

Federal Court



Cour fédérale

Date: 20240105

Docket: IMM-7825-22

Citation: 2024 FC 21

Ottawa, Ontario, January 5, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MOHAMMAD ZEINALY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mohammad Zeinaly, seeks judicial review of a decision of the Refugee Appeal Decision (“RAD”) dated July 14, 2022, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The RAD found the determinative issue to be credibility, concluding that the Applicant had not established that he is a genuine follower of Christianity nor that events in Iran had occurred as alleged.

[3] The Applicant submits that the RAD unreasonably rejected new evidence and made several unreasonable credibility findings, especially in relation to his Christian faith.

[4] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 25-year-old citizen of Iran.

[6] The Applicant stated that when he was young, he was forced to participate in Islamic religious ceremonies and events. He stated that in high school, a childhood friend spoke critically about Islam. One discussion with this friend was about the Prophet Mohammad marrying a seven-year-old child.

[7] The Applicant stated that when he raised this issue with his father, his father slapped him and told him it was heretical and blasphemous. The Applicant then disclosed to his father that he had this discussion with a friend.

[8] The Applicant stated that the next day, he was required to go to the principal's office at his high school, where he saw his friend, father, and two police officers. The Applicant stated in his Basis of Claim ("BOC") narrative that his friend had been assaulted and that the officers took his friend with them, whereupon he never saw him again.

[9] In 2017, the Applicant arrived in Canada on a study permit. He stated that he was introduced by a former partner to a church in Toronto in April 2018, and began attending church irregularly. In due course, the Applicant became increasingly interested in Christianity.

[10] The Applicant stated that he introduced a family member in Iran to a church in Tehran, but on April 29, 2019, this family member was arrested. The Applicant stated that his father called two days later, and informed him that the authorities had attended the family home in Iran inquiring about him.

[11] The Applicant indicated that his study permit has expired and he has been without immigration status in Canada since April 2019. To renew this permit, he stated he had to enroll in a new college and pay new tuition fees, but he could not call his father to ask for funds. The Applicant further stated that once his father became aware of his Christianity, the Applicant received threatening messages from his father. The Applicant stated that he nonetheless attended church and Bible study classes regularly.

B. *RPD Decision*

[12] In a decision dated October 25, 2021, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 or 97(1) of the *IRPA*. The primary issue was the Applicant's credibility.

[13] The RPD was not satisfied that the Applicant was a genuine follower and practitioner of the Christian faith. The RPD found that the Applicant failed to provide reasonable explanations for failing to amend or provide an addendum to his BOC narrative, provide documentary evidence, nor provide evidence of communication about his church membership, attendance, and baptism.

[14] The RPD further found that the Applicant had not established that the incident with his father and childhood friend occurred as alleged. The RPD rejected the Applicant's explanations for the inconsistencies between his testimony and his BOC narrative, giving alleged corroborative evidence and testimony little weight.

[15] The RPD further found that the Applicant had not established that his family member was arrested at a house church and that his family home was raided as a result. The RPD found various inconsistencies between his BOC narrative and testimony about his communications with this family member and that the Applicant could not reasonably explain why the support letter did not discuss this family member. Additionally, the RPD found that the Applicant did not reasonably explain why his mother, with whom he regularly communicated with, could not

provide a letter of support on the basis that it would place her at risk with his father or the police. The RPD thus drew further negative credibility inferences.

[16] For these reasons, the RPD found the Applicant had not established a serious possibility of persecution owing to his religion and refused the Applicant's refugee claim.

C. *Decision under Review*

[17] In a decision dated July 14, 2022, the RAD dismissed the appeal and upheld the RPD's decision that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 or 97(1) or the *IRPA*.

(1) New Evidence

[18] The Applicant submitted new evidence before the RAD. Subsection 110(3) of the *IRPA* stipulates the general rule that the RAD "must proceed without a hearing, on the basis of the record of the proceedings of the [RPD]." Subsection 110(4) enumerates the exceptions to this general rule, in which a claimant may present evidence to the RAD that was not before the RPD:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been

Éléments de preuve admissibles

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient,

expected in the circumstances to have presented, at the time of the rejection.	qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
--------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------

[19] Once the RAD finds that new evidence meets the criteria under subsection 110(4) of the *IRPA*, the RAD must then consider whether that evidence is credible, relevant, and material (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 38-49, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 (“*Raza*”) at paras 13-15). These latter admission criteria are known as the “*Raza* factors.”

