

Federal Court



Cour fédérale

Date: 20181211

Docket: IMM-1984-18

Citation: 2018 FC 1245

Ottawa, Ontario, December 11, 2018

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

HADI ALIBEGI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Hadi Alibegi is challenging the decision of the Refugee Appeal Division [RAD] rejecting his refugee claim. The RAD agreed with the determination of the Refugee Protection Division [RPD] that Mr. Alibegi has not credibly established that he is a Christian convert seeking to escape persecution in Iran.

II. Facts

[2] The Applicant is a 52 year-old citizen of Iran. He claims to be a Christian convert who escaped Iran after one of the converts attending a secret home church with him was arrested by the Iranian authorities.

[3] He made a refugee claim upon arrival at Pearson International Airport on September 14, 2014. He had no passport or travel documents; he only carried with him an expired Iranian identity card and a driver's licence.

[4] He states that he travelled to Turkey, before spending approximately three weeks in three unspecified South American countries. He testified that he was helped by a smuggler and that he travelled with a false passport, which he destroyed on the advice of the smuggler before landing in Canada. He adds that he does not know the name that was written on the false passport, nor the precise South American countries through which he transited.

[5] A week after arriving in Canada, he began attending St Luke's - Lutheran Church in Toronto, where he was later baptized on December 21, 2014.

III. RPD's Decision

[6] The RPD found that the Applicant had not credibly established that he was a Christian convert; it even called into question whether he was living in Iran prior to coming to Canada. The RPD also found that the Applicant would likely not be involved with a church or with

Christianity if he was returned to Iran, nor would he be persecuted by the Iranian authorities who would not be aware of his alleged involvement with Christianity.

[7] The RPD described a number of credibility issues with the Applicant's testimony, including inconsistencies and omissions.

[8] First, in his initial Basis of Claim Form dated October 8, 2014, and its Schedule A dated November 8, 2014, the Applicant indicates never having suffered from any serious diseases, physical or mental disorders. However, in a later amendment, he stated that he still suffered from injuries received in 2009 while he was in detention.

[9] The Applicant relied on a report from a psychologist, dated November 15, 2014, indicating that he suffers from Post-Traumatic Stress Disorder. The RPD noted that despite this diagnosis, there is no recommendation or referral for further treatment or counselling. Since no medical documentation regarding treatment between 2009 and the time he allegedly left Iran was available, the RPD found, on a balance of probabilities, that the Applicant had not established that he had been detained in 2009 or that he had suffered ill-treatment and injuries. Furthermore, the RPD did not accept that any injuries allegedly sustained caused him cognitive problems that could explain the deficiencies in his testimony.

[10] Second, the RPD noted the lack of clarity surrounding the Applicant's travel arrangements. The Applicant testified at the hearing that he used a false passport, but that he did

not know the name he travelled under. However, this contradicts the response provided in the Applicant's immigration forms that he had never used another name or an alias.

[11] The RPD noted inconsistencies in the Applicant's forms and testimony regarding the number of days he stayed in other countries while on his way to Canada. Furthermore, the Applicant did not know in which countries he had stayed. The RPD found it was not credible that he would have travelled without knowing basic information such as under which name or nationality he was travelling, or the countries where he stayed.

[12] Moreover, the Applicant could not provide any passport, boarding pass or other travel documents. The Applicant testified that he had destroyed these documents on the advice of the smuggler before landing in Canada. The RPD found the lack of documentation to be an effort from the Applicant to obfuscate his travel history.

[13] Third, the RPD questioned the Applicant's whereabouts prior to coming to Canada. The RPD noted that in his Schedule A Form dated September 15, 2014, the Applicant indicated that he was working in Tehran until September 2014. However, at the hearing, he stated this was a mistake and that he was living in Tehran until he left Iran in July 2014. This contradicts his Basis of Claim narrative in which he says that he went into hiding in Karaj from April 2014 to June 2014. The RPD found that the Applicant did not adequately explain this discrepancy, or the reason why his Schedule A Form was never amended.

[14] The RPD noted that there was no evidence the Iranian authorities were looking for him in Iran. He testified having instant messaging communication records with colleagues and relatives to prove this; however, he had deleted these records just a few days before the hearing. The RPD found that this was an embellishment, and that it was not credible that his colleagues and relatives would risk using a monitored form of communication with an allegedly wanted person.

[15] Lastly, the RPD found that the other evidence provided by the Applicant could not establish his version of events.

[16] Based on the above findings, the RPD concluded that the Applicant was generally not credible and that he had not established on a balance of probabilities that he was in Iran in 2013 and 2014, or that he would be persecuted if returned to Iran.

IV. Impugned Decision

[17] The RAD agreed with the RPD's determination that the Applicant lacked overall credibility.

[18] In particular, the RAD notes that it was open to the RPD to draw a negative inference from the Applicant's statement that, just two days before one of the hearings, he had deleted all instant messaging records showing that the Iranian authorities were looking for him.

