

Federal Court



Cour fédérale

Date: 20251104

Docket: IMM-5873-23

Citation: 2025 FC 1775

Ottawa, Ontario, November 4, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MANSOOR AHMED SHIRAZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] affirming the decision of the Refugee Protection Division [RPD] that Mr. Mansoor Ahmed Shiraz is excluded from refugee protection by virtue of Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* [the Refugee Convention].

[2] Article 1F(b) of the Refugee Convention states that the provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that they have committed a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee. Article 1F(b) of the Refugee Convention is incorporated into section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[3] For the following reasons this application is dismissed.

II. Background

[4] The Applicant is a Pakistani national, formerly resident in the United Arab Emirates [UAE], and an adherent of the Ahmadiyya Muslim faith. He and his spouse entered Canada and claimed refugee protection based on a fear of persecution in Pakistan as Ahmadi Muslims.

[5] The Applicant's Basis of Claim [BOC] reflects a history of religious discrimination. He alleges that his family was harassed and threatened in Pakistan for practising the Ahmadi faith. As a result, Mr. Shiraz, his wife, and their two daughters, Azba and Mishel Mansoor, fled to Germany in 1990 to seek asylum. After waiting six years without success, he returned to Pakistan upon receiving an employment offer.

[6] In or around April 2008, Mr. Shiraz established an insurance brokerage in Dubai under the name "Platinum Insurance Brokerage" [Platinum Insurance]. Mr. Shiraz's regular responsibilities involved collecting client premiums, depositing them into his personal account, and later issuing cheques from the company account to insurers.

[7] In or around 2018, several cheques were returned for insufficient funds. UAE authorities treated this conduct as misappropriation of client funds, which was a criminal offence under the *Penal Code of the United Arab Emirates* at the time.

[8] Mr. Shiraz maintains that he did not know the cheques would be dishonoured. He alleges that three freelance agents retained by the firm failed to remit client payments, creating a shortfall in the company account. He claims that he attempted to secure a loan to address this deficit but learned, while travelling in Switzerland, that the loan had not been approved due to his business partner's refusal to provide consent. Aware that the dishonouring of cheques constituted a criminal offence under Article 399 (Deceit) of the *Penal Code of the United Arab Emirates*, Mr. Shiraz chose not to return to the UAE and instead travelled to Canada, where his children were already residing: His son, Mohammad Ahsan, was on a student visa seeking permanent residency while his elder daughter and her family were refugee claimants. He claims that his spouse was also in Canada visiting their children at the time.

[9] Following his arrival in Canada, Mr. Shiraz and his spouse filed claims for refugee protection. On April 30, 2020, the Minister of Public Safety and Emergency Preparedness [the Minister] intervened, alleging that there were serious reasons for considering that Mr. Shiraz had committed a serious non-political crime in the UAE, thereby triggering the exclusion clause in section 98 of the Act.

[10] The Minister disclosed a comprehensive documentary package to the RPD and Mr. Shiraz, including a Dubai Public Prosecution Case Certification, a statement of charges, a court-approved audit report, witness statements, and translations of the relevant UAE criminal

provision with corresponding Canadian *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] offences.

[11] On July 5, 2022, the Minister sought late disclosure of the UAE criminal judgment pursuant to Rules 36 and 50 of the *Refugee Protection Division Rules*, SOR/2012-256. That judgment confirmed that Mr. Shiraz had been convicted of misappropriating AED 8,138,722.41 (approximately \$2.9 million CAD), sentenced to three years' imprisonment, fined the equivalent amount of the misappropriated funds, and ordered deported from the UAE. Mr. Shiraz disputed the accuracy and fairness of the UAE proceedings. He maintained that he had been wrongfully accused and that the criminal charges were the result of a business dispute. He further argued that he would be unable to receive a fair trial if returned to the UAE.

III. Procedural History

RPD Decision

[12] In its decision dated July 6, 2022, the RPD found that there were serious reasons for considering the Applicant had committed a serious non-political crime within the meaning of Article 1F(b) of the Refugee Convention.

