

Federal Court



Cour fédérale

**Date: 20210727**

**Docket: IMM-3680-20**

**Citation: 2021 FC 794**

**Toronto, Ontario, July 27, 2021**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**BALEN AKRAM AHMED AHMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This application judicially reviews a decision (“Decision”) of the Refugee Appeal Division (“RAD”) dated July 29, 2020, in which the RAD confirmed the finding of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention Refugee nor a person in need of protection. At the conclusion of this judicial review, I dismissed the application and promised that these Reasons would follow.

## II. Background

[2] The Applicant is a citizen of Iraq from the Kurdish area in the north of the country. He alleges the following facts.

[3] On December 31, 2014, he met a woman (“C”) and the couple fell in love. In June 2014, the Applicant approached C’s father for permission to marry her. The father refused because, although the Applicant is, like C’s family, a Sunni Muslim, he was not equally strict in his observance of the religion. The father ordered the Applicant to stop seeing his daughter. Meanwhile, the father also arranged for C to marry a cousin (“Cousin”) – the son of his brother (“Uncle”). The Uncle was, according to the Applicant, an influential man in charge of security and intelligence for his region in Iraq.

[4] The marriage was arranged for July 2016, and C informed the Applicant. The couple agreed to meet in a park, where they had sex for the first time in a secluded area. The couple continued to meet in secret in the park for months. However, in September 2015, C’s father followed her to the park and confronted the couple. He confined C to the house and threatened to have both her and the Applicant killed if they saw each other again, and informed them that the Uncle could make their killing appear untraceable. Despite these threats, C disguised the Applicant’s calling information on her phone and continued to communicate with him. Her father took her phone and gave it to the Uncle for analysis.

[5] The Applicant then went into hiding. The police refused to intervene because honour killings are too dangerous to investigate.

[6] The Applicant obtained a Canadian temporary resident visa (“TRV”) in November 2015 and used it to come to Canada on January 10, 2016, claiming refugee status.

A. *Procedural History*

[7] The RPD initially rejected the Applicant’s claim. However, the RAD allowed the appeal on the basis of inadequate interpretation. This application relates to a *de novo* hearing before the RPD, which did not admit the transcript of the first proceeding into evidence.

[8] The allegation of inadequate interpretation is an important thread in this application. At his second RPD hearing, the Applicant sought to add additional information to his Basis of Claim (“BOC” or “narrative”), specifically that his house in Iraq had been sprayed with bullets, as evidence that he had reason to fear for his life due to tangible threats from the Uncle and Cousin. This spraying of bullets at the Applicant’s house was not included in his BOC. The Applicant’s explanation for the omission involves a friend (the “Interpreter”) who helped him to draft his BOC in English.

[9] The Interpreter explained in a statutory declaration (“Declaration”) presented at the second RPD hearing that he and the Applicant worked together in the evenings over the course of a week to draft the BOC. The Declaration stated that the Interpreter thought that the incident with the bullets being sprayed at the house to menace the Applicant was too obvious a detail to

include in the BOC. The Interpreter deposed that the Applicant's behaviour with C (i.e. caught by the unwed female's father having sex in the park), in their culture, would inevitably lead to serious threats to the Applicant's life. The Interpreter explained that he therefore included in the BOC details of the courtship, C's father's refusal and the arrangements he made for her marriage to the Cousin, and the threats that C's father made to the Applicant. The Interpreter concluded his Declaration noting that he omitted the bullets incident from the BOC on his own initiative and that it was thus his mistake.

[10] The Applicant argued at the second RPD hearing that the BOC's omission should not be held against him and that the spraying of bullets should be included as a central component of his claim, along with supporting documentation such as photographs of holes in his house, and letters from family members that spoke to the incident.

[11] At the second RPD hearing, the Applicant was unsure whether to swear to his BOC's accuracy, given that the RPD had already disputed aspects of it at the first hearing. This led to some confusion at the hearing regarding whether the Applicant had sworn the contents of the BOC. Ultimately, Applicant's counsel stated at the second hearing that the BOC could be affirmed, without amendments, with the caveat that it be read alongside the Interpreter's Declaration. However, the RPD member continued to make it known that he had issues with the omission of this central event.