[19] Furthermore, having destroyed his passport and all boarding passes, the Applicant has not, on a balance of probabilities, established his travel plans to Canada. The RAD did not accept

the Applicant's testimony that he travelled through three countries without knowing the name on the passport he used, and that he subsequently destroyed it on the advice of the smuggler. The Applicant also never provided an explanation to his initial claim that he had never used an alias.

[20] The RAD finds that the Applicant was not forthcoming in his testimony when he did not provide the names of the South American countries through which he transited. His testimony that he did not recall was not credible, especially after having stayed 11 days in one of them. As such, the RAD agrees with the RPD's determination that the Applicant did not live in Iran in 2014 and that he did not attend secret church meetings.

[21] The RAD also agrees with the RPD that, despite the Applicant's church activities in Canada, he was not a genuine Christian. The RAD notes that at the December 9, 2015 hearing before the RPD, the Applicant had difficulty naming Christian religious events and their dates. At the subsequent hearing, one week later, the Applicant came with a diagram of the liturgical year and explained all the major religious events in the Christian year as well as the significance of their symbols. The RAD found that the Applicant's testimony on December 16, 2015 appeared to have been memorized, as he referred to Christians in the third person, to the Bible as the "Holy Book" and to Easter as a "Sunday which is holy to the Christians". Given the above, the RAD found that the Applicant was baptized only for the purpose of embellishing his refugee claim.

[22] The RAD concluded that there were many credibility concerns regarding the Applicant's travel arrangements and that the Applicant was not sincere in his religious beliefs. Accordingly, the RAD dismissed the appeal.

V. Issues

[23] The Applicant raises the following issues:

A. *Did the RAD fail to consider the psychological evidence before it?*

B. *Did the RAD fail to consider the totality of the evidence before it by:*

- making implausibility findings about the Applicant's travels to Canada without considering evidence to the contrary?
- finding that the Applicant had not established his residence in Iran and had not attended an underground Christian church without considering evidence to the contrary?
- finding that the Applicant was not a genuine Christian without considering the totality of the evidence?

C. *Did the RAD breach the principles of procedural fairness and materially prejudice the Applicant by failing to accommodate his disability?*

[24] As I am of the view that the first issue raised by the Applicant is the only one warranting the intervention of the Court and that it is determinative of this case, it will not be necessary to consider the other two issues.

[25] The question as to whether the RAD properly considered the psychological evidence before it in its assessment of the Applicant's credibility is reviewable on a standard of reasonableness (*Downer v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 45 at

para 23; *Alrashidi v Canada (Citizenship and Immigration)*, 2017 FC 930 at para 5; *Asfew v Canada (Citizenship and Immigration)*, 2017 FC 800 at para 7).

VI. Analysis

[26] The Applicant relies on the psychological report of Dr. Vera Rabie dated November 2014 to argue that his cognitive state should be taken into account when evaluating his credibility. He summarizes the report as follows in his factum:

55. [The] report stated that the Applicant suffers from anxiety and depression disorders as well as posttraumatic [*sic*] stress syndrome and that his symptoms included dissociative states, cognitive disengagement, difficulty thinking clearly and coherently, and an inability to remember simple instructions. The report also stated that his symptoms increase under stress.

[27] In fact, Dr. Rabie places the Applicant in the “severe” range of disorder with respect to anxiety and depression.

[28] In my view, the RAD made a reviewable error in making no reference to the psychological report of Dr. Rabie (*Khawaja v Canada (Minister of Citizenship and Immigration)* (1999), 92 ACWS (3d) 672 (FC) at para 8; *Min v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1676 at paras 5-9, *Sanghera v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 87 (QL) at paras 5-6; *Sokhi v Canada (Citizenship and Immigration)*, 2009 FC 140 at para 38; *Fidan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1190 at para 12; *Singh v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 963 (QL) at para 10).

[29] The RAD did make its own assessment of the Applicant's credibility, as it was called upon to do, but it failed to review the RPD's analysis of the psychological evidence and its impact on the overall credibility of the Applicant.

[30] I agree that psychological reports cannot cure all credibility concerns with regards to an applicant's testimony, but in the present case the RAD did not engage at all with the psychological evidence and did not explain why it discounted it. The report could explain why the Applicant had trouble answering questions and why portions of his testimony may have been inconsistent. These difficulties were compounded by the stress inherent to oral questioning and the use of an interpreter. The RAD should have at least explained why it decided to afford it little weight. It is impossible, by reading the RAD's reasons, to know whether or not it found that some of the inconsistencies could be explained by the Applicant's psychological state, and how this affected its credibility assessment.

[31] This, in and of itself, warrants the Court's intervention.

VII. Conclusion

[32] The RAD did not explain why it made no reference to the psychological report or why it did not give it any weight. Since the credibility finding is central to the decision, the RAD should have explained why it decided to discard this critical piece of relevant evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17).

[33] This application for judicial review is therefore allowed. The parties did not propose any question of general importance for certification and none arises from the facts of this case.

JUDGMENT in IMM-1984-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed;
2. The decision of the Refugee Appeal Division, dated January 31, 2017, is set aside and the matter is remitted to a different member for a new determination;
3. No question of general importance is certified.

“Jocelyne Gagné”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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