[20] Under subsection 110(6) of *IRPA*, the RAD may hold an oral hearing if it admits new evidence that raises a serious issue about the claimant’s credibility and that is central and determinative.

[21] Considering all of the evidence submitted in light of these factors, the RAD found that five out of the seven documents proffered by the Applicant on appeal met the requirements of subsection 110(4) of the *IRPA* and admitted four of them as new evidence on appeal, including two letters from different churches, photos of his baptism ceremony, and photos of his attendance at a church.

[22] The RAD did not admit the Applicant’s baptismal certificate. It bore two conflicting dates, which themselves conflicted with the Applicant’s testimony. The RAD also did not admit an item with two undated Google pages of the church where the baptism allegedly took place and a letter from a counsellor providing evidence of the Applicant’s mental health and memory

issues. The RAD was not satisfied that the letter arose after the rejection of his claim, was not reasonably available, or could not have been reasonably expected to be provided to the RPD prior to the rejection of his claim.

[23] The RAD concluded that none of the admitted evidence would justify allowing or rejecting the claim, and therefore did not hold an oral hearing per subsection 110(6) of the *IRPA*.

(2) Credibility

[24] The RAD began its credibility findings by drawing a negative inference from the Applicant's inability to recall his baptism date, rejecting the Applicant's claim that he suffers from severe mental health issues such that his ability to recall this important event was affected.

[25] The RAD agreed with the RPD drawing a negative credibility inference about the Applicant's inconsistent statements regarding what he discussed with his father about the Prophet Mohammad and rejected that this inconsistency could be explained by his mental health.

[26] The RAD further agreed with the RPD drawing a negative credibility inference with regard to the Applicant's testimony regarding the incident in the principal's office. The RAD found that the Applicant's testimony was "confusing, evolving, internally inconsistent with his earlier testimony, and inconsistent with his BOC narrative." The RAD highlighted the pieces of testimony that contradicted one-another about the childhood friend's presence in the principal's office and contradictions between his testimony and his BOC narrative about who was present in

the office. The RAD once more rejected alleged psychological obstacles to presenting consistent testimony before the RPD.

[27] The RAD found that the RPD was correct to draw a negative credibility inference regarding the modes of communication between the Applicant and the family member in Iran who had allegedly been arrested. The RAD maintained that the Applicant's testimony was specific when initially asked about how the authorities would have found out about his connection to this family member (i.e., that he communicated only via FaceTime or WhatsApp voice calls despite the BOC narrative referring to photos and text messages). However, the RAD rejected the RPD's plausibility finding that it would be contradictory that one is afraid of detection would only speak by voice yet would text something as incriminating as the house church address, and further deleted the messages in Canada due to safety reasons.

[28] The RAD agreed in part with the RPD's findings about the Applicant's omissions in his BOC narrative or absence of an update thereof. The RAD did not agree with the RPD that the Applicant's omission of his baptism from his BOC narrative warranted drawing a negative inference, as the RAD found he was forthcoming about his baptism. The RAD further disagreed with the RPD finding the Applicant had trouble recalling a common Biblical parable, acknowledging that the Applicant testified to various aspects of the Bible.

[29] However, the RAD agreed with the RPD drawing a negative inference from the Applicant's omission of his attendance at a church from his BOC narrative, finding the BOC narrative to be misleading in its statement that the Applicant had been actively attending Bible

study classes and Sunday services regularly, despite stopping all Christian activities six months prior to the RPD hearing. The RAD noted that the Applicant was represented by counsel and attested to the completeness, truthfulness, and accuracy before the RPD hearing.

