

Federal Court



Cour fédérale

Date: 20230119

Docket: IMM-9240-21

Citation: 2023 FC 77

St. John's, Newfoundland and Labrador, January 19, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**Seyed Reza VASLI
Seyed Mohammadjavad VASLI
(a.k.a. Seyed Mohammadjavad VASLI) Fatemeh
MAHDAVI) and Seyedeh Maryam VASLI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Seyed Reza Vasli (the “Principal Applicant”), his wife Ms. Fatemeh Mahdavi and their children Seyed Mohammadjavad Vasli and Seyedeh Maryam Vasli (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing their appeal from the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). The RPD found that the Applicants

were neither Convention refugees or persons in need of protection within the scope of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Iran. They claimed protection on the basis of a fear of persecution from the Iranian Ministry of Intelligence arising from issues at the Principal Applicant’s place of work, that is a pharmaceutical plant that he claims is owned by the Supreme Leader of Iran.

[3] The Principal Applicant worked as a mechanic, with responsibility for maintaining the equipment used to make pills. He claimed that changes were made to a formula for the production at the plant and that the dosage of medication had been reduced in each pill to save money. He claimed that as a result of his objections to these changes, in September 2018, he was blindfolded, driven to an unknown location and forced to sign documents without reading them. He was then released.

[4] The Principal Applicant claimed that after this incident, he was subject to surveillance at his place of employment and told that he would be replaced in his job.

[5] In the hearing before the RPD, the Applicants relied on the narrative submitted by the Principal Applicant. The RPD dismissed the claim on the basis of credibility findings.

[6] Before the RAD, the Applicants argued a new ground of persecution, that is on behalf of the Principal Applicant's wife and daughter. This new ground was a fear of persecution on their behalf arising from their opposition to wearing the hijab in Iran.

[7] The Applicants sought to introduce new evidence in support of this ground, that is a new narrative from the wife and photographs, as well as an affidavit from the wife explaining why she had not raised this ground before the RPD. Among other things, she raised objections about the fairness of the hearing before the RPD, including allegations about the competency of counsel acting on behalf of the Applicants.

[8] The RAD rejected the proposed new evidence on the grounds that it did not comply with subsection 110(4) of the Act which provides as follows:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

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

[9] Although the RAD acknowledged that the wife's narrative was prepared after the hearing before the RPD, it focused on the timing of the events described in that narrative and found that

the fear of persecution on the basis of opposition to wearing the hijab was available before the RPD hearing and could have been raised before that tribunal.

[10] The RAD found that the wife did not provide a reasonable explanation for not having raised this ground before the RPD.

[11] The RAD considered the wife's affidavit in assessing whether her narrative and submitted photographs should be accepted as "new evidence", within the meaning of subsection 110(6) of the Act. The RAD decided that these materials did not meet the statutory requirements and declined to accept them as evidence.

[12] The RAD addressed the issue of incompetent counsel when it considered the Applicants' explanation for not submitting the female Applicants' claims before the RPD.

[13] The RAD accepted, as new evidence, the affidavit of the person who provided interpretation at the hearing before the RPD. It then considered the Applicants' request for an oral hearing, as it was required to do pursuant to subsection 110(6) of the Act which provides as follows:

Hearing

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility

Audience

(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) soulèvent une question importante en ce qui concerne

of the person who is the subject of the appeal;	la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	b) sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[14] The RAD determined that since the contents of the interpreter's affidavit were not determinative of the appeal, no oral hearing was required.

[15] The RAD confirmed the findings of the RPD about inconsistencies in the evidence of the Principal Applicant about the difficulties in his workplace, the abduction and blindfolding, and the length of his detention. It found that the presumption about the truthfulness of sworn evidence was rebutted and that the Applicants were not entitled to the "benefit of the doubt". It found that the Applicants were not Convention refugees or persons in need of protection.

[16] Upon their application for judicial review, the Applicants argue that the RAD breached their right to procedural fairness by refusing to accept their proposed new evidence, without conducting an oral hearing. They submit that without an oral hearing, the RAD denied the wife the opportunity to respond to its concerns and this denial amounts to a breach of procedural fairness.

[17] The Applicants further argue that they did not have the opportunity to present claims on behalf of the female Applicants to the RPD and that this was unfair. They attribute this lost

opportunity to the conduct of their Counsel who only directed questions to the Principal Applicant.

[18] As well, the Applicants argue that the RAD took a microscopic approach to their evidence and inappropriately drew adverse inferences, thereby rendering an unreasonable decision.

[19] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD’s treatment of the proposed new evidence was reasonable. He also argues that the allegations of inadequate representation before the RAD are “without merit”.

[20] Otherwise, the Respondent argues that the RAD reasonably assessed the Applicants’ credibility and reasonably dismissed their appeal.

[21] The first issue for consideration is the applicable standard of review. Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[22] Findings of credibility and findings of fact, as well as questions of mixed fact and law, are reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[23] In considering reasonableness, the Court is to ask if the decision under review "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"; see *Vavilov, supra* at paragraph 99.

[24] The RAD referred to the relevant provision of the Act, dealing with “new evidence”, that is subsection 110(4).

[25] The photographs add little to the claim of the Applicants. The RAD reasonably found that the claim based upon wearing the hijab could have been raised before the RPD.

[26] The RAD also reasonably found that the Applicants did not suffer a breach of procedural fairness arising from the competence of counsel. Although the RAD did not make an explicit finding about the competency of Counsel and procedural fairness, it clearly rejected the arguments that the Applicants did not raise the fears of the female Applicants, due to the manner by which their Counsel questioned the Principal Applicant.

[27] Overall, I am not persuaded that the RAD breached the duty of procedural fairness owed to the Applicants. Neither am I satisfied that the decision fails to meet the applicable standard of reasonableness.

[28] The RAD reviewed the evidence and made clear findings.

[29] In the result, the application for judicial review is dismissed. There is no question for certification.

JUDGMENT in IMM-9240-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9240-21

STYLE OF CAUSE: SEYED REZA VASLI, FATEMEH MAHDAVI,
SEYED MOHAMMADJAVAD VASLI AND
SEYEDEH MARYAM VASLI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: NOVEMBER 3, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 19, 2023

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