Federal Court  Cour fédérale

Date: 20250718

Docket: IMM-16549-24

Citation: 2025 FC 1284

Toronto, Ontario, July 18, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

MEYSAM MAJDISORKHABI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Meysam Majdisorkhabi, is an Iranian citizen who admits to having prepared false financial statements as an accountant for his employer, an Iranian wire and cable company [Company]. He sought refugee status on the basis of the repercussions he says this will have on him in Iran, which he says ultimately poses a risk to him of bodily harm. By decision dated August 22, 2024 [Decision], the Refugee Appeal Division [RAD] confirmed a decision of

the Refugee Protection Division [RPD] finding that the Applicant is excluded from refugee protection under Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150, effective 22 April 1952 [*Refugee Convention*] as there are serious reasons for finding that he had committed a serious non-political crime in Iran.

[2] The Applicant seeks judicial review of the RAD's Decision on the basis that the RAD erred in its consideration of the seriousness of the crime and in not accepting his defence of duress as well as his new evidence.

[3] For the reasons that follow, I find that the Applicant has not shown that the Decision is unreasonable; accordingly, this application is dismissed.

II. Facts

A. *The events surrounding the Applicant's employment*

[4] The Applicant is an accountant who started working with the Company in April 2020. Only a few months in, his manager asked him to prepare false financial statements in connection with a plan for an initial public offering. The Applicant says he refused and sought a transfer to another department, but this request was refused as well. His manager threatened to enforce payment of the promissory notes he says he provided in satisfaction of a condition of his employment and insinuated that he could be imprisoned. The Applicant thought he had no choice but to cooperate in falsifying the financial statements; he did not go to the police as he was aware that he would be held responsible for having signed the documents.

[5] The Applicant says he made secret plans to leave Iran and took a leave of absence in December 2021 to travel to Canada where he eventually initiated a refugee claim in February 2022.

[6] When he did not return to work, the Company initiated legal proceedings against the Applicant to enforce his guarantee. The Applicant believes that if he returns to Iran, he will face criminal penalties for his failure to fulfill the promissory notes and he could face prosecution for his role in falsifying the company's financial statements. Considering the harsh conditions in Iranian prisons, he believes he is at risk of bodily harm.

B. *The RPD decision*

[7] An oral hearing was held on March 18, 2024. The Minister of Citizenship and Immigration [Minister] intervened in person on the claim.

[8] The Applicant gave evidence that he had "no choice" but to file the fraudulent financial statements and that he fears that his life is in danger in Iran.

[9] The RPD's decision to exclude the Applicant from refugee protection was based on a finding that the Applicant had committed a serious non-political crime that was equivalent to two offences under the Canadian *Criminal Code,* RSC 1985, c C-46: subsection 380(2) (fraud affecting public market) and paragraphs 400(1)(a) and (b) (false statement with intent to deceive or defraud). As both offences carry a potential term of imprisonment of 10 years or more in Canada, the RPD found that there is a presumption that the crimes were serious for the purposes

of Article 1F(b) exclusion. The RPD found that there were not enough mitigating circumstances to rebut the presumption.

C. *The RAD decision*

[10] On appeal, while the RAD considered that the RPD's exclusion analysis was flawed in certain respects, it nevertheless dismissed the Applicant's appeal and upheld the finding of exclusion. Given that the equivalent Canadian crimes are indictable offences in Canada carrying a prison sentence of 10 years or more, the RAD agreed with the RPD that a presumption of seriousness had been made out. The RAD rejected the mitigating factors presented by the Applicant and found other mitigating factors insufficient to rebut the presumption of the seriousness of his crime.

[11] The RAD rejected the Applicant's defence of duress as there was no explicit or implicit threat of death or bodily harm, and while the Applicant insisted that he would have been imprisoned, he failed to adduce evidence that: (i) the promissory notes were enforceable; (ii) employers can enforce financial guarantees against employees who are being asked to carry out criminal acts; or (iii) non-payment of employment guarantees are punishable by imprisonment under Iranian criminal law.

[12] The Applicant sought to introduce new evidence on appeal, which consisted of articles on: (i) the use of promissory notes by Iranian employers; and (ii) the use of variations in corporate logos by well-known organizations in Iran [the New Evidence]. The New Evidence sought to address aspects of the RPD's Decision. The RAD rejected the New Evidence on the

basis that the articles all predated the RPD's Decision and the Applicant failed to address the statutory criteria for its admission under subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*].

III. Legislative Framework

[13] Article 1F(b) of the *Refugee Convention* states:

1F. The provisions of this Con vention shall not apply to any person with respect to whom there are serious reasons for considering that:	1F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
…	…
(b) he has committed a serious non-political crime outside the country of refug e prior to his admission to that country as a refugee; ...	**b)** qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés; ...

[14] Section 98 of the *Act* provides that:

Exclusion — Refugee Convention	**Exclusion par application de la Convention sur les réfugiés**
98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

IV. Issues and Standard of Review

[15] The Applicant has raised the following issues, all of which go to the reasonableness of the merits of the Decision:

A. Did the RAD err in finding that the Applicant committed a serious non-political crime?

B. Did the RAD err in rejecting the Applicant's defence of duress?

C. Did the RAD err in not accepting the New Evidence?

[16] The applicable standard of review of the merits of a decision of the RPD is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show that the decision is unreasonable (*Vavilov* at paras 99-100).

V. Analysis

A. *Did the RAD err in finding that the Applicant committed a serious non-political crime?*

[17] The Applicant says that the RAD erred in its assessment of the seriousness of the Applicant's crime. He specifically takes issue with the RAD's consideration of the mitigating and aggravating factors in accordance with the leading authority of *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404. The Applicant argues that all of the factors should have been found as mitigating factors capable of rebutting the presumption of the seriousness of the Applicant's crime.

(1) The elements of the crime

[18] The Applicant submits that the RAD erred in concluding that the crime was a serious one when it involved no violence and no intent. The RAD addressed both arguments.

[19] The RAD rejected the suggestion that an absence of violence means that the crimes cannot be serious for the purpose of Article 1F(b) exclusion and found that purely economic offences can support a finding of exclusion. This reasoning is supported by Federal Court of Appeal case law which the Applicant did not dispute: *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 at paragraph 40.

[20] On the issue of intent, the RAD noted that the equivalent offences were not "simple frauds" and instead involved intentional deception. The Applicant takes issue with the suggestion that the Applicant's crime involves "deceptions that are capable of having a considerable economic impact on individual victims as well as a potentially large number of victims," which he says is exaggerated and not supported by the record. I disagree. The RAD justified its finding based on the context of the documents being submitted as part of an initial public offering and on the basis of the Company's size as one of the largest wire and cable companies in Iran. This reasoning is coherent and logical.

(2) Consideration of the Applicant as a reluctant participant

[21] The Applicant submits that it was not enough for the RAD to acknowledge that he was a reluctant participant in the fraudulent scheme and that it should have acknowledged his evidence

that he had “no choice” but to commit the fraud. Given that the RAD expressly accepted the Applicant’s role in the fraud as a mitigating factor, the Applicant’s submission is one related to the weight to be given to the Applicant’s testimony, which is not a basis for intervening in the RAD’s Decision (*Vavilov* at para 125).

(3) The penalty prescribed

[22] I can find no fault in the RAD failing to find as a mitigating factor the fact that no penalty had been imposed. In the absence of evidence that the Applicant’s crime was even known to authorities in Iran, this fact does not take on the significance urged.

(4) Canadian sentencing ranges

[23] On the factor of the Canadian sentencing range, the Applicant takes issue with the RPD’s suggestion that the Applicant would likely receive a lengthy sentence in the absence of submissions or evidence from the Minister. However, the RAD expressly noted that neither the Minister nor the Applicant provided any information on the Canadian sentencing ranges for the equivalent Canadian offences. Rather, the RAD accepted the RPD’s research that showed recent lengthy sentences had been imposed even in cases where the fraud had failed. While the Applicant also suggests that the RAD’s sentencing range analysis lacks transparency, the RPD provided the citations for the cases and provided distinguishing features of the cases that supported its analysis. Most critically, the Applicant did not dispute the RPD’s analysis before the RAD in circumstances where the onus was on the Applicant to rebut the presumption of the seriousness of the crime.

B. *The RAD did not err in rejecting the Applicant's defence of duress*

[24] The Applicant submits that the RAD erred in its assessment of his defence of duress when the facts were clear that he was forced to file the fraudulent documents under threat of imprisonment, which the Applicant contends amounts to a threat of bodily harm given the harsh prison conditions that exist in Iran.

[25] I find that the RAD reasonably addressed this same argument noting that based on the evidence in the record, the only consequences given by the Applicant's manager when he sought a job transfer was that the Company would require one month's notice, compensation for his training and payment of the promissory notes. It was also reasonable for the RAD to have rejected the Applicant's suggestion that there was an "implicit threat" of bodily harm given the lack of objective corroborating evidence related to the use of promissory notes in the employment context in Iran, which the RPD had expressly asked the Applicant for evidence of. The country condition evidence showing that imprisonment in Iran is tantamount to bodily harm is of little significance absent such objective evidence that it was more likely than not that the Applicant would be imprisoned.

C. *Did the RAD err in not accepting the New Evidence?*

[26] The Applicant submits that the RAD's rejection of the New Evidence was unreasonable. He contends that this evidence corroborates his claims related to the use of promissory notes, and by extension, the risk to his life in Iran.

[27] The RAD found that the New Evidence was not admissible, as the Applicant, who was represented by counsel, failed to address the statutory criteria for its admission under subsection 110(4) of the *Act* and had not shown that the evidence could not have been brought earlier, especially given the evidentiary gap expressly identified by the RPD related to the practice of promissory notes in the employment context in Iran and in circumstances where the RPD openly questioned the variation of company logos on the Applicant's documents.

[28] The Applicant asserts that he did meet the conditions in subsection 110(4) of the *Act* as he could not reasonably have known the RPD's credibility concerns and address them with the New Evidence before the RPD Decision was released. The Applicant relies on the fact that the RPD never invited the Applicant to make post-hearing submissions.

[29] I agree with the Respondent that the Applicant's submissions run up against clear judicial authority that holds that the failure on the part of an applicant to anticipate an adverse finding by the RPD is not a valid basis for bringing new evidence before the RAD (*Digaf v Canada (Citizenship and Immigration)*, 2019 FC 1255 at para 26), nor is the fact that the new evidence may contradict a finding by the RPD (*Arafa v Canada (Citizenship and Immigration)*, 2019 FC 6 at para 43).

VI. Conclusion

[30] The RAD's Decision exhibits the requisite transparency and intelligibility and is justified on the facts and the law that constrained it. As the Applicant has failed to show otherwise, this application is dismissed.

JUDGMENT in IMM-16549-24

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

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