

Federal Court



Cour fédérale

Date: 20210525

Docket: IMM-7836-19

Citation: 2021 FC 476

Ottawa, Ontario, May 25, 2021

PRESENT: Madam Justice Simpson

BETWEEN:

**SHIVA SINAEI
PEYMAN MOHAMMADNIA
PARIYA MOHAMMADNIA
PARHAM MOHAMMADNIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS
(Delivered orally from the Bench by teleconference
at Ottawa, Ontario on May 7, 2021)

[1] This application is for judicial review of a decision of the Refugee Appeal Division [the RAD], of the Immigration and Refugee Board [the Board], dated November 27, 2019, dismissing the Applicants' appeal from a decision of the Refugee Protection Division [the RPD] of the Board in which their refugee claim was refused.

[2] The Applicants are a husband and wife [the Principal Applicant] and their two children, all citizens of Iran. They claim to fear persecution because of their conversion to Christianity in Iran. The RAD dismissed the appeal on the basis of credibility, finding that there was insufficient evidence to show that the Principal Applicant was a genuine Christian convert.

[3] The Principal Applicant says in her Basis of Claim narrative [BOC Narrative] that she converted to Christianity in late 2015 with the help of two close friends [the Friends]. At their invitation, she attended home church meetings with them in secret once or twice a month. She eventually told her husband and he agreed to attend the church as well. Because the authorities were discovering home churches, the Applicants decided to leave Iran. They arrived in Canada on October 16, 2018, and filed their refugee claim in January 2019.

I. **The RAD Decision**

[4] The Applicants submitted as new evidence a letter from their pastor and photos showing them at their church. The RAD accepted the photos as new evidence, but not the pastor's letter. It was rejected because the content did not pertain to events that post-dated the RPD Decision and because the content was identical to an earlier version of the letter which was already in evidence. Only the letter's date was new.

[5] The RAD Member upheld the RPD's negative credibility finding based on the lack of an explanation in the Principal Applicant's BOC Narrative for her religious conversion. The Principal Applicant wrote in her BOC Narrative that she "became attracted to Christianity" and stated that she had never believed in Islam or in the regime's application of Islam. However, she

testified before the RPD that she converted because she was stressed and depressed about the treatment of women in Iran. She referred to the hijab and the inability to wear nail polish as particular concerns.

[6] The RAD Member found that her failure to mention her stress and depression about gender issues was a significant omission from her BOC Narrative [the Omission] and that it had not been adequately explained. When she was confronted with this concern at the hearing, the Principal Applicant indicated that she forgot to mention it and her narrative was just a summary.

[7] The RAD Member concluded that, on a balance of probabilities, the Principal Applicant did not convert to Christianity in Iran. This finding was based largely on the Principal Applicant's inability to explain the security measures at her home church. When asked what she would do if the authorities arrived, the Principal Applicant said she would simply "rely on God".

[8] The RAD Member determined that this explanation not credible, given the clear consensus in documentary evidence about rigorous security measures in place for home churches, and given the fact that the Principal Applicant had attended the home church for three years.

[9] The RAD Member found that the ease with which the Principal Applicant, and later her husband, joined the church was inconsistent with country condition evidence. The RAD Member also noted that there was no corroborating evidence from the Friends, which could have

addressed significant matters such as the process of joining the church, the church's security measures, and the reasons for the Principal Applicant's conversion.

[10] The RAD Member not only found that the pastor's letter from the church in Canada was of little probative value, he also determined that the Applicants' involvement with the church in Canada was undertaken to bolster their refugee claim.

[11] The RAD Member accepted that the Applicants had joined a church in Canada and that their friends and family are aware of their baptisms. However, the RAD Member noted that there was no indication that any of the friends and family would report their activities to Iranian authorities. As well, the Applicants offered no evidence that Iranian authorities knew or would come to know of their conversion in Iran. In these circumstances the *sur place* claim was not accepted.

II. The Issues

[12] The Applicant raises several issues, but I will deal only with those which I see as determinative.

[13] The first issue concerns the nature of the Principal Applicant's testimony before the RPD about the reason for her conversion. The question is whether her testimony was new evidence which had been omitted from her BOC Narrative, or whether it was simply an elaboration of the information in her BOC Narrative.

[14] The evidence in her BOC and testimony are described above in para 5. In my view, the testimony was new evidence, given that the BOC had not mentioned the Principal Applicant's stress and did not focus on problems women were encountering with the Islamic regime. Due to this Omission from the BOC, the RAD Member reasonably made a negative credibility finding.

[15] The second issue is whether it was reasonable of the RAD Member to conclude that the Principal Applicant had not converted to Christianity in Iran because after three years as a member of the congregation, she could not describe her church's security rules, and simply testified that, if there was a raid, she would "rely on God". Further, when asked whether bibles might be discovered, she mentioned carrying poetry books, but offered no evidence how about they would be used in the event of a raid. In my view, the RAD Member reasonably concluded that the conversion in Iran did not occur based on the Principal Applicant's inability to describe the rules which were in place to protect her church and its congregation.

[16] The third issue is whether it was it reasonable of the RAD to conclude that the Applicants had not converted to Christianity because of the Applicants' failure to provide evidence from the Principal Applicant's Friends. The evidence before the RPD was that the Principal Applicant was still in contact with her Friends. When asked why she did not provide their evidence, she said, "we were not required". Her husband added that because the Friends were not church leaders they could not provide a certificate.

[17] In my view, the Friends' evidence was critical because it would have addressed several core issues. It might have proved the Applicants' conversion and might have described the

Principal Applicant's reasons for leaving Islam. It might have described whether the Applicants required vetting before being accepted into the congregation and it might have dealt with whether there was security during services.

[18] The Applicants are sophisticated and had counsel. In light of all the circumstances, it was reasonable of the RAD Member to conclude in the absence of evidence from the Friends that the Applicants had not converted to Christianity in Iran.

[19] In my view, the Principal Applicant's failure to describe the reason for her conversion in her BOC, her lack of knowledge about security measures at her house church, and her failure to provide corroborating evidence from her Friends were sufficient without more to support the RAD's finding that the Principal Applicant and her husband never converted in Iran.

[20] The last issue concerns the *sur place* claim. Since the Principal Applicant and her husband were not Christian converts, their attendance at church in Canada was reasonably found to be an attempt to bolster their claim. Since they were not Christian, they would not attend church on their return to Iran, so there was no risk of persecution for that reason. Further, there was no evidence that Iranian authorities perceived them to be Christian. They were not pursued when they left Iran and their home church had not been discovered.

[21] Lastly, there was no reason to believe that the Applicants' attendance at church and baptism in Canada would come to the attention of Iranian authorities.

[22] For all these reasons, I have concluded that the dismissal of the *sur place* claim was reasonable.

III. **Certification**

[23] No question was posed for certification for appeal.

JUDGMENT IN IMM-7836-19

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

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7836-19

STYLE OF CAUSE: SHIVA SINA EI et al. v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM ON MAY 6,
2021, AND BY TELECONFERENCE ON MAY 7, 2021

DATE OF HEARING: MAY 6, 2021 AND MAY 7, 2021

JUDGMENT AND REASONS: SIMPSON J.

DATED: MAY 25, 2021

APPEARANCES:

Lani Gozlan FOR THE APPLICANTS

Lucan Gregory FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Department of Justice Canada
Toronto, Ontario