B. *RPD Decision*

[12] The RPD gave little weight to the Declaration because the RPD did not accept the Applicant's explanation regarding the omission. The RPD also found inconsistencies between two police reports, one which the Applicant obtained in late September 2015 and one which his mother obtained in January 2016 after the Applicant had left the country, which stated that the identity of the assailants was unknown, while the Applicant's testimony was that agents of the Uncle were responsible. Overall, the RPD also found that the Applicant gave vague and evolving testimony about which organization the Uncle worked for (i.e. which security forces in the region). Finally, the RPD made an adverse finding of the Applicant's two-month delay in leaving Iraq. The Applicant appealed to the RAD a second time, which is the Decision being challenged in this judicial review.

C. *Submissions to the RAD*

[13] The Applicant submitted to the RAD that the RPD erred in a number of ways, including that:

- i. by the time of the second RPD hearing, the Applicant was unsure whether to swear to the BOC's accuracy, given that it was already disputed. If the RPD expected it to have been amended, it should have made that clear, as the Applicant's counsel had offered to produce a revised BOC;
- ii. the explanations given by the Interpreter for the BOC's omissions should have been taken into account and properly assessed, along with the photographs and statements from

family members, which the Applicant argues cannot be simply rejected as evidence solely because they come from family members;

- iii. the RPD engaged in inappropriate rolling credibility findings which rely on each other to justify themselves;
- iv. the Applicant's testimony about the name of the intelligence organization the Uncle works for was reasonable in the circumstances;
- v. the RPD made inappropriate plausibility findings concerning the actions taken by security forces; and
- vi. the RPD's reasons were inconsistent with respect to whether or not the Applicant's house was shot at, because the RPD both disbelieved the incident and also used it to impugn credibility.

### III. The RAD Decision under Review

[14] The RAD dismissed the Applicant's appeal. The determinative issue for the RAD was credibility. It found that, despite a few errors made by the lower tribunal, the RPD had correctly assessed the BOC omissions and the inconsistencies in the evidence in their totality, in finding the Applicant lacked credibility. The RAD found that although the RPD had erred by failing to provide adequate reasons for giving no weight to the statements by family members that attested to the house being sprayed with bullets, its own independent analysis arrived at the same conclusion. Furthermore, it found no procedural fairness violation with respect to how the RPD dealt with the BOC, concluding that the Applicant was given a fair chance to amend it under to the *Refugee Protection Division Rules* (SOR/2012-256) [*RPD Rules*], particularly in light of the

long period of time between the BOC's completion on March 16, 2016, and the second RPD decision issued on March 13, 2019. However, he chose not to amend it.

[15] Finally, the RAD rejected the Applicant's allegation that the RPD ignored evidence, finding that it had considered the Declaration, photograph and letters from his family members as evidence in support of his house being sprayed by bullets. The RAD concluded that the RPD properly addressed the evidence. It also affirmed a number of other RPD findings, as discussed below.

#### IV. Issues and Standard of Review

[16] The parties agree, as do I, that the applicable standard of review of the RAD's Decision is that of reasonableness, as none of the circumstances that rebut that presumptive standard arise in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The allegations that the RAD erred in finding that the RPD did not breach the Applicant's rights to procedural fairness regarding the opportunity to amend his BOC, are also reviewed by this Court on a reasonableness standard (*Omirigbe v Minister (Citizenship and Immigration)*, 2021 FC 787 [*Omirigbe*] at paras 25-26).

[17] The starting point of a reasonableness review lies in the principle of judicial restraint and respect for administrative decision makers: *Vavilov* at para 13. To determine whether a decision is reasonable, the Court must ask whether it bears the hallmarks of justification, transparency and intelligibility in light of the relevant factual and legal constraints that bear on it (*Vavilov* at paras 99 and 101).

