

Federal Court



Cour fédérale

**Date: 20210210**

**Docket: IMM-2219-20**

**Citation: 2021 FC 140**

**Vancouver, British Columbia, February 10, 2021**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**FATEMEH MOUSAVI PAVAEI,  
SEYED MEHDI MOUSAVI,  
AND SEYED PAKAN MOUSAVI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. PROCEEDING**

[1] This application is for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated February 29, 2020. The RAD dismissed the appeal on the basis of credibility, finding that there was insufficient evidence to show that the Principal Applicant was a genuine convert to Christianity.

## II. BACKGROUND

[2] The Applicants are a husband [the Principal Applicant], his wife [Fatemeh], and their minor child. They are Iranian citizens.

[3] The Applicants resided in a villa in Karaj, a village near Tehran. The Principal Applicant also had a residence in the port city of Bandar Abbas, in southern Iran. He lived there on a part time basis to be near his work. The Principal Applicant owned a company that imported and exported goods from Iran. His work involved extensive contact with customs officials.

[4] The following description of events is taken in large part from the Applicants'

Memorandum of Fact and Law:

In January 2017, Salah Zaman [the Pastor] invited the Principal Applicant to attend his Christian home church. Thereafter the Principal Applicant began to attend several days a week.

In February 2017, one week after the Principal Applicant's first home church meeting, a Customs employee also joined the church. A few days thereafter he asked the Principal Applicant for a loan. The Principal Applicant refused. He later threatened that if the Principal Applicant did not lend him the money he would make trouble for him and his company. Again, the Principal Applicant refused to make the loan.

In late February or early March 2017, the Principal Applicant was confronted by the Deputy Director of Customs and accused of promoting Christianity. The Principal Applicant denied this accusation. A week later the Principal Applicant was asked to pay a bribe to make a file against him disappear. He refused to pay and his goods were stopped by Customs. He was ordered to pay double duty. This decision was reversed after the Principal Applicant complained.

Approximately five months later, on August 27, 2017, Customs issued a letter prohibiting the Principal Applicant and his employees from entering Customs and his goods were seized.

Although the Principal Applicant's conversion of others was not mentioned in his original or amended BOC, the conversions were mentioned in the testimony before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. However, the men who were converted were not identified because, at the hearing, no one asked for their names. Accordingly, before the RAD, the Principal Applicant's proposed new evidence indicated for the first time that he had proselytized and converted Ashkan Nasrabadi [Nasrabadi] to Christianity.

On September 6, 2017, a home church meeting at the Principal Applicant's home in Bandar Abbas was raided [the Raid]. The Principal Applicant and the other attendees escaped. The Principal Applicant flew to Tehran and went to Karaj to collect his family. Thereafter, they stayed with a friend – Dr. Saaki – and then they left for Canada.

In October 2017, the Principal Applicant was informed that the authorities had come to his property in Kiraj in search of him. Later that month, the Applicants filed their refugee claim.

In Canada, Fatemeh converted to Christianity and the Applicants both attended the Spirit of Truth church. They have both been baptized.

[5] The Applicants left Iran for several vacations in 2017 [the Vacations]. Their trips were as follows:

- In March, they travelled to Thailand, Malaysia, Singapore and Qatar
- In June, they travelled to Turkey
- From August 10 to 22, they were in Canada

After each trip, they returned to Iran. The Principal Applicant did not attend Christian services during these vacations.

[6] The RPD dismissed the Applicants' refugee claim on the basis of credibility, failure to claim, and reavilment following the Vacations.

III. THE RAD DECISION

[7] The RAD rejected the new evidence described below and dismissed the appeal. The RAD Member concluded that the Applicants' claims of conversion to Christianity were not credible.

IV. DISCUSSION AND CONCLUSIONS

[8] The Applicants filed seven separate applications asking the RAD to receive new evidence. To simplify matters, I created the following groups of documents. Counsel for both parties acknowledged that all the relevant documents are found in these groups:

(1) Group A

This evidence deals with the Principal Applicant's Pastor's activities after the Raid and his flight to Austria

- i. The Pastor's letter of November 16, 2018
- ii. A letter from the Pastor's brother dated November 13, 2018

(2) Group B

This evidence deals with Nasrabadi's flight to Germany after the Raid

- i. Nasrabadi's letter of July 1, 2019
- ii. Nasrabadi's Pastor's letter of March 20, 2020
- iii. The Principal Applicant's Pastor's letter about Nasrabadi of August 8, 2019

(3) Group C

This is the Principal Applicants' evidence

- i. The Principal Applicant's Affidavit of April 16, 2019, which relates to Group A
- ii. The Principal Applicant's Affidavit of August 1, 2019, which relates to Group B

(1) Group A Evidence

[9] The letters in Group A corroborate the Principal Applicant's evidence about the Raid. As well, the Pastor indicated that he remained in Iran for five months after the Raid. He left Iran on March 19, 2018 and reached Austria and claimed asylum on September 12, 2018. During his trip, he only contacted family, and his brother refused to disclose his whereabouts to the Applicants. Finally, on October 11, 2018, once the Pastor was safe in Austria, the Pastor's brother gave the Principal Applicant his phone number.

[10] The evidence is clear that on September 25, 2018, when the RPD rejected the Applicants' refugee claim, the Pastor could not be reached. The Applicants say that this fact satisfies Section 110 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA]. However, the explanation for the Pastor's evidence not being reasonably available on September 25, 2018 was incomplete because it did not address its potential availability had contact been made or attempted in the five-month period before the Pastor left Iran. Since subsection 110(4) of the IRPA had not been satisfied, the RAD Member reasonably rejected the new evidence in Group A.

[11] While the lack of a complete explanation for its unavailability was clearly the RAD Member's primary reason for rejecting the Group A evidence, the Member also appeared

concerned that the evidence was not credible because it responded to a negative credibility finding made by the RPD [the Concern]. The Applicants point to the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v Singh* [Singh], 2016 FCA 96 at paragraph 38 when it quotes *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paragraph 13(3)(c). There it is made clear that the newness of proposed new evidence may be gleaned from the fact that it responds to a negative credibility finding made by the RPD. In other words, *Singh* expressly contemplates new evidence of this kind. For this reason, it was unreasonable for the RAD Member to treat this Concern as a reason for rejecting the Group A evidence. However, because this was not the RAD's primary reason for the rejection, I have concluded that the rejection was reasonable.

(2) Group B Evidence

[12] Nasrabadi was one of the men whom the Principal Applicant allegedly converted to Christianity. The Applicants claim they only had contact with Nasrabadi after reconnecting with the Principal Applicant's Pastor.

[13] In my view, contrary to the RAD Member's conclusion, the unavailability of the Group B evidence at the date of the RPD's decision on September 25, 2018 was explained in that the Pastor did not learn of Nasrabadi's whereabouts until June 23, 2019. This was long after the RPD's decision had been released. Further, once the Pastor had Nasrabadi's contact information, he acted promptly and gave it to the Principal Applicant. In my view, the RAD's conclusion that the failure to adduce this evidence was not adequately explained was unreasonable.

[14] The RAD also expressed concern about the credibility of the Group B evidence because it addressed a credibility finding made by the RPD. The RPD had concluded based on the documentary evidence that proselytizing by Christians in Iran was unlikely given security issues.

[15] In my view, while there may have been reason to doubt the credibility of the new evidence in Group B given the contradictory documentary evidence and the Principal Applicant's failure to mention conversion in his BOC, neither of these reasons were relied on by the RAD Member. In my view, it was unreasonable of her to impugn the credibility of the Group B evidence simply because it responded to the RPD's negative credibility finding.

[16] The RAD Member also concluded that the Group B evidence was not credible because the Principal Applicant had not named Nasrabadi at the RPD hearing. The difficulty, as noted above, is that the Principal Applicant was not asked for the names of the three men he converted. In these circumstances, this reason for rejection was also unreasonable.

#### V. ADDITIONAL UNREASONABLE CONCLUSIONS

[17] At paragraph 46 of the RAD decision, the Member rejected the letter from Dr. Saaki which indicated that the Principal Applicant, Fatemah and their son hid at his home before leaving for Canada. The RAD rejected the letter finding it not credible because before the RPD, the Principal Applicant had testified that, following the Raid, he went to hide in an upholstery store and then proceeded to the Airport. The RAD understood the evidence to have been that once he was at the Airport he left for Canada. However, the audio recording of the RPD hearing and the Principal Applicant's BOC show that from the airport he flew to Tehran where he

collected his wife and child. They then hid at Dr. Saaki's and later flew to Canada. For this reason, I have concluded that the RAD unreasonably decided to give Dr. Saaki's letter no weight.

[18] The evidence was that Fatemah's father is hezbollahi. This was the basis for a finding by the RPD that the terrorist group Hezbollah was interested in the Principal Applicant. The RAD Member also understood the evidence to have been that Hezbollah was a threat and found this to be an embellishment. However, this conclusion was unreasonable because both the RPD and the RAD had failed to appreciate the evidence that hezbollahi is not a term used to describe a member of Hezbollah. Rather it describes a person of strict Muslim faith.

#### VI. CONCLUSION

[19] For all these reasons, the application for judicial review will be allowed and a different Member of the RAD is to reconsider the Applicants' appeal.

#### VII. CERTIFICATION

[20] No question was proposed for certification for appeal.



**JUDGMENT IN IMM-2219-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is hereby allowed and the matter is to be reconsidered by another Member of the RAD.

"Sandra J. Simpson"

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Judge

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

**DOCKET:** IMM-2219-20

**STYLE OF CAUSE:** FATEMAH MOUSEVA PAVAEI, SEYED MEHDI MOUSAVI, SEYED PAKAN MOUSAVI v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO (THE COURT) AND TORONTO, ONTARIO (PARTIES)

**DATE OF HEARING:** JANUARY 13, 2021

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** FEBRUARY 10, 2021

**APPEARANCES:**

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