

Federal Court



Cour fédérale

Date: 20241122

Docket: IMM-16357-23

Citation: 2024 FC 1879

Ottawa, Ontario, November 22, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**MOHAMMADHOSSEIN AZVAR, AZIZ
HOMAYONI, and NEDA AZVAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of three (two parents and their daughter) and citizens of Iran. They fled to Canada and sought refugee protection, alleging persecution on political grounds by the Islamic Revolutionary Guard Corps [IRGC] because of the actions of one of the parents' sons (their daughter's brothers) who was accused of violating Islamic laws. That son is not a party to

this application for judicial review because he, along with his two children, have been granted refugee protection in Canada further to an earlier proceeding before the Immigration and Refugee Board of Canada [IRB].

[2] The Applicants also allege that they are at risk because of their opposition to Islam and the mandatory hijab, because of the gender of the two female associate Applicants, and because of the Applicants' participation in protests opposing the Iranian government in Canada, resulting in a *sur place* claim.

[3] The Refugee Protection Division [RPD] of the IRB rejected their claims on credibility grounds. The Refugee Appeal Division [RAD] determined that the RPD was correct in finding that the Applicants are neither Convention refugees nor persons in need of protection. In dismissing their appeal, the RAD agreed with the RPD that the Applicants are not generally credible and that their corroborative evidence does not ground their claims for protection [Decision].

[4] The parties agree, as do I, that the outcome of this matter turns on the reasonableness of the Decision. Stated another way, the Court must determine whether the Decision is intelligible, transparent and justified, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 99. I find that none of the situations rebutting this presumption (*Vavilov*, at para 17) is present here.

[5] In my view, the Applicants have not met their onus of showing that the Decision is unreasonable (*Vavilov*, at para 100). For the reasons that follow, this application will be dismissed.

II. The Decision is not unreasonable

[6] I find that, on the whole, the Applicants' submissions express disagreement with the RAD's findings and are tantamount to a request to reweigh the evidence, which is not the role of a reviewing court: *Vavilov*, above at para 125.

[7] The Applicants assert that the RPD and the RAD did not consider photos of their participation in protests in Canada against the killing of Mahsa Amini. Leaving aside that the RPD decision is not in issue in the proceeding before the Court, I disagree. The RAD squarely, and in my view reasonably, addresses the Applicants' *sur place* claim in paragraphs 100-102 of the Decision. The Applicants have failed to provide any substantive submissions that show how the Decision is unreasonable regarding the RAD's treatment of this issue.

[8] The Applicants also have not persuaded me that because their son's refugee claim was accepted, this means the Applicants are similarly entitled to have their claims accepted. It is settled law that each refugee claim must be considered on its own merits. The fact that "one applicant is granted refugee status based on a similar experience is not binding on the Board because the Board must assess each claim individually, and previous decisions, even regarding family members, may have been wrongly decided": *Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752 at para 28.

[9] The Applicants submit that the RAD has a duty to consider all grounds relevant to a claim for protection, even those grounds not raised explicitly, citing *Pastrana Viafara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at para 6. The Applicants have not pointed the Court, however, to any grounds that in their view the RAD did not consider that the panel should have.

[10] The Applicants argue that the RAD made credibility determinations based on microscopic inconsistencies or omissions, and further, that the RPD and the RAD made no apparent detailed discussion or assessment of the principal Applicant's oral testimony (i.e. the testimony of Mohammadhossein Azvar). I disagree.

[11] Again, leaving aside the RPD decision, the RAD's reavilment assessment to which the Applicants point is a good example, in my view. I find the RAD reasonably explains that Mr. Azvar's and his daughter's evolving and inconsistent testimony concerning their return to Iran at different times undermines their fear of persecution and relates to core allegations of risk from the IRGC. Further, the RAD also clearly lays out its rationale for its implausibility finding regarding Mr. Azvar's and his daughter's exits from Iran on their renewed passports.

[12] I further find, contrary to the Applicants' submissions, that the RAD reasonably rejected their post-RPD hearing evidence of medical documentation regarding health issues. Rather than focus on why the RAD's explanation was unreasonable, the Applicants impermissibly urge the Court to consider the probity of the evidence (as a reason why the daughter attempted to provide

answers to her parents during the hearing, despite being cautioned by the member more than once), essentially asking the Court to reconsider and admit it.

[13] Regarding the Applicants' arguments about the RAD giving little or no weight to their remaining evidence, I find that the submissions not only reiterate the Applicants' position that the RAD focused on microscopic inconsistencies or omissions, but also attempt to have the Court reweigh the evidence.

[14] As an example, I am not persuaded that the RAD (again leaving aside the RPD) acted unreasonably when it found the Applicants' credibility was undermined because they omitted from their basis of claim the threats a second son still in Iran allegedly received that caused him to go into hiding. It was reasonably open to the RAD, in my view, to conclude that allegations of threats to their son from the Applicants' alleged persecutors are significant in terms of their forward-facing risk and, thus, reasonably would be expected to be in the basis of claim: *Hiraj v Canada (Citizenship and Immigration)*, 2016 FC 838 at para 28.

[15] As for the Applicants' claims of being persecuted for political opinion, for opposition to Islam and the mandatory hijab, I determine that the RAD reasonably noted these arguments had not been alleged in their basis of claim, were raised for the first time on appeal to the RAD although they could have been raised before the RPD, and are based upon the Applicants' own assertions with respect to their political opinions.

[16] As this Court previously has determined, where claimants from Iran first raise the issue of the mandatory hijab on appeal before the RAD, when they could have done so before the RPD, it is open to the RAD to decline to hear this new ground: *Vasli v Canada (Citizenship and Immigration)*, 2023 FC 77 at para 25.

[17] Further, I am not persuaded that the RAD's finding (at para 93 of the Decision) of insufficiency of corroborative evidence concerning the Applicants' asserted political opinion is unreasonable.

III. Conclusion

[18] For the above reasons, I conclude that the Decision is justified, transparent and intelligible. The Applicants have failed to identify any reviewable flaw in the RAD's reasoning. Instead, they seek to reargue central elements of their appeal before the RAD which is not appropriate on judicial review. The Applicants' application for judicial review, thus, will be dismissed.

[19] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-16357-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16357-23

STYLE OF CAUSE: MOHAMMADHOSSEIN AZVAR, AZIZ HOMAYONI,
AND NEDA AZVAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 20, 2024

JUDGMENT AND REASONS: FUHRER J.

DATED: NOVEMBER 22, 2024

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