

Federal Court



Cour fédérale

Date: 20221110

Docket: IMM-8245-21

Citation: 2022 FC 1531

Ottawa, Ontario, November 10, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MOHAMMAD HEIDARI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the “RAD”], dated October 27, 2021 [the “Decision”], which dismissed the Applicant’s appeal and upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board [the “RPD”], dated March 29, 2021.

[2] The RPD and RAD found that the Applicant was neither a Convention Refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[3] The Applicant, Mohammad Heidari, is a 24-year-old male citizen of Iran. The Applicant entered Canada on September 11, 2018 on a student visa and, in September 2019, claimed refugee protection pursuant to sections 96 and 97 of the *IRPA*.

[4] The Applicant claims to fear persecution from Iranian authorities, his father and his stepfather based on his conversion from Islam to Christianity. The Applicant's allegations in his basis of claim form can be summarized as the following:

- i. The Applicant was born and raised in an Islamic family. His father was a religious fundamentalist whereas his mother was raised in a "liberal family". The Applicant's parents divorced when he was seven years old.
- ii. After the divorce, the Applicant lived with his father. His father forbade him from seeing his mother. The Applicant's father remarried when the Applicant was nine years old and his new wife did not accept the Applicant.
- iii. The Applicant met a Christian classmate ["M"] in middle school and learned there were "many differences between Christianity and Islam". The Applicant believed

his Muslim classmates were insincere in their religious beliefs while his Christian classmate was not. Curious about Christianity, the Applicant maintained a friendship with M even after M left school.

iv. At age 17, the Applicant realized he wanted to learn about Christianity as a faith.

The Applicant was frustrated with how he and his mother suffered because Islamic law favoured his father. M cautioned the Applicant of the dangers of learning Christianity in Iran. M told the Applicant that he was not qualified to teach Christianity but welcomed the Applicant to join him for weekly prayer.

v. The Applicant told his father he wished to see his mother and that he no longer believed in Islam. The Applicant's father called him an apostate and told him that he no longer considered him a son. His father threatened the Applicant with a knife. The Applicant escaped to his mother's home. His mother counselled him to hide his Christian faith as her new husband worked at an Islamic court. The Applicant's father called him the next day and threatened the Applicant that he would disown him unless he was an "excellent Muslim". The Applicant refused. He has not spoken with his father since. The Applicant joined a new church in his mother's hometown. A fellow church member told him to hide his Christianity from the public. He had a Farsi Bible that he took home.

vi. In March 2017, The Applicant's stepfather asked the Applicant to help in the Iranian president's re-election campaign. When the Applicant refused, the Islamic

Revolutionary Guard Corps [SEPAH] detained and tortured the Applicant until he signed an undertaking to “obey Islamic values” and refrain from criticizing the Iranian government.

- vii. For his safety, the Applicant’s mother moved the Applicant to a different town and encouraged him to apply for a student visa to leave the country. In August 2018, while the Applicant was away in Turkey, SEPAH raided the Applicant’s apartment and arrested his fellow churchgoers. At the advice of his mother, the Applicant remained in Turkey until he received his student visa. The Applicant’s mother has since filed for divorce.

[5] On March 29, 2021, the RPD issued its decision, rejecting the Applicant’s claims for refugee status. The determinative issue for the RPD was the Applicant’s credibility. The RPD found that the Applicant was not a genuine Christian convert and was not a believer or practitioner of the Christian faith. The RPD noted that there was a general presumption that an applicant’s testimony is true but nevertheless found the Applicant’s testimony untrue. The RPD took the following issues with the Applicant’s claims:

- i. The Applicant’s testimony about when he converted to Christianity was uncertain. At one point, he told the RPD that he did not convert until leaving Iran. At other points, he claimed to have converted at 17 years old.

- ii. Despite M playing a central role in the Applicant's alleged conversion to Christianity, the Applicant did not provide any corroborative evidence of M's involvement. The Applicant explained that this was because of "security" concerns. The RPD did not accept this explanation, as the Applicant was able to present a letter from his mother.

- iii. The Applicant testified that he downloaded the bible and started attending church in August 2019, almost a year after entering Canada and around the time he initiated a refugee claim. The Applicant provided contradictory explanations for this. First, he claimed he did not "know anyone or any places" when he came to Canada. Then he claimed to have attended an English-language church where he could not understand anything or communicate with anyone. When asked why he did not obtain a letter from this church as evidence, the Applicant claimed that he did not speak with anyone there.

- iv. Though the Applicant claimed to have read a Farsi Bible often in Iran, he was unable to answer questions about the basic tenets of the religion. The Applicant believed Jesus had eleven disciples and did not know any of the Ten Commandments. He had also not been baptized.

[6] The RPD accepted that the Applicant had attended church in Canada; however, also found that he had only joined the church in August 2019 to support a fraudulent refugee claim.

There was no indication that his attendance at a Christian church had come to the attention of Iranian authorities.

[7] The RPD further denied the Applicant's refugee claim based on his fear of his father and stepfather. The RPD found that the Applicant's issues with his father stemmed from his desire to reconnect with his mother and not his conversion to Christianity and he was able to live in Iran independently for years without issue. Furthermore, the RPD accepted that the Applicant's mother had been in an abusive relationship with the Applicant's stepfather, but did not believe the portion of the Applicant's story of how SEPAH had detained and tortured the Applicant and raided his apartment. Given that his mother had filed for divorce and separated from the Applicant's stepfather, the Applicant had no forward-facing risk from his stepfather.

[8] In the Decision dated October 27, 2021, the RAD upheld the RPD's decision to reject the Applicant's refugee claims under sections 96 and 97. The Applicant asks the Court to set aside the Decision and refer it back to the RAD for reconsideration by a different panel.

III. Decision Under Review

A. *New Evidence*

[9] On appeal, the Applicant attempted to include the following fresh evidence under subsection 110(4) of the *IRPA*:

- i. Three screenshots of the Applicant attending at Bible classes online; and

ii. Letters from fellow churchgoers.

[10] Although the Applicant claimed that this evidence only became available to him after the RPD hearing, he was unable to explain how. The RAD rejected this evidence as it did not meet any of the explicit newness criteria under subsection 110(4).

B. *Decision on the Merits*

[11] The RAD agreed with the RPD's finding that the Applicant's story of his conversion to Christianity was false. The RAD agreed that the Applicant's testimony about the timing of his conversion was uncertain. The RAD also expressed concern over the lack of corroborative evidence from M and did not accept the Applicant's explanation that there were "security" concerns with requesting evidence from M as the Applicant was able to provide a letter from his mother.

[12] The RAD further echoed the RPD's credibility concerns respecting the Applicant's practise of Christianity since moving to Canada. The RAD found the timing of the Applicant beginning to attend church and downloading the Bible just as he submitted his refugee claim. The RAD agreed with the Applicant that whether or not he had been baptized was not dispositive of the genuineness of his faith. The RAD nonetheless found that the fact that the Applicant was not baptized and that he lacked knowledge about the basic tenets Christianity were factors that cast doubt on the genuineness of his Christianity.

[13] The RAD rejected the Applicant's argument that the RPD had ignored the Applicant's evidence. The Applicant alleged that the RPD failed to consider letters from the Applicant's mother as well as the church he was attending. The RAD found that the RPD had not erred. The RPD considered the letter from the church when it accepted that the Applicant had attended since August 2019 and drew a negative inference about this timing. The RPD considered the letter from the Applicant's mother when it observed that it made no mention of the Applicant's detention or apartment raid at the hands of SEPAH.

[14] The RAD endorsed the RPD's assessment of the Applicant's *sur place* claim that he would not be in danger if now returned to Iran because he had now attended church in Canada. The RAD found there was no evidence that Iranian authorities would be aware of the Applicant's religious activities in Canada.

[15] The RAD also found the RPD did not err in finding that the Applicant had no prospective facing risk of harm from his father or stepfather. The Applicant did not challenge the RPD's findings with respect to his father. With respect to his stepfather, the RAD found that while the Applicant's mother had been in an abusive relationship, she had now separated from his stepfather. Further, the Applicant's own evidence indicated that he was able to live in Iran independent from his stepfather's control.

IV. Issues

[16] Was the Decision reasonable?

V. Standard of Review

[17] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

[18] The Applicant argues that the RAD erred by refusing to accept the Applicant's new evidence pursuant to subsection 110(4) of the *IRPA*. The Applicant had attempted to include screenshots of himself attending Zoom bible classes and supportive letters from fellow churchgoers.

[19] Under subsection 110(4), an appellant 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 have presented, at the time of the rejection.

[20] The RAD reasonably found the Applicant's evidence met none of the criteria for supporting a finding of new, admissible evidence. The screenshots of the Applicant attending Bible classes on Zoom were undated. There was no evidence that the screenshots arose after the RPD's decision or that they were not reasonably available at the time of the RPD decision. Furthermore, given that the genuineness of the Applicant's faith was a central aspect of his

refugee claim, the Applicant could reasonably be expected to have presented this evidence to the RPD prior to the RPD's decision.

[21] While the four letters from the churchgoers may have been authored after the RPD hearing, each of the authors claimed to know the Applicant for over a year. The RAD reasonably found the Applicant would have been able to obtain them prior to the RPD decision. Just as with the screenshots, the RAD reasonably held that the Applicant could have been expected to present this evidence to the RPD, given the pertinence of the genuineness of his Christianity to his refugee claim.

[22] The Applicant also argues that the RAD unreasonably determined that the Applicant's faith was not genuine. The Applicant believes that the RAD unduly focussed on whether the Applicant was baptized or not. Moreover, the Applicant argues that RAD failed to consider that his testimony before the RPD was less than perfect because he was nervous and confused in a high-stress environment.

[23] The RAD reasonably concluded that the Applicant was not a genuine Christian. The fact that the Applicant was not baptized and his lack of religious knowledge were just factors that formed part of the RAD's analysis and not dispositive in and of themselves. Other factors strongly pointed to the lack of genuineness of the Applicant's faith, including the Applicant's failure to present corroborative evidence from M and the convenient timing of the Applicant's religious activities in Canada.

[24] As well, the RAD was clearly cognisant that the Applicant provided testimony in an unfamiliar, high-stress environment and considered his testimony in that light.

VII. Conclusion

[25] The application is dismissed.

JUDGMENT in IMM-8245-21

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8245-21

STYLE OF CAUSE: MOHAMMAD HEIDARI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEO CONFERENCE

DATE OF HEARING: NOVEMBER 9, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: NOVEMBER 10, 2022

APPEARANCES:

MATTHEW M. MOYAL FOR THE APPLICANT

RACHEL BEAUPRÉ FOR THE RESPONDENT

SOLICITORS OF RECORD:

MOYAL & ASSOCIATES FOR THE APPLICANT
TORONTO, ONTARIO

ATTORNEY GENERAL OF FOR THE RESPONDENT
CANADA
TORONTO, ONTARIO