

Federal Court



Cour fédérale

**Date: 20171213**

**Docket: IMM-926-17**

**Citation: 2017 FC 1138**

**Ottawa, Ontario, December 13, 2017**

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

**BETWEEN:**

**JALIL NIKKHOO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Nikkhoo is a citizen of Iran who arrived in Canada on a temporary resident visa in March 8, 2016. He initiated a refugee claim in May 2016 alleging persecution on the grounds that he is a practitioner of Erfan Keyhani, also known as Interuniversalism. The practice of Erfan Keyhani is banned by the Iranian government.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada found Mr. Nikkhoo's narrative to be inconsistent and lacking in credibility. The RPD concluded he was neither a Convention Refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a person in need of protection under section 97.

[3] He appealed the RPD decision to the Refugee Appeal Division [RAD]. The RAD confirmed the original decision and dismissed the appeal. Mr. Nikkhoo now seeks judicial review of the RAD determination pursuant to subsection 72(1) of IRPA. He submits that the decision was unreasonable as the RAD: failed to conduct an independent analysis of the evidence; found, contrary to well settled law that the applicant's lack of in-depth knowledge of his faith proved that he was not a genuine follower of Erfan Keyhani; and failed to consider all the evidence before rejecting his *sur place* claim.

[4] For the reasons that follow I am unable to conclude the decision was unreasonable. The application is dismissed.

## II. Standard of Review

[5] The RAD's assessment of evidence and findings of mixed fact and law are to be reviewed against a standard of reasonableness (*Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 at para 10; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica*]). In considering the reasonableness of a decision the Court is primarily interested in whether the decision reflects the elements of justification, transparency and

intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

### III. Analysis

[6] In considering Mr. Nikkhoo's appeal the RAD undertook a detailed analysis of its role in both addressing new evidence he sought to place before the RAD and in outlining its role in accordance with the jurisprudence of this Court and the Federal Court of Appeal (*Huruglica; Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321; *Akuffo v Canada (Citizenship and Immigration)*, 2014 FC 1063). In doing so the RAD expressly noted "it is particularly important that the RAD engage in its own review of the evidence, in order to determine whether the RPD's finding is supported by that evidence." The RAD recognized it was to apply a correctness standard in considering the appeal but also was in a position to defer to the RPD's findings where the findings resulted from "the RPD's distinct advantages or from a comprehensible reasoning process whose premises are rooted in such advantages."

[7] Not only did the RAD accurately define its role, it then proceeded to conduct a review of the RPD decision in a manner that was fully consistent with that role.

[8] The RAD did not simply "rubber stamp" the RPD's findings as they related to Mr. Nikkhoo's claimed religious beliefs and the RPD's credibility findings. Rather it engaged in a consideration of the evidence. The RAD concluded that the RPD was owed deference in respect of some negative credibility findings. It differed in respect of other credibility findings. In other

areas, after reviewing the evidence, the RAD reached the same conclusion as the RPD. Finally the RAD considered the fresh evidence placed before it in the form of a court summons, a document the RAD reasonably concluded was falsified.

[9] Unlike the situation in *Jeyaseelan v Canada (Citizenship and Immigration)*, 2017 FC 278, upon which Mr. Nikkhoo relies, the RAD did undertake an independent assessment of the evidence. On the basis of this independent assessment it then arrived at its conclusions on issues of credibility, genuine belief and the *sur place* claim.

[10] The RAD did not err in carrying out its appeal function nor did it unreasonably conclude that Mr. Nikkhoo was generally lacking in credibility. The RAD's treatment of this evidence shows that it was alive to the RPD's reasoning, but also that it was conducting its own analysis of that evidence. Where it agrees with the RPD the RAD states why. Where it reaches a different conclusion it so states. In effect the RAD carried out its role as set out in *Huriglica*.

[11] Similarly the RAD did not unreasonably rely on Mr. Nikkhoo's lack of knowledge of the practice of Efran Keyhani to conclude that, on a balance of probabilities, his belief was not genuine. Knowledge of the religion was but one factor that was considered within the context of the broader record. The RAD also had before it the claimed length and nature of Mr. Nikkhoo's practice of Efran Keyhani, the credibility concerns surrounding his claim that Iranian authorities were seeking him out, the conclusion that the court summons was falsified, and the inconsistency between his expressed fear and his conduct at demonstrations. This is not a situation where the

finding was based upon the failure of the applicant to adequately respond to a religious trivia test.

[12] Finally the RAD also reasonably concluded that Mr. Nikkhoo had not established that he faced a risk on return to Iran as the result of his activities in Canada. The finding was consistent with the objective country condition evidence. Mr. Nikkhoo's speculation to the contrary is not a basis upon which to interfere with the decision reached by the RAD.

#### IV. Conclusion

[13] The RAD's decision is transparent, justified and intelligible and falls within the range of reasonable possible outcomes based on the facts and the law. The application is dismissed.

[14] The parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed; and
2. No question is certified.

"Patrick Gleeson"  
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Judge

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

**DOCKET:** IMM-926-17

**STYLE OF CAUSE:** JALIL NIKKHOO v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 19, 2017

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** DECEMBER 13, 2017

**APPEARANCES:**

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