

Federal Court



Cour fédérale

**Date: 20240731**

**Docket: IMM-1148-23**

**Citation: 2024 FC 1220**

**Toronto, Ontario, July 31, 2024**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**NGOC THANG MAI  
NGOC XUAN NHI MAI  
TUNG BACH MAI  
THUY HAO NGUYEN**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a dismissal of the Applicants' appeal by the Refugee Appeal Division (RAD). The issue is whether the RAD's credibility findings concerning some of Applicants' evidence were reasonable.

[2] For the reasons below, the RAD's findings challenged by the Applicants are reasonable or inconsequential to the decision, and the application for judicial review is dismissed.

II. Background

[3] The Applicants are a family of four from Vietnam, consisting of two parents—Ngoc Thang Mai (Principal Applicant) and Ngoc Xuan Nhi Mai—and two children—Tung Bach Mai and Thuy Hao Nguyen. The Applicants allege a fear of persecution due to the political opinions of the adult Applicants.

[4] The adult Applicants claimed to be supporters of a human rights organization called “Friends on the Long Road” (FLR). FLR opposes public-private partnership tollbooths in Vietnam on the basis that they are exploitative and corrupt.

[5] The Principal Applicant claimed that in early March 2019, he and other protesters were arrested and charged with disturbing the public order. His evidence was that in July 2019, he was sentenced to two and a half years’ imprisonment. The police allegedly raided the Applicants’ home and detained the adult Applicants. They were beaten and interrogated and subsequently released two days after paying a bribe.

[6] The Applicants arrived in Canada in August 2019, on visitor visas previously obtained for tourism purposes.

[7] The Applicants claimed that in August 2020, after they came to Canada, the police raided their home in Vietnam and mistreated the Principal Applicant’s mother. The police allegedly either told the Principal Applicant’s mother they wanted to arrest and charge the adult Applicants for disturbing public order or that they had already convicted them for this crime.

[8] On February 10, 2021, the Principal Applicant signed his Basis of Claim (BOC) form that forms the basis of these refugee claims.

### III. The RAD decision

[9] New evidence was presented to the RAD, including letters from the Principal Applicant's mother and the founder of FLR, and news articles. The RAD accepted all of the new evidence but found that a hearing was not justified because none of the new evidence raised credibility issues that would justify a different outcome.

[10] The RAD identified 13 adverse credibility findings made by the Refugee Protection Division (RPD). These credibility findings undermined the Principal Applicant's evidence about his conviction and his role in FLR. The RAD found that the RPD erred in making one adverse credibility finding arising from the Principal Applicant's oral testimony, but the RAD supported the balance of the adverse credibility findings.

### IV. Issue

[11] The Applicants contest three adverse credibility findings confirmed by the RAD, and the sole issue in this application is whether those findings are reasonable. A reasonable decision is one which is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and the law that constrain the decision maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85.

### V. Analysis

[12] The Applicants argue that the following three adverse credibility findings of the RAD are unreasonable:

- A. The RAD's adverse credibility finding arising from the failure of the Principal Applicant to mention his conviction in his BOC form;

- B. The RAD's assignment of limited probative value to the letter from the Principal Applicant's mother because it was not in the form of an affidavit; and
- C. The RAD's conclusion that it was unlikely that the Vietnamese government would target the Principal Applicant's Facebook account for deletion.

[13] I find the first finding of the RAD to be reasonable, and I find that the remaining two findings, even if unreasonable, are inconsequential to the RAD's general credibility findings on the larger issues to which they related. The RAD's overall decision was intelligible and justified based on the evidence before it.

A. *Omission from the BOC*

[14] The RAD agreed with the RPD that a negative inference was warranted based on the Appellant's failure to include in their BOC forms that the Principal Applicant had been criminally convicted in Vietnam. The RAD noted that the law is clear that when material information is left out of a BOC form, a negative credibility may be warranted (*Mohamed v Canada (Citizenship and Immigration)*, 2022 FC 55 at para 22).

