

Federal Court



Cour fédérale

**Date: 20240416**

**Docket: IMM-2353-23**

**Citation: 2024 FC 590**

**Toronto, Ontario, April 16, 2024**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**HAMID REZA MALEKI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated January 26, 2023 [the Decision], in which the RAD upheld the decision of the Refugee Protection Division [RPD] finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is allowed, because the RAD made a reviewable error in its consideration of the admissibility of the new evidence adduced by the Applicant on appeal.

## II. Background

[3] The Applicant is a citizen of Iran who asserts fear of harm from the Iranian regime as a result of a land dispute with a Shia mullah, his Kurdish ethnicity, and his Sunni religion.

[4] The Applicant alleges that, in December 2018, he and his uncle tried to sell some family land but discovered that a Shia mullah had ownership to the land. The Applicant says that he and his uncle attempted to involve the police, but the police would not lodge a complaint. The Applicant also alleges that he and his uncle could not find a lawyer to assist them, as a result of their ethnicity and the powerful Shia mullah with whom they were in a dispute.

[5] The Applicant alleges that he subsequently got into a fight with the mullah's son and was arrested and detained for two months. He claims that he was tortured and eventually forced to sign documents saying that he had sold the land to the mullah.

[6] The Applicant left Iran and came to Canada in November 2019. At the Port of Entry [POE], a Canadian Border Services Agency officer advised the Applicant he was inadmissible because he had used a fraudulent document for the purposes of obtaining a visa. The Applicant made a claim for refugee protection, which was heard in June and September 2021. The RPD refused his claim on October 13, 2021, the determinative issue being credibility and well-founded fear of persecution.

[7] The Applicant appealed the RPD's negative decision to the RAD with the assistance of his former counsel. The RAD dismissed the appeal on June 8, 2022. After receiving the notice of dismissal of his appeal, the Applicant retained new counsel and subsequently filed an application to reopen his appeal on July 14, 2022. The application to reopen their appeal was based on an allegation of inadequate representation by former counsel. In particular, the Applicant argued that his right to procedural fairness was breached due to former counsel's failure to submit new evidence with the first appeal. The RAD decided to reopen the appeal on August 17, 2022.

[8] With the assistance of new counsel, the Applicant provided the RAD with new evidence. However, on January 26, 2023, in the Decision now under review, the RAD again dismissed the Applicant's appeal.

### III. Decision under Review

[9] The determinative issue before the RAD was credibility. The RAD agreed with the RPD's credibility concerns and confirmed the RPD's negative determination.

[10] In arriving at that determination, the RAD considered the admissibility of three new pieces of evidence the Applicant submitted for the purpose of his appeal:

- A. A summons dated October 26, 2021 [2021 Summons];
- B. A letter from the Applicant's mother dated September 20, 2022; and
- C. A summons dated March 2, 2022 [2022 Summons].

[11] The RAD accepted that all three pieces of new evidence could not reasonably have been provided to the RPD, as they all are dated after the rejection of the RPD claim. However, per *Singh v. Canada (Citizenship and Immigration)*, 2016 FCA 96, the RAD noted that the second step in the analysis for considering new evidence required assessment of the admissibility of the evidence for its credibility, relevance and newness.

[12] The RAD found that both summonses were not reliable, as they were inconsistent with the summons samples provided in the National Documentation Package [NDP]. In particular, the RAD noted that the 2021 Summons' structure and format was not consistent with the NDP sample, because the 2021 Summons did not include a reason for the required appearance and did not include the name of the agent serving the notice or a spot for a signature. The RAD found the 2022 Summons also varied from the NDP samples and was not reliable because it was missing the location of the justice department and the prosecution office at the top of the page, as well as the signature of the serving agent and date. The RAD noted that neither summons had security features that could help determine its legitimacy and found, on a balance of probabilities, that the Applicant had submitted two fraudulent summonses which could not be accepted as new evidence.

[13] In considering the letter of support from the Applicant's mother, the RAD noted that the letter related to the service of a summons that had been found to be fraudulent. Based on the RAD's conclusion that the letter referred to an unreliable document, the RAD did not find the contents to be credible or relevant and rejected the letter as new evidence on the basis that it lacked any probative value.

[14] The RAD therefore rejected all the new evidence and concluded that, because it had no new evidence creating any credibility concerns, it could not convene an oral hearing.

[15] The RAD considered the RPD's negative credibility findings, which included inconsistencies in the Applicant's narrative, his delay in departure from Iran, and confusing testimony about his arrival in Canada. Upon an independent review of the record and transcripts of the RPD hearing, the RAD agreed with each of the RPD's credibility findings.

[16] As for the Applicant's residual profile, the RAD found on a balance of probabilities that the Applicant is of Kurdish ethnicity and a Sunni Muslim. The RAD found the documentary evidence suggests that Sunnis are discriminated against in Iran and that, while Kurdish is not banned, it is not taught in schools and groups are harassed for supporting Kurdish independence. The RAD found that the Applicant may face discrimination based on his Kurdish and Sunni ethnicity and religion, but that his allegations did not rise to the level of persecution. In particular, the RAD found the Applicant had failed to establish that he is engaged in activities that would attract negative attention from the Iranian regime.

[17] In conclusion, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

#### IV. Issues and Standard of Review

[18] The Applicant's arguments raise issues surrounding the RAD's treatment of the evidence before it, including the new evidence that the Applicant sought to adduce on appeal.

[19] The standard of reasonableness applies to the RAD's treatment of the evidence (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). This includes the RAD's treatment of the proposed new evidence, other than to the extent a question of procedural fairness is raised, in which case the Court assesses whether the procedure followed was fair having regard to all the circumstances, (*Mohamed v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1145 at paras 6-9).

V. Analysis

[20] My decision to allow this application for judicial review turns on one of the principal arguments advanced by the Applicant's counsel in his oral submissions, that the RAD erred in its comparison of the summonses to the samples in the NDP and in its resulting conclusion that the summonses are fraudulent.

[21] In particular, I find compelling the Applicant's argument that the RAD erred in concluding that the 2021 Summons did not include the name of the agent serving the document or a spot for a signature. Referencing the combination of the Farsi original and the English translation of that document, the Applicant submits that the 2021 Summons clearly does contain both the agent's name and a signature. At the hearing, the Respondent conceded that this information does appear in the 2021 Summons but emphasized that the 2022 Summons was missing information contained in the NDP sample, including the signature of the serving agent.

[22] In my view, an error by the RAD in its comparison of the 2021 Summons to the NDP sample, which error contributed to the RAD's conclusion that the 2021 Summons was

fraudulent, is a reviewable error that undermines the reasonableness of the Decision and requires that this application be granted. Even if the RAD's analysis and conclusions surrounding the 2022 Summons remain unimpugned, the potential that at least one of the two summons is legitimate requires that the Decision be set aside and the matter returned to a differently constituted panel of the RAD for redetermination.

[23] My Judgment will so provide. Having arrived at this conclusion, it is not necessary for the Court to address the Applicant's other arguments. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-2353-23**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RAD for redetermination. No question is certified for appeal.

"Richard F. Southcott"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2353-23

**STYLE OF CAUSE:** HAMID REZA MALEKI v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 15, 2024

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** APRIL 16, 2024

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