[13] In reaching that conclusion, the RPD relied upon the evidence disclosed by the Minister, including the UAE criminal judgment, the audit report, and witness statements, all of which it found credible and probative. The RPD rejected Mr. Shiraz's explanation that he had been defrauded by freelance sales agents, finding it unreasonable, given the substantial sum allegedly

lost (approximately \$450,000 CAD), that he did not report the matter to the authorities. In this regard, the RPD stated:

The panel does not accept the principal claimant's explanation as reasonable, on a balance of probabilities. While the principal claimant testified that he did not have a formal contract with these freelance sales agents, the panel finds that there was more than enough evidence to warrant a police investigation. For example, the sales agents would have had to deposit the cheques they received from clients into their own personal bank accounts, the clients would have been able to testify or provide evidence that they paid these sales agents to obtain insurance, employees of Platinum Insurance Brokerage would have been able to testify about the fact that these sales agents were working with the company and that insurance policies had been issued for their clients, and the fact that these sales agents had disappeared from their homes. 1,280,000 Dirhams is equivalent to approximately \$450,000 CAD, which is a large amount of money. Given the amount of money involved and the evidence that would have become available to the police through investigation, the panel finds it unreasonable that the principal claimant would not, at the very least, report the fraud to the police. [emphasis added]

[14] The RPD also rejected Mr. Shiraz's assertion that his departure from the UAE was compelled by immediate criminal jeopardy. It noted that, by his own testimony, the cheques had not yet been dishonoured when he was in Switzerland and that there was no credible evidence of a pending police case at that time. The RPD found that he still had an opportunity to address the matter through lawful means, i.e., by seeking additional time from the insurance companies, negotiating another loan, retaining legal counsel, or winding up the business. Instead, Mr. Shiraz chose to flee to Canada, a decision the RPD found unreasonable in the circumstances and inconsistent with his claim of imminent persecution.

[15] The RPD determined that, had Mr. Shiraz committed those same acts in Canada, they would correspond to several offences under the *Criminal Code*. These were fraud (s. 380), false

pretence (s. 362), misappropriation of money held under direction (s. 332), and theft (s. 334). It therefore found that Mr. Shiraz's conduct met the "serious reasons for considering" standard required for exclusion under Article 1F(b).

[16] The RPD concluded that Mr. Shiraz was excluded from refugee protection given the above findings, but that his spouse, whose claim was considered separately, was accepted as a Convention refugee.

IV. Decision Below

RAD Decision

[17] Mr. Shiraz appealed that decision to the RAD. He argued that the RPD erred in law and fact by finding him excluded under Article 1F(b), and that the decision was unreasonable because it relied on a UAE judgment which lacked credibility. He also sought to introduce new evidence in the form of an expert opinion from a Canadian criminal lawyer, who opined the conduct described in the UAE judgment would not have constituted a criminal offence in Canada [the Opinion].

[18] The RAD declined to admit the Opinion under s. 110(4) of the Act. It found that Mr. Shiraz had been aware of the charges and their factual basis for over a year before the RPD hearing and could reasonably have obtained such an opinion earlier. The RAD also noted that Mr. Shiraz was represented by counsel before the RPD, who had already made submissions on the *mens rea* and equivalence of offences under Canadian law. The RAD therefore held that the

evidence was not new, failed to meet the statutory criteria, and was inconsistent with this Court's guidance in *Ramachandiran v Canada (Citizenship and Immigration)*, 2023 FC 228.

[19] On the merits, the RAD found no reviewable error in the RPD's decision. It agreed that there were serious reasons for considering that the Applicant had committed a serious non-political crime in the UAE, resulting in his exclusion from the protections under Article 1F(b). The RAD accepted that the offence was financial in nature and of significant value, and that Mr. Shiraz's claims of ignorance or good faith were not supported by the record. The RAD found no indication that the UAE proceedings were politically motivated or otherwise connected to persecution, nor was there evidence suggesting the conviction was for political purposes.

