

Federal Court



Cour fédérale

Date: 20220114

Docket: IMM-6691-20

Citation: 2022 FC 42

Ottawa, Ontario, January 14, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

MEHNAZ TAHZIBI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mehnaz Tahzibi, seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board, which confirmed the Refugee Protection Division's (RPD) determination that she is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Tahzibi is a citizen of Iran. She obtained a visa to study in India in 2004, and lived in India until 2013. She attended school for part of that time and earned money by assisting other Iranian students, including by helping them to maintain their visas through the Iranian consulate. Ms. Tahzibi alleges that her troubles began after she rejected the sexual advances of a representative from the Iranian consulate in India. She states that the consulate representative is influential, and he made false accusations to Iranian authorities that she converted from Islam to the Baha'i religion. According to Ms. Tahzibi's basis of claim (BOC) narrative, in August 2013 the Indian police raided her home without a warrant, and she noticed one of the officers was speaking on the phone with the consulate representative. The Indian police could not find anything incriminating but after realizing that her visa had expired, she was arrested, imprisoned for two months, and ordered deported to Iran.

[3] During a stopover of the flight from India to Iran, in Oman, Ms. Tahzibi bought a ticket to Turkey. She did not initiate a refugee claim in Turkey due to the prolonged refugee process. Ms. Tahzibi paid a trafficker to assist her to enter Canada where she sought refugee protection. Ms. Tahzibi fears persecution in Iran due to the false allegations that she practices the Baha'i faith and due to her gender.

[4] The RAD found that Ms. Tahzibi lacked credibility, that the independent corroborative evidence was insufficient to establish her core allegations, and that she had failed to establish a residual risk profile. The RAD's main findings were: (i) Ms. Tahzibi's allegation that her arrest and detention in India were retaliatory acts orchestrated by the consulate representative was not credible in light of contrary evidence; (ii) there were material inconsistencies between Ms.

Tahzibi's testimony and a letter from her friend that was presented as corroborative evidence, which were not reasonably explained; and (iii) the RAD did not accept that Ms. Tahzibi was deported as alleged, or her account of how she escaped during a stopover in Oman.

[5] On judicial review, Ms. Tahzibi argues that the RAD's decision is unreasonable. She submits the RAD overzealously analyzed the evidence and made unreasonable credibility findings and unsupportable plausibility findings, misconstrued probative evidence that corroborated her allegations, and failed to consider the totality of the evidence when analyzing her risk of persecution or harm under sections 96 and 97 of the *IRPA*.

[6] For the reasons set out below, I am not persuaded that the RAD committed the reviewable errors as alleged. The RAD's decision is reasonable, and this application is dismissed.

II. Issue and Standard of Review

[7] The issue on this application for judicial review is whether the RAD's decision is unreasonable based on the following:

1. Did the RAD overzealously analyze the evidence and make unreasonable credibility findings and unsupported plausibility findings?
2. Did the RAD misconstrue probative evidence that corroborated Ms. Tahzibi's allegations?
3. Did the RAD fail to consider the totality of the evidence?

[8] Reasonableness is the presumptive standard on judicial review of an administrative decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. Analysis

A. *Did the RAD overzealously analyze the evidence and make unreasonable credibility findings and unsupported plausibility findings?*

[9] Ms. Tahzibi submits it is settled law that refugee claimants are to be given the benefit of the doubt, and the RAD's credibility findings must be based on relevant considerations.

Implausibility findings should be made only in the clearest cases, taking into account the cultural differences between Canadian norms and a refugee claimant's circumstances: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ No 1131 (FCTD); *Rajaratnam v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1071 at para 46.

[10] According to Ms. Tahzibi, the RAD made implausibility findings without an evidentiary basis, based on speculation: *Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37. The RAD improperly found it implausible that (i) her arrest was a retaliatory act by the consulate representative to silence her about the sexual assault, (ii) the consulate representative orchestrated the arrest by creating false accusations, (iii) the consulate representative has

significant influence in Iran, and (iv) Ms. Tahzibi could fail to appear for the second leg of her flight to remove her to Iran, without attracting the attention of the airline authorities.

[11] In my view, the first three findings above are not implausibility findings. Rather, the RAD found Ms. Tahzibi had failed to establish these elements of her claim, on a balance of probabilities. The RAD stated that “while it is not inherently implausible that [Ms. Tahzibi] could be arrested due to corrupt practices that exist in the Indian government”, based on the evidence that suggested other reasons for her arrest and contradictions between her testimony and BOC narrative about the reasons for her arrest, the RAD was not satisfied on a balance of probabilities that she was arrested due to corruption or personal retaliation. Specifically, the arrest notification indicated that Ms. Tahzibi was arrested due to student complaints, and the student complaints had been made well before the alleged sexual assault. Ms. Tahzibi’s BOC narrative indicated that the reason for the arrest was an expired visa. The RAD noted that Ms. Tahzibi testified at the RPD hearing that the Indian authorities do not detain people for overstaying a visa; however, her expired residence permit indicated that a failure to leave the country or extend the permit prior to its expiry may be punishable by a term of imprisonment of up to five years. Furthermore, the RAD found there was no evidence to link the consulate representative to the arrest notification and insufficient evidence to establish that he had significant influence. Ms. Tahzibi’s arguments on judicial review amount to a disagreement with RAD’s reasonable findings of fact. It is not a reviewing court’s role to reweigh the evidence or decide the issue for itself: *Vavilov* at paras 83 and 125.

[12] The RAD did make an implausibility finding regarding Ms. Tahzibi's escape at the airport. Ms. Tahzibi challenges that finding on the basis that her sworn allegations are not outside the realm of what could reasonably be expected in the circumstances, and the RAD failed to cite any authority about the process for deporting individuals from India to Iran in order to support a finding that it was "clearly unlikely" the deportation occurred in the manner alleged.

[13] Ms. Tahzibi has not established that the RAD's implausibility finding is unreasonable. The finding was based on the evidence, and the inferences to support it were reasonable and clearly explained: *Martinez Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7 at para 17, citing *Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152, at para 17. The RAD found, on a balance of probabilities, that the airport authorities had accepted responsibility for Ms. Tahzibi's deportation when they accepted her custody and took possession of her passport. The RAD considered Ms. Tahzibi's explanation about how she hid in the airport. The RAD found it implausible that she was able to simply fail to appear for the connecting flight, and board a different flight the next day using her own passport, without any issue. Particularly when considered in the context of other findings, it was open to the RAD to find this sequence of events during the alleged deportation to be implausible.

B. *Did the RAD misconstrue probative evidence that corroborated Ms. Tahzibi's allegations?*

[14] Ms. Tahzibi submits that she provided ample evidence to corroborate her allegations, and the RAD's rationale for giving little weight to probative evidence was unreasonable. The RAD found that the arrest notification sent by email did not establish that the consulate representative orchestrated the arrest. Documents that corroborate some aspects of the claim cannot be

discounted simply because they do not corroborate other aspects of the claim: *Belek v Canada (Minister of Citizenship and Immigration)*, 2016 FC 205 at para 21, *Sitnikova v Canada (Minister of Citizenship and Immigration)*, 2016 FC 464 at paras 22-24, *Feng v Canada (Minister of Citizenship and Immigration)*, 2019 FC 18 at para 37. Ms. Tahzibi submits the RAD failed to accept the arrest notification for what it says, and it was unreasonable to expect further corroborative evidence. Furthermore, she submits the RAD overzealously searched for minor inconsistencies between her testimony and a friend's letter, and failed to accept a reasonable explanation for the minor inconsistencies.

[15] I disagree with Ms. Tahzibi. The RAD assessed the arrest notification for what it said, and assessed the circumstances surrounding the email. As noted above, the evidence indicated that Ms. Tahzibi was arrested due to student complaints that were made before the alleged sexual assault, and there was no evidence to link the consulate representative to the arrest notification. The RAD concluded that Ms. Tahzibi had not established on a balance of probabilities that she was arrested due to personal retaliation or corruption.

[16] I agree with the respondent that the inconsistencies between Ms. Tahzibi's testimony and the friend's letter are not peripheral. They pertained to key points in Ms. Tahzibi's narrative about her arrest and deportation. Ms. Tahzibi testified that the authorities did not notify anyone about her arrest, whereas the friend's letter stated that the police called to tell him about the arrest and he rushed to the police station. Ms. Tahzibi testified that she was taken directly from the prison to the airport to be deported, and was not permitted to go to her apartment to pick up

her belongings. The friend's letter states that Ms. Tahzibi was taken from the prison to her apartment in order to retrieve her belongings before she was taken to the airport.

[17] The RAD considered Ms. Tahzibi's explanations that the friend was simply repeating what he was told by prison officials, or that he did not recall the exact details when he wrote the letter two years after the incident. The RAD reasonably rejected the explanations in view of Ms. Tahzibi's testimony that the friend provided support during her imprisonment and was attempting to engage a lawyer to prevent her deportation to Iran, and that she spoke with him after arriving in Turkey and they discussed what happened to her apartment. The RAD found it likely that she and the friend would have discussed the circumstances of her removal, including whether she had been taken to her apartment to retrieve her belongings. Ms. Tahzibi states that this was speculation; however, as the respondent points out, Ms. Tahzibi's own evidence was that she discussed the details of her removal with the friend. Ms. Tahzibi has not established that the RAD unreasonably gave the friend's letter no weight as corroborative evidence to establish her allegations. The RAD's assessment of the inconsistencies was not overzealous, and the RAD's finding that the inconsistencies undermine the letter's reliability was justified and supported by intelligible reasoning.

C. *Did the RAD fail to consider the totality of evidence?*

[18] Ms. Tahzibi submits that even if the RAD doubted her credibility, the RAD was obliged to assess whether the unimpugned evidence would establish that she is a person in need of protection under sections 96 or 97 of the *IRPA*: *Suntharalingam v Canada (Minister of Citizenship and Immigration)*, 2014 FC 987 at paras 49-51; *Lai v Canada (Minister of*

Employment and Immigration) (1989), 8 Imm LR (2d) 245 (FCA), [1989] FCJ No 826 (QL); *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168, [1989] FCJ No 444, (FCA) (QL). A finding that a witness is not credible simply means that the person's testimony cannot be relied on to establish a proposition of fact, but does not establish that the facts are untrue. Ms. Tahzibi submits that the RAD was still required to consider whether she would be of interest to the Iranian authorities and whether she would face mistreatment upon return to Iran.

[19] Ms. Tahzibi submits that she had testified she faced sexual assault at the hands of a man of authority with the Iranian government (the consulate representative) who later accused her of being a convert to the Baha'i faith. She argues that the RAD was required to consider country condition documentation for Iran that indicates workplace sexual harassment was "the norm" and there were no known government efforts to address this problem. Iranian authorities conduct surveillance on citizens abroad to prevent dissidence, and Baha'is, who make up the largest non-Muslim minority in Iran, face widespread discrimination. Due to the consulate representative's influence, Ms. Tahzibi alleges that she would face similar mistreatment if forced to return to Iran as she is blacklisted as a practicing Baha'i.

[20] I am not persuaded by Ms. Tahzibi's arguments. Ms. Tahzibi raised the same arguments before the RAD, and the RAD noted that she testified she is not Baha'i, but was labelled as such by the consulate representative in order to cause problems for her. The RAD found Ms. Tahzibi's testimony, regarding the basis for her fear that she is blacklisted as a Baha'i convert, was not credible. Furthermore, the RAD found that the fact that sexual harassment

exists in Iranian workplaces does not establish a personalized risk to Ms. Tahzibi. The RAD noted that women with certain profiles are at risk of persecution, but Ms. Tahzibi did not give evidence or make arguments that her own profile would put her at risk. On this application for judicial review, Ms. Tahzibi repeats the arguments made to the RAD and urges a different conclusion, but she does not identify any error by the RAD in addressing her arguments.

IV. **Conclusion**

[21] Ms. Tahzibi has not established that the RAD's decision is unreasonable, and this application for judicial review is dismissed.

[22] Neither party proposes a question for certification. In my view, there is no question to certify in this case.

JUDGMENT IN IMM-6691-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6691-20

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