

Federal Court



Cour fédérale

**Date: 20211022**

**Docket: IMM-4505-20**

**Citation: 2021 FC 1109**

**Ottawa, Ontario, October 22, 2021**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**KHOSRO TORKIAN VELASHANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Khosro Torkian Velashani, a citizen of Iran, seeks judicial review of the Decision of the Refugee Appeal Division [RAD] dated August 24, 2020 [the Decision] dismissing his appeal and confirming the Refugee Protection Division's [RPD] decision dated June 14, 2019 that the Applicant is neither a Convention refugee nor a person in need of

protection as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant alleges a fear of persecution by the Iranian authorities because of his conversion from Islam to Christianity. The RAD dismissed the appeal on the basis of credibility, finding that there was insufficient evidence to show, on balance of probabilities, that the Applicant was a genuine Christian convert who is wanted by the Iranian Authorities.

[3] For the reasons that follow, the application for judicial review is dismissed. I am not satisfied that the RAD erred in reaching its findings. The Decision is transparent, intelligible, and justified in relation to the relevant facts and law constraining the decision-maker.

## II. Background

[4] The Applicant stated in his Basis of Claim form and his testimony before the RPD that after his relationship ended in 2013, the Applicant struggled with suicidal thoughts and alcoholism and had difficulty maintaining a job. The Applicant testified that he participated in Alcoholics Anonymous treatment programs in Iran and, later, in Canada.

[5] In 2016, the Applicant started a new job where a colleague, whom he had known for approximately three weeks, invited him to his apartment for a meeting. The Applicant states that at this first meeting, he was provided with a Bible. Within three weeks, he considered himself to be a Christian convert and then continued to attend the weekly meetings at his colleague's house

thereafter. The Applicant claims that his Christian practice enabled him to overcome his addiction to alcohol.

[6] The Applicant arrived in Canada on a visitor's visa in July 2018. He exited Iran on his own biometric passport, which contained an exit visa. At the RPD hearing, the Applicant testified that in August 2018 he received a call from his father informing him that the Iranian authorities had raided his home and found his Farsi Bible. Shortly thereafter, in September 2018, the Applicant lodged a claim for refugee protection under sections 96 and 97 of the *IRPA*.

[7] Following the alleged call from the Applicant's father, the Applicant began attending St. Luke's Lutheran Church in Canada in August 2018 and was baptized on March 10, 2019.

[8] In a decision dated June 14, 2019, the RPD rejected the claim finding that the Applicant's credibility was the determinative issue. The RPD considered that the Applicant was not unsophisticated, had work and travel experience, and had completed 12 years of formal education. The RPD also considered the Applicant's testimony, which it found to be at times (i) evasive, vague, repetitive of the information in his Basis of Claim, and (ii) non-responsive to the questions asked. The RPD found that the Applicant was not a credible or trustworthy witness with respect to the central allegations in the matter before the RPD. In particular, the RPD found that (i) the Applicant had failed to establish a personal connection with Christianity, (ii) he was not credible about his alleged practice of Christianity in Iran, (iii) it was not credible that the Iranian authorities pursued him after his exit from Iran, and (iv) the documentary evidence was

insufficient to establish the central allegations in the case, nor did it overcome the cumulative credibility concerns related to the Applicant's testimony and evidence.

[9] The Applicant appealed the RPD decision to the RAD. In dismissing the appeal, the RAD found that the Applicant had not credibly established, on a balance of probabilities, that the Applicant was a genuine Christian. The RAD admitted and considered new evidence submitted by the Applicant, namely an updated letter from the Reverend Justin D. Laughridge of St. Luke's Lutheran Church and screenshots of an online meeting, described by counsel for the Applicant as an "online church meeting". The RAD, however, found that a letter from an associate pastor at St. Luke's Lutheran Church submitted after the Applicant's record was perfected was inadmissible on the basis that the Applicant had not demonstrated that the evidence met the requirements of subsection 110(4) of the *IRPA*. In particular, the RAD found that the contents of the associate pastor's letter, save for the date, pre-dated the rejection of the claim by the RPD.

[10] The RAD found that the RPD made four credibility findings that were unchallenged by the Applicant on appeal. The RAD determined that the unchallenged findings related to the core of the Applicant's claim, namely that:

- (i) the Applicant suffered from an alcohol addiction that led to his conversion to Christianity;
- (ii) he joined a Christian house church in Iran;
- (iii) he continued to practice Christianity in Canada, and
- (iv) the Iranian authorities searched for the Applicant at this home after he had exited Iran on his own biometric passport.

[11] The RAD determined that the unchallenged findings were determinative and that it could reject the appeal on that basis alone. Nevertheless, the RAD addressed the Applicant's remaining arguments.

[12] The RAD found that the RPD did not err in its assessment of the Applicant's evidence of his practice of Christianity in Iran, finding it to be inconsistent with the National Documentation Package evidence.

[13] In analysing the Applicant's *sur place* refugee claim, the RAD found that the Applicant's motives for conversion were suspect. Neither the RPD nor the RAD disputed that the Applicant had attended church in Canada or that he was baptized. Rather, the question was whether these actions were taken because the Applicant was a genuine Christian convert. The RAD determined that the Applicant was not and that the evidence failed to establish that he would continue to practice Christianity in Iran. The RAD determined that, in any event, it had not been established on a balance of probabilities that the Applicant's conversion would come to the attention of the Iranian authorities should he return to Iran.

### III. Preliminary Issue: Style of Cause

[14] The style of cause is hereby amended to Khosro TORKIAN VELASHANI to reflect the correct spelling of the Applicant's name.

IV. Issues and Standard of Review

[15] At the hearing before this Court, the Applicant challenged the RAD's decision on three grounds:

- A. Did the RAD err in refusing to admit all of the Applicant's new evidence?
- B. Was it reasonable for the RAD to conclude that the Applicant was not a credible witness and had not genuinely converted to Christianity?
- C. Did the RAD err in its analysis and determination of the Applicant's *sur place* refugee claim and, relatedly, in its analysis under section 97 of the *IRPA*?

[16] The above grounds are reviewable according to the framework for reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (see also *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). *Vavilov* further instructs that the reviewing court should not approach the underlying decision with the intention of conducting a "line-by-line treasure hunt for error" (at para 102), but rather concern itself with whether "the decision as a whole is transparent, intelligible and justified" (at para 15). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[17] A reviewing court should refrain from reweighing or reassessing the evidence considered by the decision maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision maker's place (*Vavilov* at para 83). Nevertheless, the Supreme Court in *Vavilov* instructs that a decision maker "must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them" (para 126). When a decision maker has failed "to meaningfully grapple with key issues or central arguments raised by the parties [this] may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128).

## V. Analysis

### A. *Did the RAD err in refusing to admit all of the Applicant's new evidence?*

[18] The Applicant submits that the RAD erred in refusing to admit new evidence on appeal consisting of a letter from an associate pastor at St. Luke's Lutheran Church dated July 21, 2019.

[19] I am not satisfied that the RAD committed a reviewable error by refusing to admit the associate pastor's letter into evidence. In *Singh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 336 at para 14, Justice Pallotta addresses the introduction of new evidence on appeal to the RAD:

The Federal Court of Appeal's decision *Singh (FCA)* is the leading authority on this issue. In *Singh (FCA)*, the Court explained that the legislative framework for an appeal to the RAD reflects Parliament's clear intention to narrowly define the introduction of

new evidence (para 51). The basic rule is that the RAD must proceed on the basis of the record of the proceedings before the RPD, and since section 110(4) departs from that rule, it must be narrowly interpreted (para 35). Importantly, the Federal Court of Appeal held that the explicit conditions set out in section 110(4) must be met: on appeal to the RAD, an applicant may present only new evidence that arose after the RPD's rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection (para 35). The Court held that the section 110(4) conditions are inescapable and leave no room for discretion on the part of the RAD (para 35), although the RAD has the freedom to apply the conditions of section 110(4) with more or less flexibility, depending on the circumstances (para 64). [Emphasis in original.]

[20] The RAD has no discretion to admit evidence where it fails to meet the requirements of section 110(4). In finding that the contents of the letter, save for the date, pre-dated the rejection of the claim by the RPD, the RAD determined that that Applicant had not met his burden to establish how the letter met the requirements of section 110(4).

[21] The Applicant admits that the contents of the letter from the associate pastor at St. Luke's Lutheran Church were similar to the contents of Reverend Laughridge's letter that was before the RPD, but pleads that the RAD erred by refusing to admit the associate pastor's letter because the letter demonstrates the Applicant's continuous and regular attendance at St. Luke's Lutheran Church. The Respondent submits that the letter describes the Applicant's attendance at St. Luke's Lutheran Church starting in 2018 and the Applicant's baptism on March 10, 2019, for which the associate pastor, along with Reverend Laughridge, signed the baptism certificate. The associate pastor's letter, therefore, could have been provided prior to the RPD's decision dated June 14, 2019.



[22] The RAD noted that the Applicant provided no evidence or reasons as to why the associate pastor's letter could not have been provided earlier. I find that it was reasonable for the RAD to conclude that the associate pastor's letter was therefore inadmissible.

B. *Was it reasonable for the RAD to conclude that the Applicant was not a credible witness and had not genuinely converted to Christianity?*

[23] Credibility was the determinative issue before the RPD and the RAD. The unchallenged credibility findings, namely that (i) the Applicant suffered from an alcohol addiction that led to his conversion to Christianity, (ii) he joined a Christian house church in Iran, (iii) he continued to practice Christianity in Canada, and (iv) the Iranian authorities searched for him at this home after he had exited Iran on his own biometric passport, were, in the RAD's view, sufficient to reject the appeal.

[24] The Applicant pleads that the RAD's treatment of the evidence, and in particular the updated letter from the Reverend Laughridge and the screen shots of the online church meeting, was faulty and constitutes a reviewable error. The Applicant states that the documentary evidence proves the genuineness of the Applicant's faith. Both in his written submissions and at the hearing, the Applicant submitted that the evidence provided was probative and should have been given more weight by the RAD in determining the genuineness of the Applicant's faith.

[25] The Respondent submits that the Applicant's arguments constitute a request to reweigh the evidence that was before the RAD. I agree with the Respondent. Absent exceptional

circumstances, it is not the role of this Court sitting in judicial review to reassess or reweigh the evidence considered by the RAD (*Vavilov* at para 125).

[26] I find that the RAD undertook a careful analysis of the Applicant's evidence, and, as demonstrated by its reasons, the RAD engaged with and responded to the Applicant's arguments on appeal. Based on the foregoing, the RAD was entitled to, upon considering the evidence before it, attribute little weight to it and ultimately conclude that the Applicant had not demonstrated, on a balance of probabilities, that the Applicant was a genuine Christian or that evidence presented did not overcome its findings on the Applicant's credibility. While the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at para 126), that is not the case in the matter before me.

[27] The Applicant relies on *Asri v Canada*, 2020 FC 303 at paras 41-45 [*Asri*] for the proposition that the RAD's analysis of the genuineness of the Applicant's faith was problematic and faulty. In *Asri*, a pastor from St. Luke's Church in Toronto provided witness testimony regarding the commitment of the Iranian applicant to the church. The RAD, in *Asri*, gave little weight to the pastor's letter, testimony, and baptismal certificate. The Court found that the RAD's conclusions on the genuineness of the Applicant's faith were not reasonable.

[28] In *Sadeghi v Canada (Citizenship and Immigration)*, 2021 FC 604 [*Sadeghi*], another case involving citizens of Iran who allege a fear of persecution for their conversion to Christianity, the Court found that the RAD had improperly discounted a pastor's letter and

testimony. In *Sadeghi*, the Court noted that “the applicants provided detailed submissions, with references to the RPD’s reasons and to segments of the audio recording of the pastor’s testimony, to explain why they believed the pastor had provided evidence that was genuine, frank, and corroborative of the applicants’ testimony and the practice of their faith in Canada” (at para 32). The Court, in *Sadeghi*, found that the RAD failed to address this key point, namely that the pastor explained why he believed that the applicants were genuine Christian converts.

[29] In *Hassankiadeh v Canada (Citizenship and Immigration)*, 2015 FC 1284, also relied upon by the Applicant, the Court found that it was unreasonable for the Officer, in the context of a PRRA, to simply reject an affidavit from a pastor and give it no weight, after the RPD had determined, subsequent to having heard the pastor’s testimony, that the pastor was credible.

[30] I find the above cases to be distinguishable. In *Sadeghi*, *Hassankiadeh* and *Asri*, the pastors in question provided sworn testimony, along with their letters and the baptismal certificates, which was discounted, rejected or given no weight by the administrative decision makers. In the matter at hand, there was no sworn testimony by the pastor at St. Luke’s Lutheran Church, and both the RPD and the RAD found his letters to be generic and lacking in detail. The RAD engaged with the evidence, and noted the fact that the RPD concluded that the documents were deserving of less weight because they were lacking in detail and the pastor did not appear as a witness. The Applicant has failed to establish that the RAD’s analysis was not transparent, intelligible and justified.

C. *Did the RAD err in its analysis and determination of the Applicant's sur place refugee claim and, relatedly, in its analysis under section 97 of the IRPA?*

[31] The RAD considered the Applicant's lack of credibility to be determinative. The RAD found that the Applicant was not a genuine Christian convert, and thus the evidence did not establish that the Applicant would continue to practice Christianity in Iran if he were to return. The RAD considered whether the Applicant's baptism, even if non-genuine, would put him at risk in Iran. The RAD determined that the Applicant had not established, on a balance of probabilities, that his baptism and involvement in the church in Canada would come to the attention of the Iranian authorities.

[32] Based on the evidentiary record before the RAD, I find the RAD's assessment of the *sur place* claim to be reasonable. During the hearing, the Applicant relied on documents contained in the National Documentation Package concerning Christians in Iran, including foreign-baptised Iranian Christians who have returned to Iran. This documentation was before the RAD, which considered the Applicant's situation. Ultimately, the RAD dismissed the *sur place* claim, and the Applicant has failed to demonstrate a reviewable error.

#### VI. Certified Question

[33] During the hearing, counsel for both parties were asked if there were questions requiring certification, and they each stated that there were no such questions. I agree that none arise.

VII. Conclusion

[34] For these reasons, this application for judicial review is dismissed.

**JUDGMENT in IMM-4505-20**

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

1. The Applicant's application for judicial review is dismissed;
2. There is no question for certification;
3. The style of cause is amended to Khosro TORKIAN VELASHANI.

"Vanessa Rochester"

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Judge

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

**DOCKET:** IMM-4505-20

**STYLE OF CAUSE:** KHOSRO TORKIAN VELASHANI v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 14, 2021

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** OCTOBER 22, 2021

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