[20] The RAD affirmed the RPD's reliance on the factors governing the presumption of seriousness for crimes punishable by ten years' imprisonment or more in Canada: *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 at para 44 [*Jayasekara*]. In reviewing the RPD's decision, the RAD examined the evidence associated with each factor and made the following findings:

- Elements of the crime: The issue was whether Mr. Shiraz had the requisite *mens rea* for the offence of intentionally misappropriating funds from his insurance brokerage. The RAD agreed with the RPD's conclusion that his account of an alleged fraud by freelance agents was not credible, and noted that, in the absence of any credible third-party intervention, there were serious reasons to believe that he possessed the necessary *mens rea*. The RAD also relied on the UAE court's finding that Mr. Shiraz acted with "deliberate intent" and found no basis to conclude that the foreign proceedings were

fundamentally unfair. On that basis, the RAD was satisfied that the Minister had established both the *actus reus* and the *mens rea* consistent with the Canadian *Criminal Code* offences.

- Mode of prosecution and penalty prescribed: The RAD rejected Mr. Shiraz's assertion that the RPD was required to speculate on the sentence he might receive in Canada. Citing *Ahmad v Canada (Citizenship and Immigration)*, 2022 FC 455, it held that the relevant inquiry concerns the seriousness of the actual sentence imposed abroad. It noted that the UAE judgment imposed three years' imprisonment, deportation, and a fine equivalent to approximately \$2.9 million CAD. In Canada, the comparable *Criminal Code* offences carry penalties of up to 14 years' imprisonment, with a mandatory minimum where the value exceeds \$1 million. The RAD concluded that the penalties in both jurisdictions reflect that the offence is objectively serious.
- Facts: The RAD considered Mr. Shiraz's risk in Pakistan but, relying on *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 at paragraph 40, confirmed that Article 1F(b) does not permit balancing the seriousness of the crime against potential risk of persecution. It therefore rejected the argument that the RPD erred by not weighing his fear of return in assessing exclusion.
- Mitigating or aggravating factors: The RAD noted that Mr. Shiraz did not identify any such factors. It found none on the record.

[21] Considering these findings, the RAD concluded that the RPD's analysis was justified, intelligible, and fell within the range of acceptable outcomes. It dismissed the appeal and confirmed Mr. Shiraz's exclusion from refugee protection under Article 1F(b) of the Refugee Convention and section 98 of the Act.

V. Issue

[22] Mr. Shiraz raises several points of disagreement with the RAD's decision. In my view, these may be distilled into two grounds. The first is that the RAD unreasonably declined to admit the new evidence on appeal. The second is that the RAD erred in upholding the RPD's finding of exclusion under Article 1F(b), as it treated his financial misconduct as a serious non-political crime and failed to consider his risk of persecution in that assessment.

VI. Standard of Review

[23] For substantive review, I agree with the parties that the decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

VII. Legal Framework

[24] Section 98 of the Act provides that 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. Article 1F(b), set out in the schedule to the Act, reads as follows:

Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees

F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

[...]

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

Sections E et F de l'article premier de la Convention des Nations Unies relative au statut des réfugiés

F Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

[...]

(b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

[25] Subsection 110(4) of the Act prescribes the strict limits on new evidence before the RAD:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal 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.

Éléments de preuve admissibles

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[26] Section 380 of the *Criminal Code* defines the indictable offence of fraud, which encompasses deceitful or dishonest conduct that deprives another of property, money, or a valuable security. It provides for a maximum penalty of fourteen years' imprisonment where the value exceeds \$5,000 and imposes a mandatory minimum sentence of two years where the total value of the fraud exceeds \$1 million:

Fraud

380 (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

Minimum punishment

(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.

Fraude

380 (1) Quiconque, par supercherie, mensonge ou autre moyen dolosif, constituant ou non un faux semblant au sens de la présente loi, frustre le public ou toute personne, déterminée ou non, de quelque bien, service, argent ou valeur :

(a) est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans, si l'objet de l'infraction est un titre testamentaire ou si la valeur de l'objet de l'infraction dépasse cinq mille dollars;

(b) est coupable :

(i) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans,

(ii) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire,

si la valeur de l'objet de l'infraction ne dépasse pas cinq mille dollars.

Peine minimale

(1.1) Le tribunal qui détermine la peine à infliger à une personne qui, après avoir été poursuivie par acte d'accusation, est déclarée coupable d'une ou de plusieurs infractions prévues au paragraphe (1) est tenu de lui infliger une peine minimale d'emprisonnement de deux ans si la valeur totale de l'objet des infractions en cause dépasse un million de dollars.

[27] Section 362 of the *Criminal Code* is the offence of obtaining property by false pretence, which includes situations where a person secures a benefit through deceit or misrepresentation. Subsection 362(4) further establishes a statutory presumption that the offence is made out when a dishonoured cheque is used to obtain property, absent proof that the accused reasonably believed the cheque would be honoured:

False pretence or false statement

362 (1) Every one commits an offence who

(a) by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person;

Punishment

(2) Every one who commits an offence under paragraph (1)(a)

(a) if the property obtained is a testamentary instrument or the value of what is obtained is more than \$5,000, is guilty of

(i) an indictable offence and liable to imprisonment for a term of not more than 10 years, or

(ii) an offence punishable on summary conviction; or

[...]

Presumption from cheque issued without funds

(4) Where, in proceedings under paragraph (1)(a), it is

Escroquerie : faux semblant ou fausse déclaration

362 (1) Commet une infraction quiconque, selon le cas :

(a) par un faux semblant, soit directement, soit par l'intermédiaire d'un contrat obtenu par un faux semblant, obtient une chose à l'égard de laquelle l'infraction de vol peut être commise ou la fait livrer à une autre personne;

Peine

(2) Quiconque commet une infraction visée à l'alinéa (1)a) :

(a) si le bien obtenu est un acte testamentaire ou si la valeur de ce qui est obtenu dépasse cinq mille dollars, est coupable :

(i) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans,

(ii) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire;

[...]

Présomption découlant d'un chèque sans provision

(4) Lorsque, dans des poursuites engagées en vertu de l'alinéa (1)a),

shown that anything was obtained by the accused by means of a cheque that, when presented for payment within a reasonable time, was dishonoured on the ground that no funds or insufficient funds were on deposit to the credit of the accused in the bank or other institution on which the cheque was drawn, it shall be presumed to have been obtained by a false pretence, unless the court is satisfied by evidence that when the accused issued the cheque he believed on reasonable grounds that it would be honoured if presented for payment within a reasonable time after it was issued.

Definition of *cheque*

(5) In this section, *cheque* includes, in addition to its ordinary meaning, a bill of exchange drawn on any institution that makes it a business practice to honour bills of exchange or any particular kind thereof drawn on it by depositors.

il est démontré que le prévenu a obtenu une chose au moyen d'un chèque qui, sur présentation au paiement dans un délai raisonnable, a subi un refus de paiement pour le motif qu'il n'y avait pas de provision ou de provision suffisante en dépôt au crédit du prévenu à la banque ou autre institution sur laquelle le chèque a été tiré, il est présumé que la chose a été obtenue par un faux semblant, sauf si la preuve établit, à la satisfaction du tribunal, que lorsque le prévenu a émis le chèque il avait des motifs raisonnables de croire que ce chèque serait honoré lors de la présentation au paiement dans un délai raisonnable après son émission.

Définition de *chèque*

(5) Au présent article, est assimilée à un chèque une lettre de change tirée sur toute institution où il est de pratique commerciale d'honorer les lettres de change de tout genre, tirées sur elle par ses déposants.

[28] Section 332 of the *Criminal Code* sets out the offence of theft by misappropriation, committed when money or property received under a specific direction is fraudulently applied to an unauthorized purpose:

Misappropriation of money held under direction

332 (1) Every one commits theft who, having received, either

Distraction de fonds détenus en vertu d'instructions

332 (1) Commet un vol quiconque, ayant reçu, soit seul, soit

solely or jointly with another person, money or valuable security or a power of attorney for the sale of real or personal property, with a direction that the money or a part of it, or the proceeds or a part of the proceeds of the security or the property shall be applied to a purpose or paid to a person specified in the direction, fraudulently and contrary to the direction applies to any other purpose or pays to any other person the money or proceeds or any part of it.

Effect of entry in account

(2) This section does not apply where a person who receives anything mentioned in subsection (1) and the person from whom he receives it deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, unless the direction is in writing.

conjointement avec une autre personne, de l'argent ou une valeur ou une procuration l'autorisant à vendre des biens meubles ou immeubles, avec instructions d'affecter à une fin ou de verser à une personne que spécifient les instructions la totalité ou une partie de cet argent ou la totalité ou une partie du produit de la valeur ou des biens, frauduleusement et en violation des instructions reçues affecte à une autre fin ou verse à une autre personne l'argent ou le produit, ou toute partie de cet argent ou de ce produit.

Effet d'une inscription à un compte

(2) Le présent article ne s'applique pas lorsqu'une personne qui reçoit une chose mentionnée au paragraphe (1) et celle de qui elle la reçoit traitent l'une avec l'autre de telle manière que tout argent versé à la première serait, en l'absence de telles instructions, régulièrement traité comme un article d'un compte, par doit et avoir, entre elles, à moins que les instructions ne soient données par écrit.

[29] Section 334 of the *Criminal Code* prescribes the general punishments for theft offences:

Punishment for theft

334 Except where otherwise provided by law, every one who commits theft

(a) if the property stolen is a testamentary instrument or the value of what is stolen is more

Punition du vol

334 Sauf disposition contraire des lois, quiconque commet un vol :

(a) si le bien volé est un acte testamentaire ou si la valeur de ce qui est volé dépasse cinq mille

than \$5,000, is guilty of	dollars, est coupable :
(i) an indictable offence and liable to imprisonment for a term of not more than 10 years, or	(i) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans,
(ii) an offence punishable on summary conviction; or	(ii) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire;
[...]	[...]

[30] Chapter 2, Article 399 of the *Penal Code of the United Arab Emirates* establishes the offence of deceit (as provided in the UAE Judicial Department's "Legislation Series in English"):

Shall be sentenced to detention or to a fine, whoever succeeds in appropriating, for him or for others, movable property, a deed or a signature thereon, cancellation, destruction or amendment thereof through deceitful means or use of false name or capacity, whenever this leads to deceit the victim and have him give away shall be sentenced to the same penalty, whoever disposes of an immovable or movable property being aware that it is not his property, that he is not entitled to dispose of it or disposes of it knowing that he previously disposed of, or contracted, it whenever such act of disposition causes prejudice to others.

Should the object of the crime be the property or a deed belonging to the State or one of the bodies mentioned in Article (5, [sic] this shall constitute an aggravating circumstance.

Attempt shall be sanctioned by detention for a term not exceeding two years or a fine not in excess of twenty thousand Dirham.

when [sic] condemning the recidivist to detention for a period of one year or more, the court may order putting him under control for a maximum period of two years provided it does not exceed the period of the adjudicated penalty.

VIII. Analysis

[31] I find no reviewable errors in the RAD's reasons that warrant this Court's intervention.

Admissibility of New Evidence Before the RAD

[32] I am not persuaded that the RAD erred in declining to admit Mr. Shiraz's new evidence.

[33] Subsection 110(4) of the Act prescribes the strict limits on new evidence before the Refugee Appeal Division:

Evidence that may be presented	Éléments de preuve admissibles
(4) On appeal, the person who is the subject of the appeal 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.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[34] Mr. Shiraz submits that the RAD erred in refusing to admit the Opinion. He argues that the letter was highly probative, as it opined that he would not be found guilty of any equivalent criminal offences in Canada. He further contends that procedural fairness was breached when the Minister disclosed the UAE judgment only one day prior to the RPD hearing, which, in his view, necessitated the introduction of the Opinion on appeal.

[35] Mr. Shiraz disputes the RAD's conclusion at paragraph 12 of its decision:

I am not persuaded that the appellant could not have reasonably expected to provide this evidence to the RPD in the circumstances.

The Appellant was represented by counsel before the RPD who raised arguments about the seriousness of the crime and the *mens rea* requirements of the Canadian criminal offences. I find that he had the opportunity to present evidence about these issues to the RPD before the decision, and it is reasonable to expect that he would have done so.

[36] Although Mr. Shiraz now raises concerns of procedural fairness, I need only address the application of subsection 110(4) of the Act because the record indicates that the Applicant raised no objection to the late disclosure before the RPD, despite being represented by counsel. He has also failed to identify any concrete prejudice or explain how he was deprived of a fair opportunity to know or respond to the case against him.

[37] I agree with the Respondent's submission:

The Applicant has not shown that the RAD erred. While he claims he could not have provided the opinion sooner because he was blindsided by the Minister's late disclosed [sic] of the UAE judgment, this claim is contradicted by the record. In May 2021, over a year before the hearing, the Minister submitted a lengthy package of documents describing the UAE charges, the factual allegations underpinning them, and their proposed Canadian equivalents. This information was sufficient to solicit a legal opinion well in advance of the decision.

[38] Mr. Shiraz has provided no explanation for *why*, considering the Minister's earlier disclosures, he could not reasonably have obtained a legal opinion addressing whether his conduct would engage Article 1F(b). The fact that a formal conviction had not yet been entered is immaterial to the exclusion analysis. Exclusion does not depend on a conviction, but rather on whether there are "serious reasons for considering" that the claimant committed the acts in question: *Moreno v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 298

(FCA) at 308; *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 at para 129 [*Zrig*]. The Minister is required only to show serious reasons to believe the individual committed the alleged acts, on a standard lower than the balance of probabilities: *Zrig* at para 56.

[39] I therefore conclude that the RAD did not err in finding that the Opinion failed to meet the requirements of subsection 110(4) of the Act and was properly excluded.

Reasonableness of the RAD's Decision Affirming the RPD's Article 1F(b) Exclusion

[40] Mr. Shiraz advances two arguments: first, that financial crimes such as misappropriation do not attract the presumption of seriousness under Article 1F(b); and second, that the RAD erred by failing to weigh his risk of persecution as an Ahmadi Muslim upon return to Pakistan.

[41] I do not accept that financial crimes fall outside the category of offences contemplated by the Supreme Court of Canada in *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 [*Febles*]. At paragraph 62, the Court set out examples of crimes suggested by the UNHCR where a presumption of serious crime might be raised:

Article 1F(b) is designed to exclude only those whose crimes are serious. The UNHCR has suggested that a presumption of serious crime might be raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery (Goodwin-Gill, at p. 179). These are good examples of crimes that are sufficiently serious to presumptively warrant exclusion from refugee protection. However, as indicated, the presumption may be rebutted in a particular case. While consideration of whether a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada is a useful guideline, and crimes attracting a maximum sentence of ten years or more in Canada will generally be sufficiently serious to warrant exclusion,

the ten-year rule should not be applied in a mechanistic, decontextualized, or unjust manner. [emphasis added]

[42] The governing framework for assessing seriousness under Article 1F(b) draws on international standards and the factors identified in *Jayasekara* at paragraphs 37 and 44: (1) the elements of the crime; (2) the mode of prosecution and penalty; (3) the factual circumstances; and (4) any mitigating or aggravating factors.

[43] As confirmed in *Febles* at paragraph 62, the applicable Canadian sentencing range is an additional consideration. A maximum penalty of ten years' imprisonment or more under Canadian law generally gives rise to a presumption of seriousness. However, the Court instructs that this presumption is rebuttable and must not be applied in a "mechanistic, decontextualized, or unjust manner": *Febles* at para 62; *Jayasekara* at para 55. The RAD adopted the RPD's application of these factors and addressed the issues raised by the Applicant.

[44] Mr. Shiraz submits that the finding of seriousness for financial crimes is inconsistent with the humanitarian purpose of the Refugee Convention. For this proposition, he relies on the dissent in *Febles* (paragraph 130) to argue that seriousness must be interpreted considering the Convention's human rights objectives. The dissent, though informative, is not binding and does not represent the law as it currently stands.

[45] The majority in *Febles* held that exclusion under Article 1F(b) turns only on "factors related to the commission of the criminal offences, and whether those offences were serious within the meaning of Article 1F(b):" *Febles* at para 6. Humanitarian considerations, including the claimant's current circumstances, rehabilitation, future dangerousness, or personal hardship,

are not relevant at this stage. At paragraph 60, Chief Justice McLachlin (as she then was) concluded:

Article 1F(b) excludes anyone who has ever committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee. Its application is not limited to fugitives, and neither is the seriousness of the crime to be balanced against factors extraneous to the crime such as present or future danger to the host society or post-crime rehabilitation or expiation. [emphasis added]

[46] The Court also defined what constituted a “serious” crime under Article 1F(b):

The Federal Court of Appeal in *Chan v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17150 (FCA), [2000] 4 F.C. 390 (C.A.), and *Jayasekara* has taken the view that where a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada, the crime will generally be considered serious. I agree. [emphasis added]

[47] The threshold for seriousness is therefore met where the conduct, if committed in Canada, would attract a maximum sentence of ten years’ imprisonment or more. Mr. Shiraz does not dispute that his alleged acts were criminal under Article 399 of the *Penal Code of the United Arab Emirates* and whether it corresponds to the several Canadian *Criminal Code* offences, each of which carries a maximum sentence exceeding ten years. As the decision notes, the UAE conviction, which involved misappropriation of approximately \$2.9 million CAD, resulted in a custodial sentence of three years’ imprisonment, a fine equivalent to the misappropriated funds, and deportation. The RAD reasonably considered this penalty comparable in seriousness to the sentences available under Canadian law.

[48] I note further that this Court has recognized that serious financial crimes, particularly those involving financial fraud or misappropriation, justify exclusion under Article 1F(b): see

Jain v Canada (Citizenship and Immigration), 2023 FC 539 at para 35; *Gyateng v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1660 at paras 23–25 and 59; and *Ma v Canada (Citizenship and Immigration)*, 2018 FC 252 at para 11.

[49] The Federal Court of Appeal has similarly affirmed that “a purely economic offence” can be sufficient to trigger exclusion: *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 at para 40 [*Xie*].

[50] I therefore find no reviewable error in the RAD’s determination that the Applicant’s financial crimes committed in the UAE constituted a serious, non-political offence warranting exclusion under Article 1F(b).

[51] I turn next to Mr. Shiraz’s submission that the RAD erred by failing to account for the persecution he would face as an Ahmadi Muslim if returned to Pakistan. In advancing this argument, he appears to conflate two separate findings: the RPD’s acceptance of his spouse’s claim based on her risk of persecution, and the exclusion analysis conducted in his case under Article 1F(b). Given the serious criminal conduct attributed to him, his legal circumstances are distinct from his spouse’s and was properly assessed separately under the exclusion analysis.

[52] The Federal Court of Appeal has made clear that exclusion under Article 1F(b) does not involve a balancing exercise between the seriousness of the crime and any risk faced upon return.

As noted by the RAD and the Respondent, paragraph 40 of *Xie* instructs:

I stress refugee protection because the certified question appears to suggest that the exclusion applies to claims for protection, which is not the case. It applies only to claims for refugee protection. I would also say that in the application of the exclusion, the Refugee

Protection Division is neither required nor allowed to balance the claimant's crimes (real or alleged) against the risk of torture upon her return to her country of origin. [emphasis added]

[53] This general principle was further re-affirmed in a broader context by the Court of

Appeal in *Jayasekara* at paragraph 44, citing *Xie*:

In other words, whatever presumption of seriousness may attach to a crime internationally or under the legislation of the receiving state, that presumption may be rebutted by reference to the above factors. There is no balancing, however, with factors extraneous to the facts and circumstances underlying the conviction such as, for example, the risk of persecution in the state of origin: see *Xie v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 (CanLII), [2005] 1 F.C.R. 304 (F.C.A.), at paragraph 38; *Immigration and Naturalization Service v. Aguirre-Aguirre*, at page 427; *T. v. Secretary of State for the Home Department*, 1905 CanLII 172 (MB CA), [1995] 1 W.L.R. 545 (C.A.), at pages 554-555; *Dhayakpa v. Minister of Immigration and Ethnic Affairs*, at paragraph 24. [emphasis added]

[54] Accordingly, I find no error in the RAD's conclusion that Mr. Shiraz's risk as an Ahmadi Muslim in Pakistan was not relevant to the determination of whether Article 1F(b) applied.

IX. Conclusion

[55] This application is dismissed. No question was proposed to be certified.

JUDGMENT in IMM-5873-23

THIS COURT'S JUDGMENT is that this application is dismissed, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

HUSSAIN BUKHARI	FOR THE APPLICANT
ZOFIA ROGOWSKA	FOR THE RESPONDENT

SOLICITORS OF RECORD:

BUKHARI LAW PROFESSIONAL CORPORATION MISSISSAUGA, ONT	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ONT	FOR THE RESPONDENT