Federal Court  Cour fédérale

Date: 20250318

Docket: IMM-94-24

Citation: 2025 FC 501

Toronto, Ontario, March 18, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SALAR AZIZI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a December 8, 2023 decision [Decision] of the Refugee Appeal Division [RAD] that confirmed a decision of the Refugee Protection Division [RPD] which found the Applicant to be neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*¸ SC 2001, c 27.

[2] The determinative issue is whether the RAD breached procedural fairness by issuing the Decision without waiting for the Applicant to file any further evidence pursuant to Rule 29(3) of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules] when the Applicant stated an intention at the time of filing his appeal memorandum, but did not do anything more.

[3] For the reasons set out below, and upon considering all of the circumstances, it is my view that the Applicant has not demonstrated that there was a breach of procedural fairness. As the issues raised are all predicated on the possible Rule 29(3) evidence, the application is accordingly dismissed.

I. Background

[4] The Applicant, Salar Azizi, is a 35-year-old citizen of Iran. He is an ethnic Kurd and a Sunni Muslim and claims that his ethnicity and faith put him at risk of harm in Iran.

[5] The Applicant alleges that in July 2020, he was falsely arrested for possession of alcohol and was detained by the morality police who pressured him into making a false confession. Allegedly fearing for his life, he fled the country and in November 2020 arrived in Canada.

[6] In February 2021, he was convicted *in absentia* by a criminal court in Iran and a week later sought refugee protection in Canada.

[7] On July 31, 2023, the RPD rejected the Applicant's claim for refugee protection.

[8] The Applicant appealed to the RAD and filed his Appellant's record, thereby perfecting his appeal on October 23, 2023.

[9] In its materials, the Applicant provided a further affidavit as new evidence, however, only certain paragraphs were found to be admissible. In those paragraphs, the Applicant claimed that since coming to Canada, he had publicly voiced his political beliefs and his support of Kurdish rights. He asserted that he attended a memorial service for Mahsa Amini, shared stories about her online, and was active in related protests. The Applicant stated in his memorandum that he planned to provide additional personal disclosure under Rule 29(3) of the RAD Rules "as part of a separate application in the near future".

[10] The RAD issued its Decision dismissing the appeal on December 8, 2023.

[11] In the Decision, the RAD accepted that the Applicant was falsely charged by Iranian police with alcohol possession but found the false arrest was not due to the Applicant's Kurdish ethnicity or any Convention ground. It concluded that the RPD had correctly determined that the conviction and sentence did not expose the Applicant to section 97 risks.

[12] The RAD concluded that the RPD had correctly found that the Applicant did not establish a serious possibility of persecution based on his profile and that the country condition evidence did not support such a finding.

[13] The RAD found that the RPD had not erred in failing to consider his political opinion as a nexus for his fear of persecution in Iran. It further concluded that the Applicant had not established a *sur place* claim based on his new evidence as the evidence was lacking certain details and was insufficient to demonstrate that the Applicant's activities in Canada would come to the attention of Iranian authorities. The RAD acknowledged that the Applicant had stated that he would file a Rule 29(3) application but noted that the application was never received.

II. Issues and Standard of Review

[14] The Applicant raises three issues in this application:

1) Did the RAD breach the Applicant's right to procedural fairness by failing to wait for the Applicant's Rule 29(3) application before making its decision?

2) Did the RAD err by failing to find the Applicant had a nexus to a Convention ground based on political opinion?

3) Did the RAD err in its assessment of the *sur place* claim?

[15] The parties agree that the determinative issue is the first issue of procedural fairness as the remaining issues rely on the proposed Rule 29(3) evidence. The standard of review for issues of procedural fairness is akin to correctness: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35. The Court must determine whether the procedure was fair having regard to all of the circumstances, including the factors outlined in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], and ask whether a fair and just process was followed: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

III. Analysis

[16] The Applicant asserts that it was procedurally unfair for the RAD not to wait until the end of the 90-day period for it to render its decision, or to at least follow-up with the Applicant before issuing the Decision. He contends that the RAD released the Decision at an unnecessarily accelerated pace, that it was a lengthy process to obtain the evidence, and that the proposed evidence was highly probative to the Applicant's *sur place* claim, as it addressed various deficiencies that were highlighted by the RAD in the Decision.

[17] The Applicant contends that the factors set out in *Baker* provide support for his argument. He asserts *inter alia* that: a) greater procedural protections should be afforded as the RAD is a quasi-judicial body, and there is no automatic right of appeal from a RAD decision; b) as the Applicant is seeking asylum and the decision has serious consequences, he should have been given every opportunity to present all relevant evidence to support his claim; c) as the RAD was put on notice of the Applicant's intention to file a Rule 29(3) application, the Applicant had a legitimate expectation that his Rule 29(3) evidence would be given due consideration prior to a decision being rendered; d) the Applicant intended to file corroborating documentary evidence to support his claimed fear of persecution, and in particular his *sur place* claim. As the RAD did not have the Applicant's complete evidence before it, the Applicant did not have an opportunity to be fully heard; and e) the choice made by the RAD to deliver their Decision early must be balanced against the fairness to the Applicant.

[18] The Respondent asserts that while the general principles set out in *Baker* are applicable, the Applicant's position is not supported by any specific case law. It also asserts that the

Applicant's argument runs contrary to the relevant statutory scheme. The Respondent contends that a mere statement of intention to file a Rule 29(3) application is not enough. As there was no pending Rule 29(3) application before the RAD and no further correspondence from the Applicant after 46 days, there was no obligation on the RAD to follow-up with the Applicant or to wait to render its decision. This is particularly so, in view of the statutory scheme and requirement to decide RAD appeals in an expeditious manner, within 90 days (Rule 159.92(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227).

[19] I agree that in its full context, the circumstances here do not support a finding of procedural unfairness. While the nature of the decision and the decision-making body support some procedural protections, the intention stated by the Applicant without more, after close to 7-weeks, was not enough to require the RAD to forestall completing its statutory duty or to reasonably create a legitimate expectation that they should have done so.

[20] In this instance, the evidence in question was not mandatory. The RAD had everything it needed to determine the appeal once the Applicant perfected his appeal.

[21] The stated intention to file Rule 29(3) evidence, on its own, was not actionable nor did it create an obligation on the Applicant to file further evidence. To submit further evidence, a separate application was required (rules 29(2) and (3) and 37, RAD Rules) and the evidence would also need to meet the evidentiary requirements set out in *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 [*Singh*].

[22] While the Applicant suggests that it was common practice for the RAD to follow-up with an applicant in this type of scenario before issuing a decision, they provided no support for their assertion. Although the Respondent conceded that in some instances follow-up by the RAD does occur, it contested that the circumstances here, which were based on an intention and nothing more, would have imposed any such obligation of due diligence on the RAD.

[23] As the production in question was not mandatory, nor formally initiated, I agree that a more substantive step by the Applicant was required before any follow-up by the RAD would be expected (see for example, *X(Re)*, 2021 CanLII 150699 (CA IRB) at paras 12-15).

[24] After nearly 7 weeks, it was not unreasonable for the RAD to move forward to render its decision in view of it own statutory duties.

[25] The Applicant argues that he ran into delays when providing the documents due to the nature, scope and volume of the documentary evidence and that counsel received translated materials only two days prior to receiving the RAD decision; however, there is no evidence to support this contention. If anything, the package includes a declaration suggesting that the documents were translated two days after the Decision, on December 13, 2023. Even with the Applicant's assertion, there is no explanation as to why the Applicant did not take any steps within the near 7 weeks following submission of its appeal materials to advise the RAD as to when any further evidence would be expected.

[26] As recently noted by Justice Zinn in *Mendoza De Jesus v Canada (Citizenship and Immigration)*, 2025 FC 32 at paragraph 29: “Procedural fairness requires a meaningful opportunity to present one’s case, not an indefinite one. While the consequences for the Applicant are significant, this does not obviate the need for timely engagement with administrative processes.”

[27] In addition to the foregoing considerations, as noted earlier, any evidence submitted under Rule 29(3) would also be required to meet the requirements set out in *Singh* to be admissible. The exhibit provided by the Applicant as his proposed Rule 29(3) evidence, includes a bundle of documents and photographs without any explanation. There is no basis to draw any inferences on the probative value of the proposed documents as they are not accompanied by an affidavit from the Applicant but are merely attached as a collection of documents and photographs to the affidavit of a law clerk, without further explanation. There is also no Rule 29 application.

[28] Accordingly, there is insufficient evidence to be able to conclude that the documents would make a meaningful difference to the Decision even if the matter were sent back for redetermination.

[29] For all these reasons, it is my view that the Applicant has not established that there has been a breach of procedural fairness.

[30] As the parties agreed that the remaining issues were predicated on the proposed new evidence, in view of these findings, it is also my view that the remaining issues cannot succeed.

[31] The application is accordingly dismissed.

[32] There was no question for certification proposed by the parties, and I agree none arises in this case.

JUDGMENT IN IMM-94-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-94-24
STYLE OF CAUSE:	SALAR AZIZI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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