

Federal Court



Cour fédérale

Date: 20250127

Docket: IMM-11206-23

Citation: 2025 FC 166

Toronto, Ontario, January 27, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

TAHEREH POURGHASEM

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Tahereh Pourghasem [Applicant], seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated August 18, 2023 [RAD Decision], upholding a decision of the Refugee Protection Division [RPD] finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant's main

argument on appeal to the RAD was that she had received incompetent and negligent representation by her former counsel [Former Counsel], which impacted every aspect of her claim including the RPD's finding that the Applicant's testimony was not credible and that her conversion to Christianity was not genuine.

[2] For the reasons that follow, I find that the Applicant has failed to show the RAD Decision to be unreasonable. The RAD reasonably assessed the Applicant's allegations and found that Former Counsel met the requisite standard of professional competence and this Court would have to impermissibly engage in the reassessment or reweighing of the evidence to find otherwise. Accordingly, this application for judicial review is dismissed.

II. Facts

[3] The Applicant is a citizen of Iran. She is a divorced woman who was in her late sixties at the time of the proceedings. She has limited education and a low level of literacy.

[4] In August 2021, she came to Canada to visit her daughter, who is a Canadian citizen. In October 2021, she claimed refugee protection. The Applicant alleges that based on her conversion from Islam to Christianity, she fears being persecuted, mistreated, threatened or sentenced to death for apostasy in Iran if she is forced to return.

A. *RPD Decision*

[5] In a decision dated November 21, 2022 [RPD Decision], the RPD rejected the Applicant's refugee claim, finding that the Applicant had not credibly established that she is a genuine convert to Christianity nor that she would be at risk of persecution or harm if she returned to Iran based on her *sur place* claim.

[6] The determinative issue for the RPD was the Applicant's credibility. The RPD found the Applicant's testimony to be evolving, inconsistent and vague, which led the RPD to conclude that the Applicant's religious conversion was not genuine. Despite having had fourteen months of exposure to Christianity including a year of online bible study classes, the RPD found that, "[s]he was unable to note anything beyond very general concepts of faith and prayer and naming commonly known characteristics such as the Bible, Jesus, and God." While the RPD took note of the Applicant's personal circumstances as an older woman with limited education and literacy, the RPD found that the Applicant was "sophisticated and intelligent enough to understand the nature of a conversion of faith, the hearing process, and testimony."

[7] In rejecting the Applicant's *sur place* claim, the RPD found that the Applicant would not be perceived as a Christian upon her return to Iran and there was no reliable evidence anyone in Iran is aware of her involvement with Christianity, including the Iranian authorities.

B. *RAD Decision*

[8] The Applicant appealed the RPD Decision arguing primarily that she had received incompetent and inadequate legal representation from her Former Counsel before the RPD, leading to the negative credibility findings against her, which she submitted were unreasonable. She also raised other grounds of appeal, including that the RPD contradicted itself in finding that the Applicant was sophisticated enough to fully understand the nature of the proceedings. The Applicant sought to submit new evidence for her appeal both after the RPD hearing and after the perfection of her appeal to the RAD and requested an oral hearing before the RAD.

[9] On August 18, 2023, the RAD dismissed the Applicant's appeal and upheld the RPD Decision. The RAD found that the Applicant had not established, on a balance of probabilities, that Former Counsel's conduct met the legal test for incompetence amounting to a breach of procedural fairness. The RAD found that the RPD's conclusions regarding the Applicant's sophistication were not contradictory.

[10] Like the RPD, the RAD found that the Applicant, on a balance of probabilities, failed to establish with credible and trustworthy evidence that she is a genuine convert to Christianity and that she would face a serious possibility of persecution if she were to return to Iran.

[11] Of the new evidence submitted, the RAD admitted new evidence going to the allegation of the incompetence of Former Counsel. It also allowed new evidence going to the Applicant's baptism, which took place after the RPD hearing, including a certificate of baptism and photos of

the ceremony, as well as new country condition evidence showing the treatment of Christians in Iran. The RAD declined the Applicant's request for an oral hearing, as it found that the admitted new evidence does not relate to the Applicant's credibility.

[12] The RAD found that the RPD had erred in finding that no one in Iran was aware of the Applicant's involvement with Christianity, since some of the Applicant's friends were aware of her conversion. However, the RAD found that this did not undermine the overall correctness of the RPD's conclusion that there was no evidence her conversion had come to the attention of the Iranian authorities. The RAD therefore rejected the Applicant's *sur place* claim.

III. Issues and Standard of Review

[13] The Applicant raises the following issues in this application for judicial review of the RAD Decision:

- A. Was it unreasonable for the RAD to find that the Applicant was sufficiently sophisticated enough to understand the proceedings?
- B. Did the RAD unreasonably dismiss the Applicant's allegations of incompetence of Former Counsel?
- C. Was it unreasonable for the RAD to fail to accept new evidence that corroborated the Applicant's Christian conversion and practice?
- D. Did the RAD make unreasonable negative credibility findings?
- E. Did the RAD unreasonably dismiss the Applicant's *sur place* claims?

[14] The parties agree that the applicable standard of review that applies to this Court's review of the RAD Decision is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision is one that bears the hallmarks of a reasonable exercise of public power, which requires that it be justified, transparent and intelligible (*Vavilov* at para 95). Reasonableness review asks whether the impugned decision displays "an internally coherent and rational chain of analysis ... that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[15] Importantly, while judicial review is described as a "robust review," it nevertheless starts with a deferential review of an administrative decision maker's reasons and does not engage in a "line-by-line treasure hunt for error" (*Vavilov* at paras 81, 91, 102). Reviewing Courts are not entitled to reweigh or reassess the evidence (*Vavilov* at paras 94, 125) and may only intervene in the face of fundamental or significant errors (*Vavilov* at para 101).

IV. Analysis

A. *The RAD did not err in finding the Applicant to be sufficiently sophisticated enough to understand the proceedings*

[16] The Applicant submits that the RAD erred in determining that the Applicant was sufficiently sophisticated to understand the RPD proceedings and the questions posed to her during the hearing. She argues that the RAD blindly accepted Former Counsel's statement that in his dealings with her, the Applicant was confidently able to answer questions well and in detail. The Applicant contends that this evidence is at odds with Former Counsel raising the issue of the Applicant's low education and literacy level at the outset of the RPD hearing.

[17] Contrary to the Applicant's assertions, the RAD did not ignore the Applicant's limited education and literacy level, but merely found that *despite* her limited abilities, she was capable of understanding the hearing process and answering questions. There is nothing contradictory about this finding: a person can understand the hearing process and require some assistance in fully understanding the questions posed.

[18] I find that the RAD's finding that the Applicant was able understand the nature of the proceedings was both justified and sound. The RAD's conclusion is based on more than Former Counsel's statements and included the RAD's own review of the audio recording of the RPD hearing and transcript.

A fair review of both the RPD and RAD Decisions shows that both decision makers were sensitive to the Applicant's limited literacy and education and took this factor into account throughout their reasons. The RAD noted, for example, that the RPD in assessing the Applicant's knowledge of Christianity: (i) asked the Applicant questions in various ways; (ii) gave her the opportunity to explain her own understanding of Christian religious principles using general concepts; (iii) asked the Applicant to describe concepts that she captured during verbal discussions in her religious studies as opposed to written materials; and (iv) sought to have her describe in her own words what her faith means to her.

B. *The RAD's analysis of the incompetence of counsel was reasonable*

[19] The Applicant mainly argues that she was denied a fair hearing before the RPD because of the negligent legal representation she received from her Former Counsel, and the RAD erred

in dismissing the Applicant's incompetency allegations. She further alleges that her Former Counsel's incompetence resulted in the negative credibility findings and dismissal of her new evidence, which resulted in unreasonable findings on the Applicant's credibility, religious conversion claim and *sur place* claim.

[20] The Applicant's list of alleged inadequacies of representation by her Former Counsel is long and includes allegations spanning the entire course of the retainer from the preparation of the Basis of Claim [BOC] to matters after the RPD hearing [collectively, the Allegations of Incompetence]. However, for the reasons that follow, I find that the RAD applied the correct legal test for determining the competency of Former Counsel and that for each of the Allegations of Incompetence, it provided logical and reasoned basis for rejecting the allegations that are defensible on the facts and the law.

(1) The RAD applied the correct legal test

[21] I agree with the Respondent that the RAD identified the correct legal test for assessing the competence of Former Counsel by applying the test in *R v GDB*, 2000 SCC 22 [*GDB*], which requires that the Applicant demonstrate, on a balance of probabilities, that Former Counsel's acts or omissions constituted incompetence (the performance component) and a miscarriage of justice resulted (the prejudice component) (*GDB* at para 26) [collectively, the *GDB* Test].

[22] The RAD's analysis focused almost entirely on the performance component of the *GDB* Test. It found a single example of possible misconduct where Former Counsel failed to make timely disclosure of a letter from a Church in Canmore, Alberta confirming that the Applicant

had been attending their church gatherings for the past “number of weeks” and had expressed an interest in being baptized [the Church Letter]. The RPD found that Former Counsel’s actions did not amount to a miscarriage of justice, as he ultimately did disclose the letter and the RPD considered it.

[23] The Applicant argues that despite identifying the correct legal test, the RAD erred in its application of the test by engaging in the type of improper representation identified in *Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 [*Guadron*], which finds fault in an undue focus on an Applicant’s failure to volunteer information without properly assessing whether counsel fulfilled their essential role of seeking out crucial information (*Guadron* at para 29).

[24] I do not find that the RAD engaged in this faulty line of analysis. The RAD expressly agreed that proper legal representation required more from counsel, stating:

“While I agree with the Appellant’s daughter that ‘the purpose of Counsel is to guide a claimant through the process,’ I also agree with former Counsel that ‘I can only represent what is presented to me by her [...] [and] that these aspects of the claimant’s case are out of my control.’”

(2) The RAD did not err in its rejection of the Allegations of Incompetence

[25] The RAD addressed each of the Allegations of Incompetence and found with respect to each that the Applicant had failed to show that Former Counsel met the performance component of the *GDB* Test.

(a) *Failure to canvass other grounds for the Applicant's refugee claim*

[26] The Applicant submitted evidence to the RAD that Former Counsel did not advise the Applicant that she could allege additional grounds of persecution based on her political opinion or gender.

[27] The RAD determined that the evidence did not support these allegations. In assessing this allegation, the RAD accepted the evidence of Former Counsel that, in addition to the discussions he had with the Applicant in connection with the BOC and her narrative, Former Counsel questioned the Applicant about her fears about returning to Iran as part of her preparation for the RPD hearing.

[28] The RAD further noted that the RPD also questioned the Applicant about residual grounds for her claim based on the duty to do so arising out of the *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board* (dated July 2022). The RPD found, "[e]ven when asked, [the Applicant] did not mention any further allegations regarding issues surrounding her political opinion or even gender." The RAD considered the RPD to have reasonably concluded that the "central and only issue" for her fear of persecution in Iran was her stated religion.

[29] I find that it was open to the RAD to accept the evidence of Former Counsel, which was supported by a consideration of the Applicant's own evidence.

(b) *Alleged irregularities in the completion of the BOC*

[30] The Applicant alleges that Former Counsel did not meet the standard of competent counsel by: (i) asking her to sign an unfinished BOC form that did not include an interpreter declaration; (ii) not providing the RPD with BOC amendments; and (iii) not getting her instructions on amendments to her narrative, which Former Counsel sent to the RPD in a letter dated March 21, 2022 [the Supplementary Letter]. The Applicant submits that the contents of the Supplementary Letter should have been filed as an amendment to her BOC following proper RPD protocols and rules, and that the RAD erred in finding the Supplementary Letter was not an amendment to the Applicant's BOC.

[31] The Applicant submits that these errors were impactful, considering that the RPD perceived her narrative to have evolved over time.

[32] I can find no fault in the RAD's reasoning with respect to the completion of the BOC. First, it was open to the RAD to accept Former Counsel's statement that the BOC was complete at the time of its initial submission and that he reviewed all documents, including the final completed BOC, with the Applicant. Second, the RAD's reasoning relied on other objective evidence which included: (i) the email from Former Counsel submitted by the Applicant, which did not support her assertion that the BOC was signed before it was completed; (ii) the Applicant herself signed the BOC attesting that it was "complete, true and correct ... and had been interpreted back to her" and confirmed this statement at the outset of the RPD hearing; and (iii)

the affidavit of the Applicant's daughter was contradictory regarding Former Counsel's instructions about the BOC.

[33] As for the narrative contained in the Supplementary Letter, I find that the RAD reasonably explained why it found the letter to not have been an amendment, and while the RAD did not directly address the Applicant's full argument, the RAD is not required to "respond to every argument or line of possible analysis" (*Vavilov* at para 128). I do not consider this omission to be a significant flaw in the RAD Decision, given that the Applicant does not dispute that she provided the further details to her narrative that were included in the Supplementary Letter and the RAD found that the information in the Supplementary Letter was reflected in the information provided by the Applicant herself during her testimony.

(c) *Inadequate preparation for the RPD hearing*

[34] The Applicant submits that the RAD unreasonably accepted that Former Counsel properly prepared her for the RPD hearing. She argues that the questions sent by Former Counsel to help her understand what to expect at the hearing were very general and sent long before any hearing preparation was conducted. The Applicant submits that the RAD failed to acknowledge that the practice simulation sessions only took place after the Applicant took the initiative to contact Former Counsel and that Former Counsel failed to advise the Applicant that her practice answers were general, vague and inconsistent in those sessions.

[35] I find that it was open to the RAD on the record to conclude that Former Counsel had "significant" involvement in the Applicant's preparation for the RPD hearing. According to the

RAD, that involvement included more than practice sessions such as discussions over the phone with both the Applicant and her daughter and sending sample questions in both English and Farsi/Persian in advance of the hearing to guide the Applicant on what to expect. It was Former Counsel's evidence that during the practice sessions the Applicant spoke with "confidence and clarity," and she provided "great details." It was open to the RAD to accept this evidence and to prefer it over the Applicant's evidence.

[36] The RAD further noted that the Application did not allege that preparation occurred on short notice and there was no evidence that the Applicant complained about her preparation. Based on these findings, the fact that the Applicant initiated the practice sessions is not significant and the RAD cannot be faulted for failing to mention it. I agree with the Respondent that the RAD's reasons are logical and defensible.

(d) Failure to advise of the need for corroborating evidence

[37] The Applicant submits that the RAD erred in finding that Former Counsel advised the Applicant about the importance of submitting corroborative evidence. The Applicant's submissions focus on three aspects of the RAD's reasons related to: (i) the Church Letter; (ii) a file review letter sent by the Immigration and Refugee Board of Canada, which asked for supporting documents [the IRBC Letter]; and (iii) the Applicant's ability to understand.

[38] The Applicant alleges that the RAD misconstrued the Applicant's evidence with respect to the Church Letter, since the Applicant's daughter gave evidence that she obtained it on her own initiative, despite Former Counsel advising that no such letter was required.

[39] I am unable to find that the RAD misconstrued the evidence regarding the Church Letter and I see no logical flaw in the RAD's reasoning. The RAD noted the Applicant's own testimony before the RPD contradicted her allegation that Former Counsel was not communicating with her and her daughter about the need for corroborating evidence since the daughter informed the Church about the specific content the letter should include and asked the Church to email it to her so she could email it to Former Counsel.

[40] The Applicant submits that the RAD wrongly accepted Former Counsel's evidence with respect to the IRBC Letter. This letter contained information on what kinds of corroborating documents could be provided to support one's claims and specifically requested three types of documents, including documents to support the Applicant's religious conversion. The Applicant claims that while her daughter was informed about the IRBC Letter, Former Counsel did not provide the Applicant or her daughter with a copy of it. I find that the RAD's reasons were rational and logical on this point in finding support for the fact that Former Counsel advised the Applicant of the IRBC Letter given he requested an extension of time to respond to it and did respond to it by providing two of the three documents requested. This Court is not entitled to reassess or reweigh the evidence.

[41] Finally, the Applicant submits that the RAD erred in presuming the Applicant to be sufficiently sophisticated to understand the instructions in the BOC, the annex for which provides notice to a claimant about supporting documents. The Applicant argues that the RAD embarked in faulty reasoning in concluding that because the Applicant provided supporting documents, she understood the importance of doing so. As discussed in other parts of these

reasons, I find that the RAD thoughtfully and reasonably addressed the Applicant's ability to understand the proceedings and it was open to it to find that she was capable of understanding the BOC given that the Applicant confirmed during the RPD hearing that the BOC was fully translated to her.

(e) *Failure to obtain accommodations for the Applicant in light of her low level of education and literacy*

[42] The RAD rejected the Applicant's allegation that Former Counsel failed to obtain appropriate accommodations given her low level of education and literacy. The Applicant submits that the RAD erred in two ways.

[43] First, the Applicant submits that the RAD contradicted itself in finding no additional documentation supporting the Applicant's limited literacy and education was necessary in circumstances where Former Counsel himself raised the issue of the Applicant's education and literacy with the RPD.

[44] I find no merit in this submission. The RAD noted that Former Counsel drew the RPD's attention to the Applicant's low literacy rate both at the start of the hearing and in a letter written to the RPD in advance of the hearing, which also mentioned that she struggles to retain information and has never developed the skill to learn from books. Former Counsel warned the RPD that it may need to accommodate the Applicant by repeating or rephrasing questions which the RAD considered the RPD had done. The RAD's reasoning is logical, and it was open to it to find that Former Counsel sought adequate accommodations by doing so.

[45] Second, the Applicant argues that in the circumstances, Former Counsel should have advised the Applicant about the possibility of appointing a Designated Representative.

[46] The RAD's reasons for excusing Former Counsel for not raising the possibility of appointing a Designated Representative reasonably centred on both its finding that the Applicant was sufficiently sophisticated enough to represent herself, and the unchallenged evidence of Former Counsel that the Applicant advised him that her daughter is not to be part of the proceedings. According to Former Counsel, the Applicant advised him that her daughter has "her own life problems and cannot be too involved or knowledgeable" about the Applicant's claims. It was open to the RAD to accept Former Counsel's evidence and his reliance on the Applicant's instructions. I find the RAD's reasons to be sound, rational and justified on the record.

(f) Decision not to submit proof of the Applicant's medical conditions

[47] The Applicant submits that Former Counsel was aware of her health conditions but failed to submit proof of these conditions and the medications she takes. According to the Applicant's daughter, these medications affect the Applicant's ability to recall events and perform well, which in turn played a role in the RPD's negative credibility findings. The Applicant criticizes the RAD for ignoring this evidence.

[48] I disagree. It was open to the RAD to accept the evidence of Former Counsel that the Applicant was "as lucid as any other client" he had represented and that he did not witness any impairment in her ability to answer questions or express herself clearly and effectively. I do not

fault the RAD for failing to refer to evidence that the Applicant's daughter was not qualified to give.

- (g) *The failure to seek an audit of the interpretation provided at the RPD hearing*

[49] The Applicant submits that the RAD unreasonably rejected her allegation that Former Counsel did not meet the standard of competent counsel when he failed to accept the RPD's offer to conduct an audit of the interpretation of the hearing after Former Counsel advised the RPD that he considered there to have been "blatant" issues. The RAD considered that despite the Former Counsel's statement at the end of the RPD hearing, its review of the recording of the hearing confirmed the RPD's conclusion that there were no significant problems with the interpretation meriting an audit.

[50] The case law is clear that for an interpretation error to amount to a breach of procedural fairness, it must be sufficiently serious, material and non-trivial (*Muamba v Canada (Citizenship and Immigration)*, 2021 FC 388 at para 13). The Applicant has clearly not met this standard as she has not pointed to any specific interpretation errors that would have justified an audit or a finding that the RAD's decision was unreasonable.

- (h) *Failure to inform the Applicant she could participate in streaming of less complex refugee protection claims cases*

[51] The Applicant claims that due to Former Counsel's incompetence, she was denied the opportunity to have her case considered under the streaming of less complex refugee protection

claims cases, where there is no oral hearing requirement. The Applicant argues that the RAD erred in rejecting this allegation of incompetence by blindly accepting Former Counsel's evidence.

[52] This same allegation was made to the RAD, and it found that the Applicant's allegation of incompetence lacked elaboration and was unsupported. Not only has the Applicant again not supported her allegations of incompetence, but she fails to acknowledge that the RAD's reasoning was based on the fact that the decision to proceed with an oral hearing was that of the RPD. The Applicant's suggestion that the RAD blindly accepted the evidence of Former Counsel is not justified. The RAD merely noted Former Counsel's evidence that he warned the Applicant that the failure to provide more documents and evidence would "almost certainly" result in a hearing date being set.

(3) Conclusion on the RAD's analysis of the Allegations of Incompetence

[53] In summary, I find that the RAD's analysis in respect of the Allegations of Incompetence to be defensible on the facts and the law. It follows that the Applicant's arguments related to the RAD's rejection of new evidence, which flowed from the alleged errors the RAD made in determining the competency of counsel, cannot succeed.

[54] I note that the Applicant argues that the RAD failed to justify its preference for Former Counsel's evidence. I do not consider this to be a significant flaw in the RAD Decision. First, this calls for a standard of perfection that is not justified in the face of a 65-page decision that directly addresses the numerous allegations made by the Applicant in detail. Secondly, many of

the RAD's reasons are based on evidence not only of Former Counsel, but on objective evidence that supports Former Counsel's evidence. Ultimately, the weighing of evidence lies within the purview of the RAD's expertise that this Court will not lightly disturb (*Homayun v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 319 at para 78).

C. *The RAD did not err in failing to accept new evidence that corroborated the Applicant's Christian conversion and practice*

[55] The Applicant submits that the RAD erred in finding that the Applicant was not credible and in ignoring the explanation she gave in her affidavit to the RAD for stopping her online studies with an Iranian Church in Calgary, which was a factor in the RPD's finding that her religious conversion was not genuine. The Applicant argues that the new evidence, which showed the Applicant's Christian activities, should not have been rejected and an oral hearing should have been granted, given that it was relevant to an issue of credibility.

[56] While I acknowledge that the RAD did not address the Applicant's explanation as to why she stopped her online studies, there were several other reasons why the RAD questioned the credibility of the new evidence going to the genuineness of the Applicant's religious conversion. Those reasons included the fact that the exhibits were all dated shortly after the RPD Decision and the fact that the exhibits came from an online church. As the Applicant's pause in her online studies was not the sole basis for the RAD's negative credibility finding, I do not consider this a significant flaw meriting this Court's intervention.

[57] Nor do I consider the RAD to have committed a reviewable error in refusing to grant an oral hearing in connection with this evidence. Subsection 110(6) of the *IRPA* is discretionary and this Court has recognized that there is no requirement for the RAD to hold an oral hearing to assess the credibility of new evidence (see *Hossain v Canada (Citizenship and Immigration)*, 2023 FC 1255 at para 42).

D. *The RAD did not make unreasonable negative credibility findings*

[58] In large part, the Applicant's submissions related to the RAD's negative credibility finding are tied to other alleged errors on the part of the RAD. The Applicant submits that the RAD's dismissal of incompetent representation allegations led to improper dismissal of the new evidence, which in turn had significant repercussions for the RAD's assessment of the Applicant's credibility. The Applicant also argues that the RAD's failure to consider the Applicant's limited education and sophistication renders the RAD's credibility findings unreasonable.

[59] Based on my previous findings related to the competence of Former Counsel, the RAD's assessment of the Applicant's ability to understand the nature of the RPD proceeding, and the RAD's rejection of new evidence, the related credibility arguments cannot succeed.

[60] Finally, the Applicant argues that it was unreasonable for the RAD to question the Applicant's delay in getting baptized rather than seeing it as a sign of the sincerity of her faith. The Applicant's arguments call for the Court to reweigh and reassess the evidence, which is not its role (*Vavliov* at para 125).

[61] I therefore find that the RAD's negative credibility finding has not been shown to be unreasonable.

E. *The RAD did not make an unreasonable assessment of the Applicant's sur place claim*

[62] In responding to the Applicant's submissions to the RAD that she wishes to practice her new faith openly in Iran, which will put her at risk with Iranian authorities, the RAD found that the Applicant only made these allegations after the RAD disclosed the most recent version of the National Documentation Package on Iran and asked for additional submissions on prospective risk. The RAD considered her claim that she would want to practice Christianity openly in Iran and would need assistance in doing so to be not genuine. The RAD held:

Moreover, given that I agree with the RPD's findings that she has not established on a balance of probabilities that she is a genuine adherent of Christianity, I do not accept her arguments that she would practice the Christian faith in Iran; that Iranian authorities would be aware of it or that they or non-state actors, including family, friends or members of the wider Iranian public. Here, I underscore that in the past, the Federal Court has held that the Board must be allowed to import credibility findings when considering the *sur place* aspect of a claim and that it is permissible to assess a refugee claimant's *sur place* claim in light of credibility concerns relating to the original authenticity of the claim (citing *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at paras 27-28) (RAD Decision at para 163).

[63] The Applicant submits that the RAD misstated the case law on genuineness and motivation in a *sur place* claim. She submits that based on the authority of *Ejtehadian v Canada (Citizenship and Immigration)*, 2007 FC 158 [*Ejtehadian*], in assessing the Applicant's risks of returning to Iran in the context of her *sur place* claim, the RAD was required to consider the evidence of her religious activities while in Canada independently from her motives for

conversion since the consequences of an imputation of apostasy to the Applicant by the authorities in Iran may bring her within the scope of the Convention definition (*Ejtehadian* at para 11).

[64] Contrary to the Applicant's contention, the RAD did just that. It examined the evidence related to the Applicant's baptism and stated:

I am aware that in the baptism certificate, the Appellant's genuine name is stated. However, there is no evidence, nor has the Appellant alleged, that on a balance probabilities, Iranian authorities would become aware of the existence of this baptism certificate in the first place. The certificate is not publicly available on the internet or social media. Nor has the Appellant alleged that she intends on sharing it publicly with state or non-state actors. Similarly, with respect to the photos of the baptism ceremony, there is nothing in the photos that indicates it is strictly a baptism ceremony. Neither the priest, the Appellant nor the attendees are wearing any particular clothing or holding any religious artifacts or text that may indicate it is a religious ceremony. The photos were also taken at a lake (RAD Decision para 165).

[65] The Applicant also suggests that the RAD unreasonably questioned the genuineness of the Applicant's baptism. This is a misreading of the RAD Decision. The RAD was considering whether the evidence of the Applicant's baptism put her at risk of being discovered as an apostate by Iranian authorities, which it reasonably found was not the case.

[66] The Applicant has not shown the RAD to have erred in its consideration of the Applicant's *sur place* claim.

V. Conclusion

[67] The Applicant had the burden of showing that the RAD Decision is unreasonable. She was not able to do so. Accordingly, this application for judicial review is dismissed.

JUDGMENT in IMM-11206-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11206-23

STYLE OF CAUSE: TAHEREH POURGHASEM v MINISTER OF
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