[30] The RAD did not find that the RPD decision would have resulted in a positive finding if the RPD “spent more time” examining his knowledge of the Christian faith. The RAD acknowledged that counsel at the hearing had the opportunity to question him further on his religious knowledge. The RAD found that the Applicant’s explanations regarding his lack of time, conflicts with his work schedule, issues with tenancy, and his car accident as reasons for non-attendance at church show a lack of commitment to Christian faith and undermines the credibility and sincerity of his claim.

[31] The RAD found that the Applicant’s lack of attendance at the Immanuel Baptist Church, which resulted in the church not being able to provide confirmation of his attendance or baptism, when taken with his testimony of not having time, supports a finding that the Applicant lacked commitment to the Christian faith. The RAD found that the Applicant’s inability to obtain key documents due to his poor attendance and the church’s unwillingness to provide documents goes to “the heart of his dedication to the faith.” The RAD thus drew a negative credibility inference. The RAD found that the Applicant was not entitled to the benefit of a doubt in these circumstances given he was not generally a credible witness on material aspects of his claim.

[32] The RAD disagreed with the RPD about the absence of a support letter from the Applicant's mother and sisters in Iran, finding that it is not implausible these members residing in Iran would fear providing a letter.

[33] The RAD found that there was insufficient evidence that the Applicant is of interest to Iranian authorities and concluded that no *sur place* claim had been established. The RAD considered new evidence of photos and letters attesting to his Christian faith, but found them insufficient to overcome the cumulative negative credibility findings and awarded them little weight. The RAD found that the Applicant is not a genuine follower of the Christian faith and that his knowledge of Christianity had been acquired for the purposes of his refugee claim.

[34] Lastly, the RAD further found insufficient evidence to establish that the Applicant's Christian activities in Canada had or would come to the attention of Iranian authorities such that he would be in danger upon return.

[35] For these reasons, the RAD dismissed the appeal and upheld the RPD's decision that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 or 97(1) or the *IRPA*.

III. **Issue and Standard of Review**

[36] The sole issue in this application is whether the RAD's decision is reasonable.

[37] The standard of review is not disputed. The applicable standard of review of the RAD's decision is reasonableness (*Baig v Canada (Citizenship and Immigration)*, 2023 FC 673 at para 18; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16–17, 23–25). I agree.

[38] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[39] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision's reasonableness may be called into question where the decision

exhibits a “failure to meaningfully grapple with key issues or central arguments” (*Vavilov* at para 28).

IV. **Analysis**

[40] The Applicant submits that the RAD erred in failing to admit the Applicant’s medical letter and in the credibility assessments regarding the Applicant’s Christianity. I disagree. In my view, the RAD’s decision is justified in relation to its legal and factual constraints (*Vavilov* at paras 99-101).

(1) New Evidence

[41] The Applicant submits that the letter attesting to his mental health issues should not have been rejected as new evidence at the RAD. The Applicant maintains that this letter post-dated the RPD, was not reasonably available to the Applicant in the circumstances owing to his mental health, and would have explained many of the RPD’s credibility concerns. The Applicant maintains that the letter meets the *Raza* factors. The Applicant further maintains that the RAD’s decision was not responsive to the impact of the decision on the Applicant.

[42] The Respondent submits that the RAD reasonably applied subsection 110(4) of the *IRPA* and the *Raza* factors to exclude pieces of the Applicant’s evidence, including the counsellor’s letter. The Respondent maintains that the RAD engaged and applied statutory criteria for the admission of new evidence and corresponding jurisprudence on the application of these criteria.

The Respondent further maintains that the Applicant is asking this Court to subject the decision under subsection 110(4) to a higher form of scrutiny than reasonableness, which is not permitted.

[43] I agree with the Respondent. The RAD reasonably refused to admit the counsellor's letter, the Applicant's testimony showing that the information contained in that letter existed at the time of the RPD hearing, thereby not being new (*Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 35, citing *Jadallah v Canada (Citizenship and Immigration)*, 2016 FC 1240 at para 34). As this document did not meet the statutory criteria of subsection 110(4) of the *IRPA*, the RAD did not err by not pursuing an analysis of this letter under the *Raza* factors. The RAD's decision in this regard is justified in relation to the legal and factual constraints that bore upon it (*Vavilov* at paras 99-101).

(2) Credibility

[44] The Applicant submits that the RAD unreasonably found him to not be a Christian. The Applicant maintains that some of the credibility findings are microscopic and peripheral and that the RAD unreasonably expected him to obtain all relevant evidence and include addendums to his BOC narrative given his housing situation and mental health issues. The Applicant further submits that the RAD should not have challenged the Applicant's Christian faith and should have accepted it based on the totality of the evidence and the presumption of his testimony's truth. Additionally, the Applicant submits that many of the negative credibility concerns could have been explained by admitting the letter attesting to his difficulties with memory.

[45] The Respondent submits that the Applicant has not demonstrated that the RAD made unreasonable credibility findings. The Respondent maintains the RAD was entitled to rely on omissions from the BOC narrative and that the RAD reasonably found that the church's refusal to provide a support letter struck at the heart of the Applicant's commitment to Christianity. The Respondent submits that the RAD was entitled to question the Applicant's purported Christian faith and that the Applicant's arguments about the presumption of truth must fail, as the Applicant is raising an issue with the RPD decision, rather than the RAD decision.

[46] I agree with the Respondent. I am mindful of the Applicant's circumstances, especially in relation to his housing and mental health circumstances. Nonetheless, the RAD did not commit any reviewable errors.

[47] The RAD was entitled to contradict the Applicant's statement that he had been actively attending Bible study classes and Sunday services on a regular basis. As my colleague Justice Pallotta held, "material omissions from a BOC narrative going to a central element of a claim may ground adverse credibility findings" (*Li v Canada (Citizenship and Immigration)*, 2021 FC 956 at para 24). The Applicant failing to refer to the last church he attended in his BOC narrative—Immanuel Baptist Church—goes to a central element of his claim: his Christian faith.

[48] I do not accept the Applicant's argument that his living and mental conditions were such that he could not have produced supporting documents. The Applicant was represented by counsel before the RPD. The onus is on the Applicant to ensure that his BOC narrative was complete, true, and correct before swearing/affirming to that effect. Considering the fact that a

member of the church refused to provide confirmation of his attendance at the RPD hearing, the RAD was justified in concluding that this omission and his poor attendance at church undermined the Applicant's credibility and goes to his dedication to Christianity. The evidence accepted on appeal (i.e. the letter from Immanuel Baptist Church) corroborates that the Applicant was not attending church regularly well before or at the time of the RPD hearing.

[49] Furthermore, I disagree with the Applicant that the RAD could not question his faith in Christianity and should have accepted his testimony as truthful. Inquiry into religious belief must be approached cautiously, but sincerity of belief is nonetheless a question of fact (*Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 (“*Huang*”) at paras 9, 12). The Applicant relied upon evidence of his attendance at church. It was therefore open to the RAD to question the Applicant's explanations for his non-attendance. I find that this accords with the RAD's role in assessing the sincerity of the Applicant's belief (*Huang* at para 9). The RAD was entitled to give little weight to the Applicant's evidence in light of this adverse credibility finding and others (*Chen v Canada (Citizenship and Immigration)*, 2015 FC 969 at para 8). The RAD's decision is justified in relation to the facts and legal constraints that bore upon it (*Vavilov* at paras 99-101).

[50] I agree with the Respondent that the remainder of the Applicant's submissions—regarding the conversation with his childhood friend, the date of baptism, the incident in the principal's office, and communications with a family member in Iran—ask this Court to reweigh evidence, effectively stepping into the shoes of the decision-maker to decide the issue itself. These functions are not this Court's role on review (*Vavilov* at paras 83, 125).

V. **Conclusion**

[51] This application for judicial review is dismissed. The RAD's decision is justified in light of its legal and factual constraints. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7825-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7825-22

STYLE OF CAUSE: MOHAMMAD ZEINALY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 27, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: JANUARY 5, 2024

APPEARANCES:

Tina Hlimi FOR THE APPLICANT

Lorne McClenaghan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Tina Hlimi FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario