

Federal Court



Cour fédérale

Date: 20200206

Docket: IMM-5222-19

Citation: 2020 FC 211

Ottawa, Ontario, February 6, 2020

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**ZEINAB KAKA AGHAZADEH
ROZHINA ABDOLLAHI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Mrs. Zeinab Kaka Aghazadeh [Mrs. Aghazadeh] and her minor daughter, seek judicial review of the decision of a Migration Officer [the Officer], dated June 26, 2019. The Officer found that Mrs. Aghazadeh's testimony was not credible and as a result, the Applicants had not established the basis for their claim. The Officer concluded that they did not meet the requirements of a Convention Refugee under section 96 of the *Immigration and*

Refugee Protection Act, S.C. 2001, c. 27 [IRPA] and refused their application for permanent residence as resettled refugees.

[2] For the reasons that follow, the Application is dismissed. The Officer reasonably found that the Applicants' account of the events, which underlie their claim of risk of persecution and which led them to leave Iran, was not credible. As a result, the Applicants had not established a well-founded fear of persecution. The Officer's reasons, which were set out in the decision letter and the Global Case Management System [GCMS] notes, demonstrate that the Officer considered the Applicants' claim and all the evidence and provided reasons for each negative credibility finding and the overall finding. The Officer's reasons show a coherent chain of analysis leading to a reasonable finding.

I. Background

[3] The Applicants are citizens of Iran and of Kurdish ancestry. They currently reside in Van, Turkey. Ms. Aghazadeh's son resides with them in Turkey, but does not seek refugee protection.

A. *The Applicants' Claim*

[4] Ms. Aghazadeh recounts that on February 23, 2016, the Iranian police raided the tailor shop where she worked as a seamstress. The police accused her of making clothing for the Kurdish Democratic Party and intended to arrest her. She recounts that on the pretense of changing her clothing, she entered the back room of the tailor shop and escaped to her cousin's house.

[5] Mrs. Aghazadeh recounts that, the next day, February 24, 2016, she and her daughter left Iran and travelled to Turkey, using their own passports. She recounted at the interview that her husband travelled to Turkey with them and remained for 20 days. Her son travelled to Turkey later in a different manner because he did not have a passport.

[6] Mrs. Aghazadeh claimed that her husband is abusive and suggested that he may have orchestrated the police raid in order to rid himself of her. She recounts that he travelled with them to Turkey out of a sense of obligation. She later learned from her cousin's wife that, following her husband's return to Iran, he married another woman.

[7] The Applicants claimed refugee status through the United Nations High Commissioner for Refugees [UNHCR]. As of February 28, 2019, the claim remained in process.

[8] In October 2016, the Applicants applied for permanent residence in Canada as members of the Convention refugee abroad class. A group in Canada that includes three relatives of the Applicants has applied to sponsor the Applicants.

B. *The Relevant Statutory Provisions*

[9] Regardless of the Applicants' claim for UNHCR protection or the status of that claim, the Applicants are required to meet all the criteria of the IRPA.

[10] Section 11(1) sets out the requirement to obtain a visa and provides:

11(1) A foreign national must, 11(1) L'étranger doit,

before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[11] Subsection 139(1) of the *Immigration and Refugee Protection Regulations* [the Regulations] sets out the general requirements to obtain a visa. The subsection provides that a permanent resident visa shall be issued to a foreign national in need of protection and their accompanying family members if the listed criteria are established, which include at paragraph 139(1)(e) that the foreign national is a member of one of the classes prescribed by this Division (i.e., Division 1 of the Regulations).

[12] Sections 145 and 147 of the Regulations provide:

145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

(a) they are outside all of their countries of nationality and

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence

habitual residence; and

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

habituelle;

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[13] Section 96 of the IRPA defines a Convention Refugee:

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,

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

(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.

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) 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) 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.

C. *The Migration Officer's Interview*

[14] On January 23 and 24, 2019, Mrs. Aghazadeh attended an interview with the Officer at the Canadian consulate in Ankara, Turkey.

[15] On February 13, 2019, the Officer sent Mrs. Aghazadeh a procedural fairness letter noting concerns about the credibility of the events she recounted at the interview, noting inconsistencies in her narrative and asking for more information.

[16] For example, the Officer found Mrs. Aghazadeh's suggestion that her husband orchestrated the police raid to get rid of her inconsistent with the information that her husband accompanied her to Turkey. The Officer also questioned Mrs. Aghazadeh's account that her friend told her that the police returned to the tailor shop the next day looking for her, given her further statement that she did not know if the shop was open that day. The Officer also found Mrs. Aghazadeh's account of her communication with her cousin to be inconsistent.

[17] On February 28, 2019, Mrs. Aghazadeh provided an unsworn statement in response to the Officer's letter.

II. The Decision under Review

[18] The Officer's decision, dated June 26, 2019 is set out in a letter. The decision letter notes that the Officer assessed the application, considered the applicable provisions of the Act and considered Mrs. Aghazadeh's testimony at the interview. The Officer notes that Mrs. Aghazadeh stated that she fled Iran because security forces had raided the tailor shop and found clothes intended for a Kurdish political party. The Officer explained, "after consideration of both your response at interview and your response to my [procedural fairness] letter, I do not find the events as outlined in your application and at interview to be credible and I, therefore, do not believe that you have a well-founded fear of persecution in Iran. There is no suggestion in your

submissions that you have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights. . . . I am not satisfied that you meet the requirements of the Act and the regulations for the reasons explained above. . . .”

[19] The Officer concluded that the Applicants had not established a well-founded fear of persecution in Iran. As a result, the Officer refused the application for permanent residence on the basis that the Applicants did not meet the requirements of the Convention refugee abroad class or the humanitarian-protected person’s class.

[20] The Officer’s decision is not limited to the decision letter. The GCMS notes form part of the Officer’s reasons (*Pushparasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 828 at para 15, 255 ACWS (3d) 962; *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 3, 231 ACWS (3d) 784; *Kotanyan v Canada (Citizenship and Immigration)*, 2014 FC 507 at para 26, 241 ACWS (3d) 931).

[21] The GCMS notes provide a chronology and describe the basis of the claim for refugee protection: the Officer’s interview with Mrs. Aghazadeh, the Officer’s interview with Mrs. Aghazadeh’s son, the Officer’s detailed credibility concerns, the procedural fairness letter, Mrs. Aghazadeh’s response to the procedural fairness letter, and the decision.

III. Issue and Standard of Review

[22] The single issue is whether the Officer's decision is reasonable. This entails consideration of whether the determinative finding – that the Applicants' account was not credible – is reasonable.

[23] The Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 69, 143, 312 ACWS (3d) 460 [*Vavilov*], establishes that reasonableness is the presumptive standard of review of the merits of a decision. There are no circumstances in the present case that would rebut the presumptive standard.

[24] Moreover, it was previously well-established that decisions of migration or visa officers, which raise questions of mixed fact and law, such as determinations whether an applicant is a Convention refugee abroad, are reviewed on the reasonableness standard (*Ahmadi v Canada (Citizenship and Immigration)*, 2019 FC 1145 at para 5, 310 ACWS (3d) 820; *Gebrewlidi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 14, 282 ACWS (3d) 593; *Selamssa v Canada (Citizenship and Immigration)*, 2017 FC 966 at para 9, 285 ACWS (3d) 384).

[25] In *Vavilov*, the Supreme Court of Canada provided extensive guidance on what constitutes a reasonable decision and on the conduct of a reasonableness review. A hallmark of a reasonable decision remains that the decision is justified, transparent and intelligible. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention, seeking to understand the reasoning process followed by the

decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker.

[26] It is also well established that the decision-makers that hear the testimony and review the evidence are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA). Their credibility findings should be given significant deference: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

[27] In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 41-46, [2012] FCJ No 369 (QL) [*Rahal*], Justice Mary Gleason summarized the key principles from the jurisprudence regarding credibility assessments, noting that the decision-maker is best placed to make such findings. Justice Gleason explained that the Court's role in reviewing credibility findings is very limited because "the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks."

IV. The Applicants' Submissions

[28] The Applicants submit that the decision is not reasonable because the Officer's credibility findings are not justified. In general, the Applicants dispute most of the credibility findings and offer alternate interpretations for the Officer's findings of inconsistency. The Applicants submit that Mrs. Aghazadeh's testimony was not vague or inconsistent; rather she provided clarification at the next opportunity of some information. The Applicants further argue that the Officer ignored Mrs. Aghazadeh's responses to the Officer's credibility concerns, which were set out in the procedural fairness letter.

[29] The Applicants submit that the Officer focussed on irrelevant matters to conclude that her account lacked credibility. The Applicants submit that it is not possible to determine what significance the Officer placed on irrelevant matters. The Applicants argue that the central aspect of their claim – that the police raided the tailor shop and are looking for Mrs. Aghazadeh – should not be discounted due to inconsistencies about matters that were not central to her account of the raid, including her husband's role in the raid, whether the tailor shop was open after the raid, and whether Mrs. Aghazadeh had contact with her cousin after the raid.

V. The Respondent's Submissions

[30] The Respondent notes that the credibility findings of Officers are owed deference. The Officer's adverse credibility findings were reasonable due to the inconsistencies in Mrs. Aghazadeh's story with respect to the police raid, its aftermath, and the actions of her husband. The Respondent submits that these inconsistencies were sufficient to cast doubt on the

core issue of the Applicants' claim, which was whether they had a genuine fear of persecution from the Iranian police.

[31] The Respondent notes that Mrs. Aghazadeh had several opportunities to explain these inconsistencies during her interview and in her response to the fairness letter. However, she failed to provide satisfactory explanations.

[32] The Respondent points to several parts of the GCMS notes and the transcript of the interview to highlight inconsistent, vague and evolving testimony.

VI. The Decision is Reasonable

[33] As noted above, credibility findings are owed deference. In the present case, the Officer interviewed Mrs. Aghazadeh and probed her account extensively. The GCMS notes, which are part of the reasons, demonstrate that there were many inconsistencies and contradictions in her account. Her responses at the interview and her response to the procedural fairness letter did not satisfactorily explain the contradictions.

[34] The Applicants ask how the Officer arrived at his credibility findings and point to various parts of the GCMS notes that the Applicants seek to reinterpret. The role of the Court is not to make a credibility finding and to determine whether the Applicants have established a well-founded fear of persecution. Rather, the role of the Court is to determine whether the Officer made reasonable credibility findings and reached a reasonable decision.

[35] In *Rahal* at paras 41-46 , Justice Gleason set out examples of what will justify credibility findings, including:

- Contradictions in the evidence, particularly in the Applicants' testimony, will provide a reasonable basis for finding the claimant to lack credibility, but such contradictions must be real and more than trivial or illusory.
- The decision-maker may consider the demeanor, including hesitations, vagueness and changes or elaboration of the story in assessing credibility, but it is preferable if there are also other objective facts to support the credibility findings.
- The decision-maker must make clear credibility findings with sufficient particulars.

[36] The Officer's credibility findings are based on these well-established indicia and are set out with particularity.

[37] The GCMS notes indicate, among other things that, "[t]hroughout the interview, [Mrs. Aghazadeh] adjusted her story whenever she realized that there were problems with her answers." The Officer made adverse credibility findings based on the inconsistencies in her evidence and implausibility, including:

- Mrs. Aghazadeh recounted that the Iranian police returned to the tailor shop on February 24, 2016, to arrest her and asked the shop workers about her whereabouts, but also stated that she did not know whether the shop was open that day or whether other shop workers had been arrested;

- Mrs. Aghazadeh recounted that the Iranian police wanted to arrest her simply for working at the tailor shop, claiming it was making clothes for a Kurdish political party, but the police did not question Ms. Aghazadeh's coworkers (apparently because they were on a lunch break, although she also stated that the police were talking with unspecified other people while she made her escape) nor did the police prevent the tailor shop from operating;
- Mrs. Aghazadeh claimed to have run to her cousin's house after the raid, but later said she did not/could not communicate with her cousin due to his government job and the risk that their conversations might be monitored, yet she communicated with his wife;
- Mrs. Aghazadeh first said that her cousin's wife called her only once to tell her about her husband's remarriage and later said that she spoke to her cousin's wife from "time to time";
- Mrs. Aghazadeh said that she never spoke with her cousin about the police raid on the tailor shop or whether the police returned, nor did she ask her cousin's wife about this, even though they would have had relevant information about these events;
- Mrs. Aghazadeh stated that her friend had told her cousin that the police were looking for Mrs. Aghazadeh and her explanation for how her friend would know this evolved once problems with her account became apparent;
- Mrs. Aghazadeh stated at the interview that her husband "strongly agreed to come to Turkey" with her. However, in her response to the procedural fairness letter, she stated

that her husband did not want to accompany her to Turkey. In her application for refugee protection she stated that her husband did not travel to Turkey with her;

- Ms. Aghazadeh stated at the interview that she did not want to divorce her husband because she did not want her husband to keep the children. However, her husband had returned to Iran leaving his daughter with Mrs. Aghazadeh in Turkey;
- Mrs. Aghazadeh alleged that her husband wanted to “get rid of her” and suggested that he was in some way responsible for the police raid on the tailor shop. However, her husband did not alert the Iranian police that she had fled to her cousin’s house and he apparently accompanied her to Turkey.

[38] Mrs. Aghazadeh was alerted to the Officer’s specific credibility concerns in the procedural fairness letter. Mrs. Aghazadeh’s response lacked detail, offered different accounts, and left many questions unanswered.

[39] The Applicants’ submission that the credibility findings do not affect the central aspect of their claim – that Iranian Forces raided the tailor shop and are looking for her because she made clothes for a Kurdish political party – is without merit. The whole account, found not to be credible, began with the allegation that the tailor shop was raided. The evidence did not support this allegation – including because there was no evidence that any other person allegedly making the same clothes for the Kurdish political party were of interest and because there was inconsistent evidence whether the police returned to the shop the next day, whether it was open,

and whether anyone else was questioned. No other objective evidence was provided to establish that this raid occurred or why.

[40] The Applicants' submissions amount to a request to the Court to reweigh the evidence and make different credibility findings. This is not the role of the Court.

[41] The Officer's decision letter clearly explains why the application was refused. The GCMS notes elaborate on the credibility findings, which were the basis for finding that the Applicants did not have a well-founded fear of persecution. The decision meets the standard of reasonableness as understood in *Vavilov*. The decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and the law, intelligible and transparent.

JUDGMENT in file IMM-5222-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5222-19

STYLE OF CAUSE: ZEINAB KAKA AGHAZADEH, ROZHINA
ABDOLLAHI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 29, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: FEBRUARY 6, 2020

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