

Federal Court



Cour fédérale

Date: 20210824

Docket: IMM-187-21

Citation: 2021 FC 866

Vancouver, British Columbia, August 24, 2021

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

HOSSEIN AKBARISENEH

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hossein Akbariseneh, seeks judicial review of a decision of the Refugee Appeal Division [RAD] that dismissed his appeal from a decision of the Refugee Protection Division [RPD] denying his claim for refugee status. He claims that the decision is unreasonable.

[2] I agree. The decision is set aside, and the Applicant's case is remitted to the RAD for reconsideration.

I. Background

[3] The Applicant is an Iranian citizen. Before coming to Canada, he was a major shareholder in a transportation company and a truck driver in Iran. He says that he discovered that one of his clients was acting improperly in shipping goods to Iraq and that it was acting in association with the Sepah intelligence service in Iran. He resisted this practice and warned other shipping companies about it. As a result, he was summoned to the Sepah office where he was harshly interrogated, assaulted and compelled to sign an undertaking not to participate in political or union gatherings.

[4] The Applicant's evidence is that he was subsequently detained by Iranian security forces in connection with truckers' strikes. He says that security forces tortured him to force him to confess to his role in encouraging other truckers to join in the strikes. He claims that the security forces referred to his earlier detention before finally releasing him with a warning after he had signed a written undertaking to be available to security forces in the future.

[5] The Applicant came to Canada on a visa to explore business opportunities. He originally planned to stay for 20 days, but while he was here, he learned that government officials had searched his home, interrogated his family and seized materials, including a CD that documented his participation in an atheism class. He says that he was told that other participants in that class had been arrested. He then made a refugee claim, because the penalty in Iran for apostasy (defined in that country as not following Islam) is death.

[6] The RPD denied his claim, on the basis that his claim of being an atheist and studying atheism in Iran lacked credibility. The RPD noted a number of weaknesses in the Applicant's evidence, including his inability to offer a clear definition of atheism. It found that it was contrary to common sense that students in an atheism class in Iran would film their graduation ceremony, in light of the penalty. The RPD also noted that although the Applicant said he had studied various well-known atheistic authors, he confused the biologist Richard Dawkins with the cosmologist and physicist Stephen Hawking, and further he had difficulty explaining the theory of evolution. The RPD denied his claim, finding that the Applicant had not provided a sufficient basis of credible evidence upon which it could find that he merited refugee protection.

[7] On appeal to the RAD, the Applicant sought to introduce new evidence regarding risk to his family in Iran. He also argued that the RPD ignored his evidence on the nature of the atheism school, misunderstood that the graduation ceremony was filmed as a personal memento, set too high a standard for questions on atheism, and failed to consider his explanations on the theory of evolution.

[8] The RAD denied the request to introduce new evidence because the evidence in question was not new and therefore it did not meet the test set out in the law and jurisprudence. The RAD upheld the RPD's decision on its merits, finding that the RPD was correct in concluding that the Applicant was not credible, that he had failed to establish his profile as an atheist and thus he did not face a serious risk of persecution in Iran because of apostasy.

II. Issues and Standard of Review

[9] The issue in this case is whether the RAD decision is reasonable. The Applicant focused on two main points: (i) the RAD failed to consider his risk of political persecution for being a whistleblower; and (ii) the RAD held him to an unreasonably high standard in regard to his knowledge of atheism.

[10] The parties agree that the standard of review is reasonableness, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-23 [*Vavilov*], and I find that this is correct. This Court has recently confirmed that this is the applicable standard: *Adefisan v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 359 at para 10; *Lin v Canada (Citizenship and Immigration)*, 2021 FC 380 at para 19.

[11] In summary, under the *Vavilov* framework for judicial review on a standard of reasonableness, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the Applicant to satisfy the Court “that any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. Analysis

[12] In my view, the determinative issue in this case is the reasonableness of the RAD's findings regarding the credibility of the Applicant's claim to be at risk because he is an atheist. In light of this, it is not necessary to deal with the Applicant's alternative argument.

[13] The RAD made several key findings in regard to the Applicant's credibility:

- *The atheism school of thought*: the Applicant had claimed to have studied atheism with others, and he alleged that the RPD had mistakenly interpreted his references to being part of an "atheism school" as referring to a "bricks and mortar" establishment rather than a school of thought. The RAD disagreed, finding that the Applicant had not provided any evidence of the existence of such a school of thought, nor had he provided other objective evidence. The RAD found that "an organized atheism school of thought does not exist in Iran". (RAD Decision, para 18);
- *Filming of the graduation ceremony*: the RAD found that the RPD was correct to be skeptical that the Applicant would have in his possession a video that tied him to participating in an activity that could result in a death sentence. The RAD found that he "made up the existence of an incriminating videotape to bolster his refugee claim". (RAD Decision, para 21);
- *Difficulty defining atheism*: the RAD found that the Applicant's answers to questions by the RPD and his own counsel on the definition of atheism focused on values such as honesty and integrity, but that it was only after much questioning and prompting

that the Applicant revealed the essence of the belief system – namely the disbelief in a supreme or supernatural creative force;

- *Cursory knowledge of evolution and famous atheists:* the RPD found that the Applicant's knowledge of evolution and the theory of natural selection was inadequate, despite his claims to have studied the belief system. In addition, the RPD found that he had confused his description of famous atheists; in particular, he confused the work of the biologist Richard Dawkins with the writing of the cosmologist and physicist Stephen Hawking. The RAD agreed that the Applicant had made these errors, but stated that it did not think that they were significant for its analysis. However, the RAD went on to find that the Applicant's emphasis on the paramountcy of science, integrity, morality and progress did not serve to distinguish his belief in atheism with the beliefs of other people of faith (RAD Decision, para 31).

[14] Based on these findings, the RAD concluded that the RPD was correct to find that the Applicant had not provided a sufficient basis of credible evidence to support his refugee claim and it therefore concluded that he did not face a serious possibility of persecution in Iran.

[15] Applying the *Vavilov* framework to this decision, I find the RAD's analysis is unreasonable on several grounds. The key failing in the RAD's decision is that it does not demonstrate that it actually grappled with the key question before it: namely, the sincerity of the Applicant's belief in atheism. In addition, certain of the RAD's findings regarding the

Applicant's credibility do not meet the test of intelligibility and logical reasoning that *Vavilov* affirms as essential to a reasonable chain of analysis.

[16] In relation to the "school of thought" question, the RPD's reasons indicated it could have been referring either to a brick and mortar school or to another, more formally organized (if not brick and mortar) school. For example it referred to "classmates... who purportedly knew about this school", and that "the claimant would remember whether he graduated from this atheism school". (RPD Decision, paras 22, 25, 31-32, 38). In light of this, it not possible to understand how the RAD could find that the RPD's "reference to the lack of an 'atheistic school' in Iran refers to what [the Applicant] himself referred to as a school of thought" (RAD Decision, para 17.) This is not intelligible.

[17] Further, while I agree with the Respondent that the documentary evidence does not specifically mention the existence of an "organized atheism school of thought", I do not understand the RAD's findings to be based on this conclusion. Rather, the documents refer to the existence of atheists in Iran, and that they generally do not reveal their identities and must otherwise guard their beliefs because of the dangers they face. The RAD does not explain how this evidence is inconsistent with the Applicant's evidence that he attended secret classes every few weeks, and that the location of these meetings was moved in order to escape detection. Nor does it explain how it would be reasonable to expect the Applicant to provide corroborating evidence about the classes he attended, in light of the fact that doing so or asking others to provide it would trigger the very risks he says he feared.

[18] As discussed below, I also find the RAD to be incoherently inconsistent; it appears to fault the Applicant for not providing corroborating evidence about his atheism, yet it also faults him for having kept a private recording of a ceremony that establishes that very link because it finds the risk of keeping such evidence in Iran is too great.

[19] In regard to the RAD's conclusions about the Applicant's knowledge of atheism, or his understanding of the theory of evolution or the work of famous atheists, I find that the RAD fell into the trap of measuring the Applicant's evidence against an unreasonably detailed or sophisticated level of knowledge of doctrine, something the jurisprudence of this Court has consistently cautioned against (*Zhou v Canada (Citizenship and Immigration)*, 2021 FC 685 at para 31, citing *Bouarif v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 49 at para 7). The case-law consistently finds it unacceptable to judge the sincerity of an asserted belief through what amounts to religious "trivia testing". In *Gao v. Canada (Citizenship and Immigration)*, 2015 FC 1139, Justice Southcott reviews the leading case-law and provides the following cogent summary:

[26] My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

[20] The problem with holding claimants to an unreasonably high standard of religious knowledge is that it can lead down unproductive doctrinal alleyways, and obscure the real

question before the decision-maker – which is whether the individual has demonstrated the sincerity of their beliefs. Many sincere adherents to a wide range of belief systems may not be able to explain the intricacies of their beliefs. The decision-maker must explain why the individual’s lack of knowledge on a particular point is itself a reason to doubt the sincerity of the asserted belief. I find that the RAD did not do this.

[21] The problem is compounded because the RAD fails to grapple with the evidence that the Applicant actually gave before the RPD. The critique of the Applicant’s evidence by both the RPD and the RAD begins with his failure to define atheism as relating to the lack of belief in a supreme or supernatural being. The transcript of the RPD hearing shows that the Applicant was asked “[w]hat does atheism mean to you?” to which he answered that it is about “friendliness... integrity, honesty...[and]supporting other fellow human beings whether Muslim or not”. The RPD and the RAD criticize the Applicant for his answer, but in my view they unreasonably ignore the actual question that he was asked. To put it plainly, he was not asked “what atheism means” in the abstract, he was asked what it meant to him, in his life. The answer he gave is a reasonable description of that; it is not, however, a definition of what the concept means in general. This Court has often found that the RAD cannot be criticized for failing to address an issue that was never raised before it. Similarly, I find that the Applicant cannot be criticized for failing to provide an answer to a question he was not asked.

[22] The RAD finds that “it is puzzling that an avowed atheist was unable or seemingly reluctant to simply state the definition of what the word atheism means” (para 26). It noted that after much questioning “he eventually did respond that he believed that there’s no God” (para 25). The Applicant argues that his answers must be understood in his personal context, as a

person born and raised in a society where Islam is the official religion and apostasy is punishable by death. He says that his reluctance to say the words must be understood in the context of his lived experience. There is much force in this, but in light of the fact that the Applicant never asserted this in his testimony, nor did he raise it in his appeal before the RAD, I do not rely on this point in support of my conclusion.

[23] The final problem with the RAD decision is its treatment of the Applicant's knowledge of the theory of evolution and famous atheists. As noted earlier, the RPD had found the Applicant's evidence about these things to be so lacking that it cast doubt on his credibility. The RAD states that his "rambling line of reasoning about atheism, evolution and great scientists is hard to follow and not very scholarly" yet it finds that this does not indicate that he did not attend atheism classes, but rather it may show that he was not a particularly attentive student (at para 31). This is consistent with the RAD's earlier conclusion that not much turns on this confusion (para 29).

[24] The difficulty arises with the next statement by the RAD:

[The Applicant] emphasized the paramountcy of science, integrity, morality and progress. I echo the point made by the RPD panel during the hearing, that people who are not atheists share many of these same principles and qualities. They are not in the exclusive domain of atheists and can include people of faith.

[25] It is not at all evident how this conclusion is relevant to the question before the RAD. The Applicant was not asked to testify about the differences between the beliefs of atheists and people of faith. His evidence was not that these beliefs were exclusive to atheists. The problem, however, is understanding how the RAD's conclusion that they are not "in the exclusive domain

of atheists” supports its finding that the Applicant is not credible when he says that he is an atheist.

[26] *Vavilov* tells us that there are two main axes of analysis for assessing whether a decision is reasonable: one is to consider whether the decision takes into account the key facts and the relevant law; the second is to consider whether the decision-maker explains the conclusion reached in a sufficiently detailed way that demonstrates internally coherent reasoning. Either of these failings can lead to a conclusion that the decision is unreasonable. Simply put, “a reviewing court must ultimately be satisfied that the decision maker’s reasoning ‘adds up’” (*Vavilov* at para 104).

[27] I find that the RAD’s analysis of the Applicant’s credibility does not meet this test. A review of the transcript of the hearing amply confirms that the Applicant’s evidence was not a model of scholarly erudition. The RAD notes his confusion, but finds that not much turns on that. It goes on, however, to state that it doubts his credibility because the values he asserts are not exclusive to atheists. In my view, this reasoning does not “add up” and it is an unreasonable basis for the RAD’s conclusion.

[28] Overall, I find the RAD’s decision to be unreasonable because it failed to grapple with the key evidence on the essence of the Applicant’s testimony, and it failed to explain its reasoning in an internally coherent manner.

[29] I am therefore setting aside the RAD's decision and remitting the matter for reconsideration by a different panel. In light of my conclusion on this issue, it is not necessary to consider the other issue raised by the Applicant.

[30] Neither party proposed a question of general importance for certification, and none arises in this case.

JUDGMENT in IMM-187-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Refugee Appeal Division dated November 5, 2020 is set aside and the matter is remitted back to a differently constituted panel.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-187-21

STYLE OF CAUSE: HOSSEIN AKBARISENEH v MINISTER OF
CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 16, 2021

**JUDGMENT AND
REASONS:** PENTNEY J.

DATED: AUGUST 24, 2021

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