[15] As stated above, I find the RAD's conclusion on this issue to be reasonable. The Principal Applicant's conviction is more than a minor detail or collateral information. The Vietnamese authorities' interest in and motivation to pursue criminal prosecution against the Applicants is significant; it goes to the very core of the Applicants' claim. As such, it was reasonable for the RAD to make a negative credibility inference from the Principal Applicant's omission of the conviction from the BOC form.

B. *Limited probative value of the letter from the Principal Applicant's mother*

[16] The Applicants challenge the RAD's finding that the letter from the Principal Applicant's mother is of less probative value because it is not sworn evidence. The Respondent states that this was not the only reason the RAD found the letter to be of relatively low probative value: the RAD found that the Applicants could not reasonably explain how they received the letter, why they deleted the letter, and the fact that the letter's content was inconsistent with the Principal Applicant's testimony.

[17] The Applicants have not challenged the RAD's other bases for concerns about the letter, which are clearly explained and intelligible. As such, the assignment of low probative value to the letter because it was unsworn was inconsequential to the RAD's overall conclusion regarding the letter.

C. *The deletion of the Principal Applicant's Facebook account*

[18] The Applicants argue that the RAD's conclusion that it is unlikely that the Vietnamese government deleted the Principal Applicant's Facebook account is an unreasonable implausibility finding. The Respondent disputes the characterization of this conclusion as an implausibility finding.

[19] I agree that the RAD made an implausibility finding relating to the deletion of the Facebook account. It was a finding that the event could not have happened in the manner asserted by the Applicants.

[20] Justice Richard Southcott recently summarized the law on implausibility findings in *Flayyih v Canada (Citizenship and Immigration)*, 2024 FC 1000 at paragraph 28:

[28] It is trite law that implausibility findings should be made only in the clearest of cases, *i.e.*, only if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant (see, e.g., *Gebreslasie v Canada (Citizenship and Immigration)*, 2021 FC 566 at paragraph 12, relying on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 9, and *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 at para 9).

[21] While I am not completely convinced that the implausibility of the Facebook account deletion is a reasonable finding, this finding relates to the larger issue of the RAD's doubts about the leadership role played by the Principal Applicant in FLR. There were other bases for the RAD's concerns about the Principal Applicant's role, such as his inability to describe any activities beyond his Facebook activity. Those findings haven't been challenged. As such, this implausibility finding, even if unreasonable, does not impact the RAD's overall conclusion about the Principal Applicant's role in FLR.

## VI. Conclusion

[22] The Applicants acknowledged that the RAD's decision was based upon multiple adverse credibility findings but stated that if this Court finds only one of those findings to be unreasonable, the decision is unreasonable and should be quashed. The Applicants relied on *Qalawi v Canada (Citizenship and Immigration)*, 2007 FC 662 [*Qalawi*] for this proposition.

[23] However, *Qalawi* does not establish the principle asserted by the Applicants. In *Qalawi*, the board doubted the overall truthfulness of the applicant's claim based on an accumulation of concerns about the applicant's evidence. The board in *Qalawi* stated that no single credibility concern undermined the claim and the Court eventually found several of the board's findings to be unreasonable. *Qalawi* does not establish the principle that when a decision is based on an

accumulation of credibility concerns, one single unreasonable finding results in the unreasonableness of the entire decision.

[24] In any case, the circumstances in *Qalawi* are not similar to the circumstances in this application. The RAD in this case made several independent adverse credibility findings undermining various aspects of the Applicants' claim, and the Applicants have not challenged the vast majority of them. Those findings are presumed to be reasonable: *Liao v Canada (Citizenship and Immigration)*, 2017 FC 1163 at para 7.

[25] For the reasons above, the application is dismissed. The Applicants do not identify shortcomings in the RAD's decision that render it unreasonable.

**JUDGMENT in IMM-1148-23**

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

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

**“Michael Battista”**

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Judge



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

**DOCKET:** IMM-1148-23

**STYLE OF CAUSE:** MAI ET AL. v MINISTER OF CITIZENSHIP  
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**DATE OF HEARING:** JULY 24, 2024

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