V. Analysis

[18] I should begin by saying that the Applicant has three previous lawyers over the course of this matter, and a fourth (Ms. Chandrashekar), who ably represented him at the hearing of this judicial review, took over the file late in the proceedings. I noted at the outset of the hearing that Ms. Chandrashekar was in a difficult position, as a number of failures may have been made earlier in the case, most notably the failure to amend the BOC, which was a central theme in this case. As the Respondent noted in written submissions, as did the RAD, no complaint against any of the former counsel was ever been filed, and such a process would require former counsel to be given notice and a chance to make submissions. Applicant's counsel at the hearing before this Court acknowledged that no complaint against counsel had been made on the file.

A. *RAD's Conclusions Regarding Procedural Fairness were Reasonable*

[19] It was reasonable for the RAD to conclude that the Applicant – who as mentioned above was represented by counsel over the years in which the tribunal proceedings took place – had ample opportunity to amend his BOC. He failed to do so despite a number of opportunities. Rule 9 of the *RPD Rules* provides clear instructions on how applicants can amend their BOC. The Applicant neither amended his BOC before his first RPD hearing in 2016, nor at the *de novo* one in 2018, despite having had every opportunity to do so.

[20] It was suggested before this Court that the tribunals below should have given the Applicant an invitation to draft a new BOC from scratch, given all the circumstances. I disagree. Counsel knew from the outset that the BOC was in issue, since the incident that led to the



Applicant's flight from his country (the shooting at his home) was not included in his narrative. Furthermore, counsel who originally represented the Applicant should have ensured that the Interpreter read the BOC to the Applicant, which was apparently never done (see Rules 5, 6, RPD Rules). The Applicant was given more than one opportunity to amend his BOC, including an express invitation to do so. This was never done.

[21] I do not agree with the Applicant's written submission that, if the presiding RPD member intended to draw an adverse inference based on the Applicant's alleged failure to update his BOC prior to his second RPD hearing, then he should clearly have said so at the start of that hearing, thereby giving the Applicant a chance to amend the narrative. Procedural fairness does not require claimants to be confronted about information of which they are aware, and in fact provided themselves (*Omirigbe* at para 40). Plainly, the onus of drafting an accurate BOC rests with the Applicant as a central plank of the refugee hearing process in Canada. Omissions from a BOC may be relevant in determining an applicant's credibility (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 161 at para 30; *Hos v Canada (Citizenship and Immigration)*, 2015 FC 791 at paras 20, 33, 41). Bullets being sprayed at the Applicant's house in this case was a central plank of the case, which the RAD found wanting in credibility, along with other key elements of the claim that I will review below.

B. *Police Reports and Photographs of Bullet Holes in the Applicant's House*

[22] The RAD also pointed to various other inconsistencies and omissions, which were reasonable when held up against the totality of the evidence. For instance, the Applicant submitted two police reports, both of them regarding the incident with the bullets. The 2015

police report states that the Applicant reported that unknown assailants had fired bullets at his house and threatened him. His report was apparently registered and presented to an investigating judge, who ordered an investigation into the matter and the arrest of the assailants. The Applicant also filed a photograph of large holes in a building, and the person who took the photograph testified (as a witness at the RPD hearing) that the holes were bullet holes. The second police report of 2016 allegedly filed by the Applicant's mother, states that she attended the police department on January 17, 2016, a week after the Applicant had fled Iraq, and reported the same incident.

[23] The RAD noted that, given that the Applicant had already filed a complaint, and an investigation was already underway, with the Applicant having left the country, it was “unclear what purpose this police complaint would have served in order to ensure his protection”. The RAD found that the 2016 report added little to the 2015 complaint. The RAD also noted inconsistencies in the reports, including the following:

The RPD accepted that shots were fired at the house which left bullet holes, but not that shots were fired over the house as stated in the police report. [...] The RPD did not draw an adverse credibility inference from this inconsistency, but rather simply acknowledged that it cannot both be true that shots were only fired over the house and that they were fired into the house at the same time. The RPD did not err in making this passing observation without having put it to the Applicant during the hearing. Because the issue of the inconsistency was evident on the record and the panel specifically drew his attention to it, he had a reasonable opportunity to have responded to it if he had so chosen.

These findings were reasonable.

C. *The RAD's Treatment of the Declaration*

[24] I cannot agree with the Applicant that the RPD ignored the Interpreter's Declaration, or that RAD erred in its finding in its correctness review on the point. The RAD noted that the RPD devoted over one page of its reasons to consider the Declaration. It also noted, as did the RPD, that the Declaration was sworn after the RPD first rejected the Applicant's claim. The RAD stated that, even if the RPD had accepted the Applicant's assertion that the BOC was not read back to him after he finished drafting it with the Interpreter, the Applicant should have identified the omission prior to either of his two RPD hearings and filed a BOC amendment.

[25] The RAD noted that the BOC narrative is about three single-spaced pages and that it is not until the end of the second page that the Applicant refers to asking C's father for permission to marry her. The BOC later refers to the Applicant hiding in a friend's house and to making a complaint to the police, but it does not include significant details that the Applicant later added in oral testimony, such as surveillance of him by purported agents of the Uncle, shots being fired at his house and moving around from house to house while in hiding.

[26] In my view, it was open to and entirely reasonable for the RAD to have concluded that the RPD had considered these aspects of the Applicant's case, and remained unpersuaded that the Declaration explained away the significant omissions in his BOC. I accept the Applicant's argument that a refugee claim is not meant to be a memory test and that memory is not a video recorder: *Pazmandi v Canada (Citizenship and Immigration)*, 2020 FC 1094 at para 28; *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 at para 28). However, what was at stake in this case was the central event that led to his flight from the country and the very basis of his claim for persecution.

D. *The RAD did not Ignore Other Evidence*

[27] The RAD, at para 24 of its Decision, provided an overview of the letters from family members that the Applicant submitted at his second RPD hearing. It noted letters from two uncles, which both stated that the Applicant visited C's father in June 2015 to ask permission to marry C. It also noted a letter from an aunt, which stated that the Applicant hid with her for a few days in October 2015 because of a conflict with C's family, which had strong influence and connections with the government, and that he changed his hiding place every few days. Finally, it noted a letter from another uncle, which was similar in its content as the letter from the aunt.

[28] Clearly, the RAD, like the RPD, did not fail to address relevant evidence. Moreover, the RAD was entitled to give this evidence little weight, given the contradictions and inconsistencies noted within the evidence vis-à-vis the narrative. The RAD properly acknowledged that third-party statements cannot be rejected merely because they were written by family members who are not disinterested parties: *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at paras 5-6; *Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para 56. Thus, the RAD found that the RPD erred in dismissing the letters from the Applicant's family members.

[29] However, the RAD then conducted its own assessment of the letters, and came to its own independent conclusions about their internal weaknesses, including that they failed to support the Uncle's centrality in the threats, to identify his organization, and related information (such as the source of the information and when they learned of the targeting). Given the various problems with the evidence, the RAD was entitled to assign little probative value or weight to weak

supporting documents from non-objective sources: *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 49; *Sayed v Canada (Citizenship and Immigration)*, 2010 FC 796 at paras 22, 24 [*Sayed*]. The RAD provided clear reasons for doing so, and its findings clearly displayed justification, transparency and intelligibility (*Vavilov* at para 86; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 60-61, 67).

## VI. Conclusion

[30] It was ultimately reasonable for the RAD to be unconvinced by the Applicant's explanation of the omission of the incident with the bullets, as well as his explanations of other problems identified above, including other omissions and inconsistencies in central evidence to his claim as outlined above. As I have not identified any reviewable error in the Decision under review, I decline the invitation to interfere with its findings. The parties, correctly in my view, felt that this case raised no questions for certification.

**JUDGMENT in IMM-3680-20**

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

1. The judicial review is dismissed.
2. No certified question was proposed and none arises.
3. There is no order as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-3680-20

**STYLE OF CAUSE:** BALEN AKRAM AHMED AHMED v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** JULY 15, 2021

**JUDGMENT AND REASONS:** DINER J.

**DATED:** JULY 27, 2021

**APPEARANCES:**

Jessica Chandrashekar FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jessica Chandrashekar FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario