Federal Court  Cour fédérale

**Date: 20200226**

**Docket: IMM-3133-19**

**Citation: 2020 FC 303**

**Ottawa, Ontario, February 26, 2020**

**PRESENT: Mr. Justice Russell**

**BETWEEN:**

**HOSSEIN ASRI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. INTRODUCTION

[1] The Applicant is a citizen of Iran who seeks refugee protection in Canada based on his fear of persecution arising from his alleged conversion to Christianity. On December 13, 2017, the Refugee Protection Division [RPD] dismissed his claim due to credibility concerns. On appeal to the Refugee Appeal Division [RAD], the Applicant sought to introduce new evidence to further corroborate his claim. The RAD declined to accept this new evidence and upheld the

RPD's refusal on April 23, 2019 [Decision]. This is a judicial review of the RAD's Decision, pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], in which the Applicant asks the Court to quash the Decision and remit the matter back to the RAD for re-determination.

## II. BACKGROUND

[2] The Applicant was born into a Muslim Shi'ite family. After a series of tragic personal events, he alleges he lost his faith in Islam and fell into depression in 2011. In January 2016, one of his employees, Mehrdad, allegedly introduced him to Christianity. He subsequently began attending bible studies in Mehrdad's home once every two weeks.

[3] One day several months later, Mehrdad did not show up to work following a religious gathering in his home the previous evening. The Applicant was unable to contact Mehrdad or other members of the house church. Feeling his life was in danger for apostasy, the Applicant sought refuge with his friend, Khosrow. Two days later, the Basij allegedly visited and searched his parents' home, detained his father, and accused the Applicant of being an apostate, anti-Islam, and anti-revolution. The Basij further informed his mother that Mehrdad and others in the home church group were in custody, and that they were searching for the Applicant. Khosrow later arranged for an agent to help the Applicant obtain a temporary residence visa [TRV] to Canada and flee Iran.

A. *The RPD Decision*

[4] The RPD felt the determinative issue in the Applicant's claim was his lack of credibility. Citing the inherent difficulty in assessing whether an applicant is a true religious convert, the RPD examined the Applicant's overall general credibility to determine whether his testimony could be relied upon.

[5] The RPD noted the Applicant first arrived in Canada on January 16, 2017, but waited to file his claim until July 16, 2017. The Applicant explained he was advised by an agent to wait as his file was incomplete, but after a period of time he grew tired of waiting and, with the help of a lawyer, filed it himself. The RPD found it unreasonable that the Applicant delayed making his claim given that he was aware of the serious consequences in Iran and had fled to Canada to avoid them. The RPD drew a negative inference.

[6] The Applicant testified that his friend Khosrow worked at an immigration office and arranged for an agent to assist him to flee Iran. When asked why Khosrow's position with the immigration office was omitted from his Basis of Claim [BOC] form, the Applicant explained "nobody wanted [him] to write this." The RPD rejected this explanation, noting the Applicant was represented by counsel and had been explicitly instructed to include every important detail of his claim. The RPD felt this omission was central to his claim as it spoke to his ability to remain in hiding and his eventual departure from Iran. Further, the RPD found the Applicant's explanations to be evolving. For example, the Applicant provided additional information about

Khosrow's position only when the timing of the visa application became an issue. On this basis, the RPD drew a general negative credibility finding.

[7] When presented with inconsistencies between the TRV and the BOC, the Applicant said that an agent arranged by Khosrow had completed all of his forms and he was never able to verify the TRV information. However, the RPD noted his birth certificate translation—which he purportedly provided to Khosrow and which the agent relied upon—was dated two days prior to the alleged incidents which prompted him to flee. Moreover, the Applicant's overall TRV application was dated the day he purportedly went into hiding and included information which predated all of the events by several months. The RPD felt these inconsistencies suggested his supporting TRV documents were fraudulently prepared prior to the events which prompted him to flee. When confronted with these concerns, the Applicant explained he had given all of his documents to Khosrow at an earlier point in time. The RPD found the Applicant's explanations to be evolving and drew a negative inference. Further, it found that, even if it accepted the Applicant's explanation that he had provided the documentation earlier, this still meant the Applicant had provided fraudulent documents to mislead immigration officials prior to the alleged event which prompted him to flee occurring.

[8] Turning to his alleged conversion, the RPD found that the Applicant's testimony regarding his practice and understanding of Christian teachings was rudimentary and consisted only of vague and general statements. Conceding a "sound grasp of theory of a belief system is not a requirement for one to consider oneself a follower of that belief system," the RPD found

general information about a belief system which is publically available was equally insufficient on its own to demonstrate the Applicant was a genuine follower.

[9] Based on the above, the RPD found that the cumulative effects of the negative inferences undermined the Applicant's overall credibility as a witness (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 604 (QL) at 244 [*Sheikh*]). As such, the RPD found the Applicant's allegations about his conversion and the events that had led him to flee Iran not credible.

[10] The Applicant also provided witness testimony from a pastor from St. Luke's Church in Toronto, which the Applicant had attended since March 2017, and letters from his parents and Khosrow. The pastor testified that the Applicant had attended an 8-week course in preparation for baptism, had participated in a charity program to feed the hungry, and had showed himself to be an inquisitive and committed member of the Church. Nonetheless, the RPD felt this evidence did not overcome its credibility concerns and that, on a balance of probabilities, the Applicant's attendance at church in Canada was an attempt to buttress his claim rather than due to his genuine belief. Meanwhile, the RPD assigned the letters little weight, noting in particular that Khosrow's statement that he had secured an agent on September 23, 2016 was inconsistent with the Applicant's claim that he immediately asked for assistance on September 21, 2016.

B. *Appeal to the RAD and New Evidence*

[11] In support of his appeal to the RAD, the Applicant submitted new evidence under s 110(4) of the *IRPA*: two court summonses and a final verdict sentencing him to 12 years,

Tazari imprisonment, and 72 lashes for promoting Christianity and cooperating with groups or sects promoting non-Islamic religions. He explained that his brother had not disclosed these documents to him earlier because he felt the Applicant had sufficient documentation for his claim and was worried that this knowledge would exacerbate his mental health concerns. He asserted that this new evidence necessitated an oral hearing (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]; *IRPA*, s 110(6)).

[12] In challenging the RPD's credibility conclusions, the Applicant first asserted that the RPD had erred in concluding that a general finding of a lack of credibility may extend to all relevant evidence emanating from a claimant's testimony. He submitted this could only occur where the RPD had made a finding of "no credible basis" (*Rahaman v Canada (Citizenship and Immigration)*, 2002 FCA 89; *Sheikh*, above). As this was not the case, his external evidence (such as the pastor's testimony) should have been independently assessed.

[13] Second, the Applicant submitted that, when assessing his delay in filing a claim, the RPD had failed to consider that he had family in Canada and was in possession of a Canadian visitor's visa, and would therefore not be forced to return to Iran (*De Matos Correira v Canada (Citizenship and Immigration)*, 2005 FC 1060). With respect to the inconsistencies between his TRV and BOC, he submitted these could not be used to impugn his *entire* testimony and discredit *all* of his evidence. By focusing on these minor inconsistencies, the RPD was overzealous in seeking out errors. Further, using these errors to discredit the support letters from his family and Khosrow without further explanation was an error (*Attakora v Canada (Minister of Employment and Immigration)*, (1989) 99 NR 168 (FCA) [*Attakora*]).

[14] Finally, the Applicant submitted that the RPD had erred in assessing his genuine belief in the Christian faith. He asserted that the RPD has held him to an unreasonably high standard of religious knowledge, and that it was unreasonable to assess the soundness of his theology rather than the genuineness of his faith (*Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139; *Wang v Canada (Citizenship and Immigration)*, 2012 FC 346; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 15). He asserts the RPD also failed to consider how difficult it would be to explain his faith through an interpreter.

## III. DECISION UNDER REVIEW

[15] The RAD reviewed the Applicant's application *de novo*, deferring to the RPD's credibility assessment on oral evidence only where expressly noted.

[16] The RAD refused to admit the Applicant's proposed new evidence, finding the summonses had been reasonably available prior to his RPD hearing. Noting the Applicant was represented by counsel and had an obligation to obtain documentation where available, the RAD found the Applicant had not made any effort to inquire about whether legal action had been taken against him despite all the new documentation being issued prior to his RPD hearing. Second, the RPD felt the Applicant's mother—who received the second summons herself and with whom he was in contact even while in hiding—would have reasonably informed him of its existence, and that no explanation for her silence was provided. Third, the RPD noted the Applicant had provided no documentation corroborating why his brother kept this information from him, or how his brother became aware of the summons or verdict. Finally, the RAD found the Applicant's explanation not credible: given that his claim was based on religious apostasy, the

RAD felt his family members would have known not to withhold such material documentation. Given this, the RAD also refused to hold an oral hearing (*IRPA*, s 110(6)).

[17] Turning to the genuineness of his religious belief, the RAD found the Applicant's explanation of the circumstances that prompted him to adopt the Christian faith were vague, general, and did not sufficiently explain why he would undergo such personal risk. The RAD further found the Applicant had failed to demonstrate a personal connection to baptism or explain why it was meaningful to him, or to explain the personal changes he had undergone as a result of his Christian practice. The RAD further noted inconsistencies between the Applicant's BOC and oral testimony concerning what drove him to Christianity: in his BOC, he said it was due to personal tragedy, whereas in oral testimony he alleged it was because he did not accept Islam any longer. The RAD felt this inconsistency further undermined his credibility. Finally, the RAD noted the Applicant did not articulate how the stress of the hearing, or the use of an interpreter, had impaired his ability to demonstrate his sincere belief in Christianity.

[18] The RAD found the Applicant inconsistent about the agent's level of involvement in his escape from Iran, and accordingly declined his explanations as to inconsistencies between the TRV and BOC. The RAD also found his testimony concerning his falsified birth certificate evasive, and his testimony about his prior plans to come to Canada evolving. Given that the falsified birth certificate had been prepared before his risk arose, the RAD found this undermined his credibility with respect to whether the alleged events had occurred.

[19] The RAD also found that the Applicant had not explained what information or assistance he was waiting for from the agent that caused him to delay making his claim in Canada. This was compounded by the fact that he knew he could contact a lawyer to help start his application. The RAD felt that, had he truly held a subjective fear, he would not have delayed his claim despite having a valid visitor's visa.

[20] The RAD further noted the Applicant's testimony that, while he was in hiding, he was able to travel to Azerbaijan and back in October 2016 in order to provide biometrics at the Canadian consulate for his visa application. The RAD felt his return to Iran was inconsistent with his alleged fear.

[21] The RAD gave little weight to the Applicant's support letters, noting first that they were out-of-court statements that could have been drawn up by anyone as they had no identity documentation attached to them (*Al-Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360 at para 34). The RAD also highlighted inconsistencies between the Applicant's testimony and Khosrow's letter concerning the nature of the assistance that both Khosrow and the agent had provided, and between the parents' letters and his own testimony about how they had contacted him.

[22] Finally, the RAD found the Applicant's attendance at church in Canada could only attest to his attendance, not his motivation, and that the pastor's assessment of the genuineness of his religious convictions could not properly substitute the RAD's own assessment (*Cao v Canada (Citizenship and Immigration)*, 2008 FC 1174). Having found the Applicant's claims about

attending church in Iran were not credible, the RAD found that his activities in Canada were undertaken only to advance a fraudulent refugee claim and were therefore incapable of supporting that he was a genuine practitioner of the Christian faith and would continue to practice in Iran should he be returned. Nor was there any evidence that his religious activities in Canada had come to the attention of the Iranian authorities.

[23] As there was no credible evidence that the Applicant was a Christian convert, the RAD declined to conduct a fulsome s 97 assessment.

## IV. ISSUES

[24] The issues raised in the present matter are the following:

1. Did the RAD err by refusing to admit the Applicant's new evidence?

2. Was the RAD's Decision to uphold the RPD's refusal unreasonable?

## V. STANDARD OF REVIEW

[25] This application was argued following the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. However, the memoranda of the parties were provided prior to these decision; their written submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. Given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court finds it unnecessary to ask the parties to make additional written

submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application, and it does not change the applicable standards of review nor my conclusions in this case.

[26] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* and instated a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[27] In this case, both the Applicant and the Respondent submitted that the applicable standard of review was that of reasonableness. I agree. There is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica*], and *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 15-16.

[28] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 among others). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

## VI. STATUTORY PROVISIONS

[29] The following provisions of the *IRPA* are relevant to this application for judicial review:

| | |
|---|---|
| **95 (1)** Refugee protection is conferred on a person when | **95 (1)** L'asile est la protection conférée à toute personne dès lors que, selon le cas : |
| **(a)** the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident | **a)** sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire |

under a temporary resident permit for protection reasons;

au titre d'un permis de séjour délivré en vue de sa protection;

**(b)** the Board determines the person to be a Convention refugee or a person in need of protection; or

**b)** la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;

**(c)** except in the case of a person described in subsection 112(3), the Minister allows an application for protection.

**c)** le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).

**(2)** A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).

**(2)** Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

**(a)** is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

**(b)** not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**97 (1)** A person in need of protection is a person in

**97 (1)** A qualité de personne à protéger la personne qui se

Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

**(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

**(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

**(i)** the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

**(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

**(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

**(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.

**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**(2)** A person in Canada who is

**(2)** A également qualité de

| | |
|---|---|
| a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. | personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. |
| … | … |
| **110 (1)** Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection. | **110 (1)** Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile. |
| … | … |
| **(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. |
| **…** | **…** |
| **(6)** The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3) | **(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois : |
| **(a)** that raises a serious issue with respect to the credibility of the person who is the subject | **a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en |

of the appeal;

**(b)** that is central to the decision with respect to the refugee protection claim; and

**(c)** that, if accepted, would justify allowing or rejecting the refugee protection claim.

…

**171** In the case of a proceeding of the Refugee Appeal Division,

…

**(a.3)** the Division may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances;

…

**111 (1)** After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

**(a)** confirm the determination of the Refugee Protection Division;

**(b)** set aside the determination and substitute a determination that, in its opinion, should have been made; or

**(c)** refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it

cause;

**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;

**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

…

**171** S'agissant de la Section d'appel des réfugiés :

…

**a.3)** elle peut recevoir les éléments de preuve qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision;

…

**111 (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

considers appropriate.

[30] The following provision of the *Refugee Protection Division Rules*, SOR/2012-256 is relevant to this application for judicial review:

| | |
|---|---|
| **42 (1)** A party who has provided a copy of a document to the Division must provide the original document to the Division | **42 (1)** La partie transmet à la Section l'original de tout document dont elle lui a transmis copie : |
| **(a)** without delay, on the written request of the Division; or | **a)** sans délai, sur demande écrite de la Section; |
| **(b)** if the Division does not make a request, no later than at the beginning of the proceeding at which the document will be used. | **b)** sinon, au plus tard au début de la procédure au cours de laquelle le document sera utilisé. |

[31] The following provisions of the *Refugee Appeal Division Rules*, SOR/2012-257 are relevant to this application for judicial review:

| | |
|---|---|
| **29 (1)** A person who is the subject of an appeal who does not provide a document or written submissions with the appellant's record, respondent's record or reply record must not use the document or provide the written submissions in the appeal unless allowed to do so by the Division. | **29 (1)** La personne en cause qui ne transmet pas un document ou des observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique ne peut utiliser ce document ou transmettre ces observations écrites dans l'appel à moins d'une autorisation de la Section. |
| … | … |
| **(4)** In deciding whether to allow an application, the Division must consider any | **(4)** Pour décider si elle accueille ou non la demande, la Section prend en considération tout |

| | |
|---|---|
| relevant factors, including | élément pertinent, notamment : |
| **(a)** the document's relevance and probative value; | **a)** la pertinence et la valeur probante du document; |
| **(b)** any new evidence the document brings to the appeal; and | **b)** toute nouvelle preuve que le document apporte à l'appel; |
| **(c)** whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record. | **c)** la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique. |

## VII. ARGUMENTS

### A. *Did the RAD err by refusing to admit the Applicant's new evidence?*

#### (1) Applicant

[32] The Applicant submits the RAD erred in not admitting his new evidence, asserting his explanation as to why he did not have access to these documents earlier was reasonable. Given that the RAD never questioned the authenticity of the documents nor the serious consequences awaiting him should he be removed to Iran, the Applicant submits the RAD also should have been more flexible in admitting this evidence (*Singh v Canada (Citizenship and Immigration),* 2014 FC 1022 at para 55; *Khachatourian v Canada (Citizenship and Immigration),* 2015 FC 182). The Applicant notes his claim was well-documented, and this reflected his due diligence in making efforts to obtain corroborating documentation overall. That he was aware of the consequences of his acts does not necessarily mean he would have been aware of actual legal

documents issued against him. He stresses that his entire family was aware of his history of depression and purposefully hid this information to protect him.

(2) Respondent

[33] The Respondent asserts the Applicant's evidence—dated March, May and August 2017—did not meet the threshold for admissibility as it arose prior to the rejection of the RPD claim, was reasonably available, and was reasonably expected in the circumstances (*Singh*, at paras 34-35, 56; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13; *IRPA*, s 110(4)). It was open to the RAD to reject the Applicant's explanations, especially as he provided no evidence to corroborate those explanations and that this evidence was easily available to him in the circumstances (*Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at para 34 [*Ikeme*]).

B. *Was the RAD's Decision to uphold the RPD's refusal unreasonable?*

(1) Applicant

[34] The Applicant submits that the RAD erred by failing to conduct an independent assessment of the record (*Huruglica*; *Ali v Canada (Citizenship and Immigration)*, 2016 FC 396 at para 4). He submits that his explanation for converting to Christianity—that Mehrdad, who introduced him to Christianity, was supportive and kind to him through his mental health problems—was both reasonable and plausible, and that his explanations were not general nor vague. He notes that depression can result from a number of factors, and that ignoring that his depression arose from his observations of the Iranian regime, the death of his close friend, and

his father's health problems was unreasonable. He also submits that the RAD erred by expecting him to have a certain level of knowledge of Christianity, rather than by assessing the genuineness of his belief (*Dong v Canada (Citizenship and Immigration)*, 2010 FC 55 at para 20; *Wang v Canada (Citizenship and Immigration)*, 2011 FC 1030 at para 13).

[35] With respect to his visa application, the Applicant reiterates it was an agent who applied for his TRV and that he was never given the application to check. Explaining that he had provided Khosrow with previous documentation, he says this documentation was not fake and that Khosrow or the agent must have included false information in the TRV without his knowledge. This is why he did not explain its inclusion in his BOC. He further clarifies that, although Khosrow was initially assisting him with the TRV, it was an agent who completed it once his risk materialized and therefore his testimony on this point was not contradictory. He says he decided not to include his original TRV application plans in his BOC because it was not relevant to his risk. He asserts the RAD's fixation with these concerns was an unreasonable microscopic assessment (*Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 24, citing *Attakora*).

[36] The Applicant also submits it was reasonable that he relied on the agent's advice to delay filing his claim given that he had a visitor visa and therefore was not subject to removal, and the agent had successfully assisted him to exit Iran and had thereby earned his trust (*El Balazi v Canada (Citizenship and Immigration)*, 2006 FC 38 at paras 7-10, citing *Houssainatou Diallo v Canada (Citizenship and Immigration)*, 2002 FCT 2004 and *Hue v Canada (Minister of Employment and Immigration)*, [1988] FCJ No 283; *Brown v Canada (Citizenship and*

*Immigration)*, 2011 FC 585 at paras 39-40). Further, it was plausible that the same agent had helped him enter and exit Azerbaijan to obtain the necessary biometrics; the RAD does not explain how the Applicant could have entered Canada by not returning to Iran (*Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533; *Tan v Canada (Citizenship and Immigration)*, 2008 FC 675 at para 17).

[37] Finally, the Applicant submits his corroborative documents were unfairly treated by the RAD. For example, he notes there is no requirement for identification documents to corroborate letters if there are other indicators of authenticity (*Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 at para 52). Further, the RAD's finding on inconsistency in that he testified he was drawn to Christianity because it assisted his state of mind, whereas the pastor testified it was because of Jesus' love and forgiveness, was a microscopic demarcation that ignores that there are multiple reasons to be drawn to a faith. Moreover, neither the RPD nor the RAD gave express reasons why they discounted the pastor's testimony, which was presumed true, and nor did they give the pastor an opportunity to respond to any concerns arising from his evidence (*Bakcheev v Canada (Citizenship and Immigration)*, 2003 FCT 202 at para 6).

(2) Respondent

[38] The Respondent submits the RAD conducted its own assessment of the Applicant's file and correctly confirmed the RPD's rejection of his claim (*Huruglica*, at para 103; *Guo v Canada (Citizenship and Immigration)*, 2017 FC 317 at paras 16-19 [*Guo*]; *Tekle v Canada (Citizenship and Immigration)*, 2017 FC 1040 at para 25). The Respondent stresses disagreement with the RAD's conclusion is not, without more, grounds for judicial intervention (*Dunsmuir*, at para 47;

*Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 at para 42; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12, 14-16, 18; *Guo*, at para 9).

[39] The Respondent submits that the totality of the Applicant's evidence, including his omissions and contradictions, supported the RAD's ultimate conclusion. As such, whether or not he had a TRV and thus could reasonably delay making a claim was not a determinative error (S*heikh*, at p 244; *Niyonkuru v Canada (Citizenship and Immigration)*, 2005 FC 174 at para 23 [*Niyonkuru*]; *Akhtar Mughal v Canada (Citizenship and Immigration)*, 2006 FC 1557 at para 31; *Kosumov v Canada (Citizenship and Immigration)*, 2015 FC 1297 at para 11; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at paras 34, 50; *Sithamparanathan v Canada (Citizenship and Immigration)*, 2017 FC 164 at paras 15, 17, 21, 23; *Borubae v Canada (Citizenship and Immigration)*, 2018 FC 125 at paras 18-20; *Mohamoud v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 665 at paras 26, 29-30). It was reasonably open for the RAD to find the Applicant's evidence vague and general: not only was he unable to recall the documents presented to him that convinced him to become a Christian, but his testimony about his distress in Iran, his acquisition of his visa, and his delays were all vague and evolving. Further, his reavailment to Iran after travelling to Azerbaijan was inconsistent with his stated fear of harm (*Ikeme*, at para 20; *Maqdassy v Canada (Citizenship and Immigration)*, 2002 FCT 182 at para 16).

[40] The Respondent submits that the Applicant's inconsistencies were sufficient to rebut the presumption of truth of his testimony and, given he had no corroborating evidence not tainted by

his credibility, there was no reliable objective evidence to support his claim (*Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5 at para 19; *Ma v Canada (Citizenship and Immigration)*, 2015 FC 838 at para 21 [*Ma*]; *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 17; *Thopke v Canada (Citizenship and Immigration)*, 2017 FC 532 at para 37; *Khansary v Canada (Citizenship and Immigration)*, 2017 FC 1146 at paras 30-31; *Adebayo v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 330 at para 37). Contrary to the Applicant's assertion, the RPD (and by extension, the RAD) was properly able to make a general finding of a lack of credibility, and did so appropriately (*Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at para 36, citing *Hohol v Canada (Citizenship and Immigration)*, 2017 FC 870 at para 19). The Respondent submits that the Applicant's explanations for his visa discrepancies were contradictory and lacked common sense, and points out that the Applicant made no attempt to correct the fraudulent information upon his arrival in Canada (*Niyonkuru*, at para 23). Having impugned his overall credibility, the RAD was entitled to reject even uncontradicted evidence which was not "consistent with the probabilities affecting the case as a whole" (*Faryna v Chorny*, [1952] 2 DLR 354 (BCCA) at pp 356-359; *Ma*, at paras 38-57; *KK v Canada (Citizenship and Immigration)*, 2014 FC 78 at paras 68-69; *Sidiqi v Canada (Citizenship and Immigration)*, 2017 FC 17 at paras 23, 30-31, 34; *Dosunmu v Canada (Citizenship and Immigration)*, 2017 FC 188 at para 26; *Kipa Numbi v Canada (Citizenship and Immigration)*, 2012 FC 1037 at para 19; *Ikeme*, at para 20; *Cao v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 364 at para 27).

## VIII. ANALYSIS

[41] This is a very troubling application. The Decision is based upon a cumulative series of negative inferences, some of which seem reasonable to me, but others seem questionable.

[42] For example, the testing of the genuineness of the Applicant's conversion to, and practice of, Christianity is, as so often in this type of case, problematic. The RPD and the RAD rely upon what they think are inconsistencies in the Applicant's explanations for why he became a Christian, as well as what they consider to be a lack of knowledge about some of the basic tenets of Christianity such as, for instance, baptism. The Applicant does provide answers to these issues to support that his conversion is genuine and that, as a fairly recent convert, he has gained some knowledge of the basic teachings of his new faith. But this is simply not enough for the RPD and the RAD. They think he would know more if his Christian faith is genuine and they draw the usual negative inference.

[43] As the Court has pointed out on many occasions, sincerely religious people experience and express their faith in many different ways. In the present case, the Applicant does not answer incorrectly; he simply fails to provide the level of detail that the RPD and RAD—based upon no objective or recognized standard—arbitrarily conclude that a true convert should have. Faith, however, is a very personal matter.

[44] In trying to satisfy the RPD, the Applicant was a recent arrival in Canada facing language barriers and suffering from depression based upon personal losses in Iran that were not

questioned by the RPD or the RAD. He also had strong support from his pastor and others who know of his faith and religious practices. All of this is rejected by the RAD:

> [46] I have reviewed the pastor's letter and the baptism certificate, which were issued by the Appellant's church in Canada, in the context of the totality of the evidence. I find that the Appellant's attendance at a church in Canada can only attest to his participation in church activities, but cannot attest to his motivation. In this regard, case law indicates that a pastor's assessment of the genuineness of a person's faith cannot be substituted for the assessment that the panel is required to make.
>
> [47] In this case, I give little evidentiary weight to the pastor's letter, testimony, and the baptismal certificate. I note that the pastor's letter states that the Appellant told him he was drawn to Christianity because of the love and forgiveness that is the basis of Christianity. I note that this is inconsistent with the Appellant's BOC about what drew him to Christianity, which was that he vaguely stated he felt "relaxed and felt Jesus in his heart" one day. I also note that the pastor's letter states that he started attending St. Luke's in March 2017, when his BOC states that he joined in February 2017. Further, I find that the attendance at church service and baptism does not speak to the genuineness his convictions. Churches are public institutions and so, any member of the public is welcome to attend.

[45] I can understand the RAD saying, for instance, that baptism does not prove conclusively that the Applicant is a genuine Christian, but I don't think it is possible to say that baptism "does not speak to the genuineness [of] his conviction." Surely baptism, in conjunction with his pastor's observation, says at least something about the genuineness of the Applicant's convictions. There is a taint of cynicism in the RAD's conclusions that suggests to me that the RAD was not entirely objective in its examination of the Applicant's religious commitment.

[46] In short, given the Applicant's personal circumstances, his reasons for converting to Christianity, and the degree of knowledge that the RPD and the RAD required of him, I find that the RAD's conclusions on the genuineness of his religious faith are not reasonable.

[47] This finding alone means that the matter must go back for reconsideration. If the Applicant is a genuine Christian convert then he is obviously at risk in Iran.

[48] However, I also see other unreasonable errors. For example, the RAD concludes that the Applicant returned to Iran from Azerbaijan in spite of his claimed fears. The Applicant says that he had to return to Iran so that his visitor visa for Canada could be issued. The RAD rejected this as an insufficient explanation as follows:

> [33] Even if I believe the Appellant was able to cross the Iranian border to get to Azerbaijan with the assistance of an agent, his behaviour is inconsistent with his alleged fears in Iran. Again, the Appellant claimed that he was very concerned and scared after learning the Basij raided his parents' home, detained his fellow church members, and learned that the Basij were looking for him for apostasy, and had even taken his father into custody. Yet, despite knowing this on September 23, 2016, the Appellant returned to Iran after he successfully exited the country to go to Azerbaijan in October 2016. It defies common sense that the Appellant would return to Iran after he was safely in another country and outside of the reach of the Iranian authorities. He could have continued on to Canada from Azerbaijan to claim refugee protection.

[49] It is notable that the RAD does not explain its bald assertion that "he could have continued on to Canada from Azerbaijan to claim refugee protection." The Applicant was alone in Azerbaijan. He was without documentation. The RAD does not explain, for example, how the Applicant would have been allowed to get on a plane and fly to Canada, or how he could have

left Azerbaijan in any other way that would not have brought him to the attention of the authorities who would have returned him to Iran in a manner that would have brought him to the attention of the Iranian authorities he was fleeing. The RPD only asked him how he got across the Azerbaijan/Iranian border and he explained that he had been assisted by an agent. There is no evidence that this agent also had the means to get him out of Azerbaijan and into Canada. Hence, returning to Iran to pick up his visa so that he could fly to Canada was not inconsistent with his alleged fears in Iran because there is no evidence that he has some other way to get to Canada.

[50] There is similar faulty reasoning in the RAD's reliance upon the Applicant's delay in making a claim once he had entered Canada on a visitor visa:

> [31] I reject the Appellant's argument and find the RPD did not err. The RPD asked the Appellant why it took him seven months to apply for refugee protection in Canada, and the Appellant stated that it was because he was waiting for information from his agent, and when he got tired of waiting he decided to contact a lawyer and start his claim. I do not accept this explanation for his delay because the Appellant did not know what information or assistance he was waiting for from the agent in order to initiate his claim, and the Appellant did not require the assistance of his agent to make a refugee claim in Canada. The fact that the Appellant eventually contacted a lawyer to assist him with his claim illustrates that he knew this. Furthermore, while I agree that the Appellant had a valid visitor visa at the time of his arrival, his actions are inconsistent with his own alleged fears. The Appellant alleges he was hiding in Iran for three months fearing the Basij who were searching for him, the Basij raided his parents' home, and allegedly the authorities had his fellow church members in custody. He also alleged that things were so dire he required an agent to get him out of Iran so that he could safely come to Canada. The Appellant stated in his BOC that he was very scared and in his testimony he said that he knew he was in danger in Iran when the incidents happened. Given the Appellant's own evidence for why he fled Iran and his stated fears, I find his delay in claiming refugee protection in Canada is inconsistent with his stated fears. One would expect the Appellant possessing the fears he alleges to make a claim at the earliest opportunity. He did not

> do so. I draw a negative inference with respect to the credibility of the Appellant's allegations and his subjective fear due to his delay in claiming.

[51] The Applicant explained to the RAD that, once he was safe in Canada on a visitor visa, he followed the advice of the agent who had assisted him, and who instructed him that he would contact the Applicant and advise him on the next step he should take to permanently legalize his status.

[52] There is nothing inherently implausible about this explanation. The agent had got him safely to Canada and, in so doing, had proved himself to be knowledgeable and effective. The Applicant was a nervous newcomer to Canada who was unaware of how to make a refugee claim. Why wouldn't the Applicant wait to hear from an agent who has earned his trust by getting him safely out of Iran and into Canada? The Applicant was safe in Canada on a visitor visa. The reasons why he had fled Iran—relied upon by the RAD as proof of inconsistency—are support for the Applicant's explanation that he awaited the advice from a trusted agent who had already saved him from those dangers. And how could the Applicant, a newcomer to Canada with no knowledge of the Canadian immigration procedures, "know what information or assistance he was waiting for from the agent to initiate his claim…"?

[53] Moreover, the fact that the Applicant, when he did not hear from the agent, eventually contacted a lawyer to assist him does not, in itself, mean the Applicant knew he didn't need the agent's assistance. The fact that the Applicant eventually contacted a lawyer because the agent did not, as promised, re-connect with him to advise him what he had to do next to legitimize his status in Canada is not proof that the Applicant always knew he didn't need the agent or, even if

he did know, that it was unreasonable to await the advice of someone who had effectively advised and assisted him in the past. This is really a plausibility finding: "One would expect the Applicant possessing the fears he alleges to make a claim at the earliest opportunity." This plausibility finding was not made in the clearest of cases, given the jurisprudence of the Court is clear that delay in itself is not a reason to support the refusal of a refugee claim (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7; *Huerta v Canada (Minister of Employment and Immigration)* (1993), 157 NR 225 (FCA), 1993 CarswellNat 297 at para 4; *Pierre v Canada (Citizenship and Immigration)*, 2019 FC 933 at para 13). In the present case, the RAD attempted to find other reasons to support its reliance upon delay to draw a negative inference, but those reasons do not take into account the full facts of the Applicant's situation following his arrival in Canada or his valid visitor visa.

[54] The Applicant's account of how he came to be a Christian and how he found a way to come to Canada is complex and convoluted. There are many aspects of his claim—such as the false information on the phony birth certificate used by the agent—that the Applicant says he cannot explain because he was not the one who applied for the visa and he had handed his documentation over to those who were handling it. However, there is no obvious lie in the Applicant's evidence and the RAD rejects his claim as a result of cumulative negative inferences. In my view, some of those inferences are unreasonable and require that this matter be returned for reconsideration.

[55] Finally, there is one other aspect of the Decision that I find particularly troubling. This is the RAD's refusal to admit new evidence from Iran of a Court Summons dated March 5, 2017, a Court Summons dated May 23, 2017, and a Final Court Judgment dated August 23, 2017.

[56] If admitted and accepted as genuine—and the RAD did not address genuineness—this evidence would have established that the Applicant has already been convicted in Iran, in absentia, of a "tendency and promoting Christianity Religion" and "tendency and cooperation with groups and sects promoting none Islamic Religion in Iran and out of the country" (*sic* throughout) and sentenced to "12 years, Taziri imprisonment… and 72 whip beat" (*sic* throughout). In other words, if accepted as genuine, this evidence is likely conclusive support for the Applicant's refugee claim.

[57] The RAD refused to admit these documents because it didn't think that members of the Applicant's family, and his brother in particular, would not disclose them for fear of their impact upon the Applicant's mental health:

> … In the absence of any corroboration from the Appellant's brother, I also do not believe that his brother would simply take it upon himself to withhold material documentation that could assist the Appellant in establishing his refugee claim, especially considering the Appellant was already well aware of the penalties for apostasy having allegedly fled Iran for that reason. In my view, the Appellant's new documents are an attempt to complete a deficient record submitted to the RPD and bolster his appeal, which is not the purpose of new evidence.

[58] Technically speaking, this documentation was not admitted because the Applicant could not convince the RAD, in accordance with the governing statutory provision, that it was not reasonably available to him when he appeared before the RPD.

[59] The Applicant had explained to the RPD that he did make inquires of his family in Iran about documentation, but his entire family did not tell him they had received the court documents because they were fully aware of his precarious mental health and did not want him to know that sentence had already been passed on him as this might provoke a serious mental health crisis.

[60] The RAD, of course, did not have to accept this explanation. However, in refusing to accept it, the RAD was, in my view, nonetheless obliged to consider the severe consequences of not admitting this documentation. If this documentation is genuine, and there was nothing before the RAD to suggest it was not, then it would mean, in effect, that a genuine refugee was unable to prove his case and could be deported back to Iran to face severe mistreatment for his religious faith simply because the RAD felt the Applicant should have made inquiries (which he said he did make) and because the RAD did not believe that his family would not have made him aware of these documents because they feared the impact it would have on his precarious mental state. I see nothing in the RAD's Decision to suggest that it did not accept the Applicant's mental fragility.

[61] The documentation was not disregarded as either irrelevant or because it was not genuine. Accordingly, there was a distinct possibility that the RAD was refusing a genuine claim because the Applicant had failed to convince it that these documents were not reasonably available earlier. In my view, this would shock the conscience of Canadians, who would expect the RAD to consider this possibility as a part of its deliberations on admissibility and, given what was at stake, consider some way of avoiding a possible tragic consequence that did not require a

disregard of the governing statutory provisions and the overall purpose of the *IRPA* which includes, *inter alia*, the protection of genuine refugees.

[62] The Applicant requested an oral hearing, but this was denied. I note there was nothing to prevent the RAD from holding this hearing and asking for the brother's attendance—by phone or otherwise—so that it could satisfy its doubts on this matter. Instead the RAD chose not to consider the extreme consequences for the Applicant of its refusal to admit documents that, for all the RAD knows, are entirely genuine. As I have said, I think that this approach by the RAD—turning a blind eye to this kind of danger and the purpose of *IRPA* to protect genuine refugees—would shock the conscience of Canadians. Accordingly, it should have turned its mind to this issue.

[63] Counsel agree there is no question for certification and I agree.

**JUDGMENT IN IMM-3133-19**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The Decision is quashed and the matter is referred back to a differently constituted RAD for reconsideration.

2. There is no question certification.

"James Russell"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3133-19 |
| **STYLE OF CAUSE:** | HOSSEIN ASRI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 9, 2020 |
| **JUDGMENT AND REASONS:** | RUSSELL J. |
| **DATED:** | FEBRUARY 26, 2020 |

**APPEARANCES:**

| | |
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| Brad Gotkin | FOR THE RESPONDENT |

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