

Federal Court



Cour fédérale

Date: 20210510

Docket: IMM-2013-20

Citation: 2021 FC 422

Ottawa, Ontario, May 10, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MAHYAR QAHRAMANLOEI

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Iran. He reports that he fears persecution in Iran as the result of being involved with a small peaceful group wanting to see the end of the Iranian regime and greater political freedom in that country.

[2] The Refugee Protection Division [RPD] refused the Applicant's refugee claim, finding he had failed to credibly demonstrate that he faced persecution as the result of his political activities. He appealed the negative RPD decision to the Refugee Appeal Division [RAD]. The RAD dismissed his appeal on February 24, 2020, finding that the credibility and sufficiency of evidence supporting core aspects of the Applicant's narrative were determinative.

[3] The Applicant applies pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD decision. He submits that the RAD's negative credibility findings relating to his fear of persecution were unreasonable and that the RAD failed to analyse the objective evidence relating to his risk of persecution if returned to Iran.

[4] For the reasons that follow, the Application is dismissed.

II. Background

[5] The Applicant reports that after retiring from the military in 2012, he began meeting with a friend, Mohammad, and three other individuals. This group distributed flyers on the current political situation in Iran. He states that in 2016, the Islamic Revolutionary Guard Corps [Sepah] raided his home. His mother was home at the time, but the Applicant was not. The Sepah took his laptop and copies of the flyers he had been involved in distributing. The Sepah informed his mother that they knew of the Applicant's activities and political group as they had arrested and obtained a confession from Mohammad.

[6] The Applicant fled Iran in November 2016 with the help of a human smuggler, who provided him with a fake passport, and he initiated a refugee claim in Canada in January 2017.

[7] In finding the Applicant had not credibly established his narrative, the RPD identified numerous concerns and inconsistencies from which the RPD drew negative inferences. Among others, the RPD identified concerns with the Applicant's evidence relating to: (1) whether he travelled with both his genuine Iranian passport and a fake passport; (2) his presence in Iran until late 2016; (3) the timing of his departure from Iran; (4) an initial non-disclosure of his father's presence in Canada; (5) a discrepancy in the translation date of his birth certificate; (6) his failure to reasonably explain contradictions and initial omissions from his narrative relating to his political activities in Iran and the Sepah raid; and (7) his failure to provide corroborating evidence of this report that Sepah was looking for him.

III. Decision under Review

[8] In dismissing the Applicant's appeal, the RAD overturned many of the RPD's negative credibility findings. Nonetheless, the RAD concluded the Applicant's narrative as it related to his reported involvement in political activity in Iran and the Sepah's interest in him were not credible.

[9] The RAD found the evidence relating to his reported involvement in the small political group inconsistent, noting that he reported being involved in his narrative but testified to being a founder of the group before the RPD. The RAD approved of further negative credibility inferences arising from inconsistent evidence relating to the content of the political flyers

reportedly distributed and the Applicant's failure to state his mother had informed him of Mohammad's confession until he was prompted. The RAD also addressed the uncontested finding of the RPD that it was implausible the Applicant would not know the names of the other group members with the exception of Mohammed. The RAD noted the small size of the group, the length of time it had been active, and its frequent meetings and found that the RPD's implausibility finding was significant because it undermined the credibility of the Applicant's claim of involvement with the group and the duration of his political activities.

[10] Finally, the RAD drew a negative credibility inference from the Applicant's failure to obtain a corroborating affidavit from his mother with respect to the raid and his claim that Sepah was looking for him. The RAD noted that at the time of the hearing the Applicant's mother was in Canada and an easily available witness.

[11] These negative credibility inferences led the RAD to find that the Applicant did not participate in a group that discussed politics and advocated for regime change and that the Sepah never raided his house. As such, the RAD found that the Applicant did not face a serious possibility of persecution due to political opinion if returned to Iran.

IV. Issue and Standard of Review

[12] The Application raises two issues:

- A. Are the RAD's negative credibility inferences reasonable?
- B. Did the RAD err in not analysing the Applicant's risk of persecution if returned to Iran?

[13] The RAD's credibility findings are reviewable on the reasonableness standard (*Keqaj v Canada (Minister of Citizenship and Immigration)*, 2020 FC 563 at paras 13-15, *Kanawati v Canada (Minister of Citizenship and Immigration)*, 2020 FC 12 at para 9). Similarly, the RAD's evaluation of a refugee claimant's risk of persecution under IRPA section 97 is reviewable on the reasonableness standard (*Celestin v Canada (Minister of Citizenship and Immigration)*, 2020 FC 97 at paras 31-32; *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2021 FC 8 at para 14; *Ambroise v Canada (Minister of Citizenship and Immigration)*, 2021 FC 62 at para 6).

[14] The RAD's decision will be reasonable if it is "based on an internally coherent and rational chain of analysis and...justified in relation to the facts and law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

V. Analysis

A. *The RAD's negative credibility inferences are mostly reasonable*

[15] The Applicant argues that the RAD erred in its assessment of the evidence and that its plausibility finding and resulting negative credibility inferences were unreasonable. Specifically, the Applicant challenges three of the RAD's findings.

[16] First, the RAD unreasonably impugned his credibility over his status as co-founder of his political group, arguing that he did not testify that he was co-founder of his group but rather testified he started political activities with others.

[17] Second, the RAD unreasonably impugned his credibility over contradictions in describing the content of the flyers.

[18] Third, the RAD's negative credibility inference flowing from his evidence relating to the Sepah raid was unreasonable. His failure to initially testify that his mother had told him the Sepah was looking for him was reasonably explained in his evidence—he was responding to general questions and was prepared to provide that detail as the questioning became more specific, it was not unreasonable that he focussed on general details only. In drawing this flawed credibility inference, the RAD then erred in concluding the presumption of truthfulness had been rebutted and unreasonably required corroborative evidence from his mother.

[19] In advancing these arguments, the Applicant relies on the principles underpinning credibility assessments in the IRPA context. There is a presumption of truthfulness in the absence of a valid reason to disbelieve a claimant (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 31 NR 34 (CA); *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783). The RAD is not to engage in a microscopic analysis of the evidence to identify discrepancies in order to justify negative credibility inferences (*Warnakulasuriya v Canada (Minister Citizenship and Immigration)*, 2008 FC 885 at para 7). The Applicant also argues that plausibility findings should only be made in the clearest of cases and that plausible explanations for inconsistencies must be considered (*Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653).

[20] Applying credibility principles to this case, I agree with the Applicant's submission that the RAD unreasonably drew a negative inference over inconsistent evidence as to whether he was a member or founder of the political group. In doing so, the RAD engaged in a microscopic analysis. As was noted by the RAD, there may be a significant distinction between joining an existing group and co-founding a group. However, the importance of that distinction on these facts is not evident. In addition, after reviewing the transcript, including the Applicant's explanation, the evidence on this point is equivocal and not necessarily, inconsistent. Finally, and most importantly, in the context of judicial review, it is not evident that the issue of membership versus co-founding is material to the Applicant's underlying claim.

[21] While I find the negative inference relating to the nature of the Applicant's reported membership in the group to have been microscopic and unreasonable, I am satisfied that the RAD's negative inferences arising from the inconsistent evidence relating to contents of the flyers the Applicant reported distributing and its findings relating to the omission of information relating to the Sepah raid were reasonable.

[22] I am also satisfied that the RAD did not err in concluding the unchallenged RPD finding—that it was not plausible the Applicant would be unaware of the names of the members of his small political group given their many years of activity—significantly undermines his claim of either belonging to or having co-founded a small political group.

[23] The RAD details its reasoning for each of these findings and those reasons are justified and transparent.

[24] With respect to the detail surrounding the raid on his home, again, I am persuaded that the RAD's treatment of the evidence and its conclusions were reasonable. The Applicant was initially asked an open ended question by the RPD with respect to what happened surrounding the raid. In answering that question, the Applicant made no reference to the Sepah having advised his mother that Mohammed had been arrested, a fact that is included in his narrative. The RPD sought more detail—" [d]id they say anything else?"—and again the Applicant's response omitted any reference to the arrest of Mohammed. This prompted a further question from the RPD—" [d]id they tell your mother anything else?" The Applicant responded "No." It was only when the RPD specifically asked about the narrative statement regarding the arrest of Mohammed that the Applicant acknowledged his mother had been told by Sepah of the arrest and confession. Given this sequence, it was open to the RAD to draw the negative inference it did. In doing so, the RAD clearly details its reasoning.

[25] Having found the Applicant was not credible on this key aspect of the narrative, it was also reasonable for the RAD to draw a negative inference in the absence of corroborative evidence from the Applicant's mother. The RAD noted that the Applicant's mother was present in Canada at the time of the RPD hearing and having her provide corroborating evidence would not have placed her at any risk.

[26] I am satisfied that the RAD's remaining negative inferences and conclusions it draws were reasonably available to it and are sufficient to support the RAD's ultimate finding that the Applicant failed to establish either his involvement in a political group or that he was being sought by the Sepah.

B. *The RAD did not err by failing to undertake an analysis of the Applicant's risk of persecution if returned to Iran*

[27] The RAD, having concluded the Applicant was not politically involved in Iran and was not being pursued by Sepah, did not engage in a review of the objective evidence. The Applicant argues this was an error.

[28] In rejecting the Applicant's narrative, the RAD found the Applicant had failed to establish either his involvement in a political group or that he was being sought by the Sepah. These are the very facts that the Applicant relied upon as the basis for his reported fear of persecution. Not having established these core facts, the RAD was not required to engage in an analysis of the Applicant's risk (*Ali v Canada (Minister of Citizenship and Immigration)*, 2021 FC 77 at paras 28-29; *Canada (Minister of Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3; *Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at paras 41-42; *Odetoyinbo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 501 at paras 5-8).

[29] The Applicant argues that the RAD found the Applicant was politically active in Iran. I disagree. The RAD does state that "[e]ven if" the Applicant were involved in political activity, he is nonetheless not being pursued by the Sepah. However, this was an alternative finding. It does not undermine the RAD's primary conclusion that the Applicant was not politically active.

VI. Conclusion

[30] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-2013-20

THIS COURT'S JUDGMENT is that:

1. Application is dismissed;
2. No question certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2013-20

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