAD what he maintained was new evidence, but the RAD found that most of it was either not new or not relevant to his claim. The RAD went on to dismiss Mr Famenian's appeal for a lack of trustworthy evidence. It also confirmed the RPD's finding that Mr Famenian is not a genuine Christian.

[3] Mr Famenian contends that the RAD wrongly rejected his new evidence, unreasonably found that his evidence lacked credibility, and failed to properly consider the risk he would face if he returned to Iran. He asks me to quash the RAD's decision and order another panel to reconsider his appeal.

[4] I can find no basis for overturning the RAD's decision. The RAD properly excluded Mr Famenian's putatively new evidence, arrived at a reasonable conclusion on the credibility of Mr Famenian's supporting evidence, and properly considered the risk to him if he returned to Iran. I must, therefore, dismiss this application for judicial review.

[5] There are three issues:

1. Did the RAD improperly exclude new evidence?
2. Were the RAD's credibility findings unreasonable?

3. Did the RAD fail to consider the risk Mr Famenian would face on return to Iran?

II. The RAD's Decision

[6] The RAD addressed allegedly new evidence presented by Mr Famenian. I will refer only to the documents Mr Famenian argues were wrongly excluded.

[7] Mr Famenian provided the RAD with a 2019 medical note from the Willowdale Medical Clinic which stated that he had complained of forgetfulness and poor concentration. The letter cited a number of visits by Mr Famenian to the clinic and alluded to mental health issues, but provided no details. The RAD found that Mr Famenian had failed to explain why the letter could not have been presented earlier as required by s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex).

[8] With respect to a letter from Mr Famenian's mother, the RAD accepted that it could not reasonably have been provided earlier. However, it found that the contents of the letter were neither credible nor new. In fact, the letter contradicted Mr Famenian's testimony about the degree of his mother's involvement with an agent who assisted in obtaining a temporary resident visa for him.

[9] Mr Famenian also provided the RAD with a copy of a summons containing an allegation against him of apostasy. Mr Famenian did not explain how or upon whom the summons had been served. Further, the document was undated and did not provide particulars about when or

where Mr Famenian was supposed to appear, details that are normally set out in a summons. The summons did state, however, that failure to appear would result in Mr Famenian's arrest, but there was no evidence that an arrest warrant had been issued for him. The RAD found the summons not to be credible evidence.

[10] On the subject of his personal credibility, the RAD noted that transcript of the hearing before the RPD showed that Mr Famenian understood the questions asked of him and that the RPD took due account of his education and experience, and the stress of testifying when assessing his credibility. The RAD accepted that Mr Famenian's testimony was presumed to be true, then reviewed the areas in which the RPD found there to be inconsistencies in his evidence.

[11] The RAD noted that Mr Famenian testified that his mother communicated with the agent only once, that she provided the agent with no documents, and that he had had no contact with the agent. The RAD found that these three assertions were contradicted by other evidence in the record, and drew an adverse inference as to Mr Famenian's credibility.

[12] As to the risk Mr Famenian might face on his return to Iran as a practising Christian, the RAD found that Mr Famenian seemed to have some knowledge about the Christian faith and had attended a Christian church while in Canada. The RAD noted that Mr Famenian's knowledge of Christianity could have been acquired solely while in Canada and, given its overall concerns about his credibility, found that he was not a genuine Christian and had acquired his knowledge merely as a means of bolstering his refugee claim.

[13] The RAD therefore concluded that Mr Famenian had failed to establish that he was in need of refugee protection in Canada.

III. Issue One - Did the RAD improperly exclude new evidence?

[14] Mr Famenian submits that the RAD wrongly excluded new evidence that supported his claim.

[15] I disagree.

[16] With regard to the medical note, the RAD properly noted that Mr Famenian had not explained why it could not have been provided sooner and pointed out shortcomings in the document that limited its evidentiary value. Mr Famenian argues that, notwithstanding these concerns, the RAD should have nevertheless considered the content of the note, particularly the reference to his attention deficits, in assessing his credibility.

[17] The RAD gave valid reasons for discounting the evidentiary value of the medical note. It cannot be faulted, therefore, for not relying on it.

[18] With respect to the letter from Mr Famenian's mother, the RAD found that it reiterated Mr Famenian's testimony in some areas and contradicted it in others. Mr Famenian maintains that the letter actually corroborated his evidence and that the RAD should have considered it.

[19] Again, the RAD gave sound reasons for not treating the mother's letter as probative new evidence. The letter contradicted Mr Famenian's testimony in a number of respects, a valid basis for an adverse credibility finding.

[20] With respect to the summons, the RAD explained why it gave this document little weight. Mr Famenian submits that the RAD speculated about the usual contents and legal significance of summonses and should have treated the document as being valid on its face. In my view, however, the RAD cited persuasive grounds for discounting the value of the summons as new evidence – the document lacked the expected details, and there appeared to have been no consequences of a failure to appear.

IV. Issue Two -Were the RAD's credibility findings unreasonable?

[21] Mr Famenian contends that the RAD relied on minor contradictions to impugn his evidence, instead of assessing his testimony as a whole. In particular, the RAD found that Mr Famenian's mother likely met with the agent more than once because delivery of the TRV was delayed when the agent asked for more funds. Mr Famenian also submits that, as the RAD found, additional documents may have been provided to the agent and that he may have met with the agent directly. However, it is possible that he was merely confused on these points because of his mental health issues and difficulties concentrating.

[22] As described above, the RAD gave reasonable explanations for its credibility findings based on the admissible evidence before it. Further, the medical note on which Mr Famenian relies as evidence of cognitive issues affecting his testimony states merely that he takes

medication for mental illness and that he complains of forgetfulness. The RAD had before it no clear evidence that Mr Famenian had difficulty testifying. No problems had been observed by the RPD.

V. Issue Three – Did the RAD fail to consider the risk Mr Famenian would face on return to Iran?

[23] Mr Famenian maintains that this is the most important issue before me. He argues that whatever his motives might have been for acquiring knowledge about Christianity, the RAD should have considered the consequences that would await him on arrival in Iran if he were regarded by authorities as a Christian apostate.

[24] The RAD concluded not only that Mr Famenian was not a genuine Christian, but also that Iranian authorities would have no basis on which to suspect that he was. Accordingly, there was no reason to believe that Mr Famenian would be regarded as a practising Christian if he returned to Iran or that he would be exposed to mistreatment or persecution on that basis.

VI. Conclusion and Disposition

[25] The RAD's conclusions were supported by the evidence and, therefore, were not unreasonable. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-973-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-973-21

STYLE OF CAUSE: IMAN FAMENIAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARING HELD BY VIDEOCONFERENCE IN
TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2022

JUDGMENT AND REASONS O'REILLY J.

DATED: JULY 12, 2022

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