

Federal Court



Cour fédérale

**Date: 20210614**

**Docket: IMM-414-20**

**Citation: 2021 FC 604**

**Ottawa, Ontario, June 14, 2021**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**RAHELEH SADEGHI  
HADI SHATERI  
ROZE SHATERI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicants, Raheleh Sadeghi, her husband, Hadi Shateri, and their daughter, Roze Shateri, are citizens of Iran who allege a fear of persecution for their conversion to Christianity. They seek judicial review of a decision of the Refugee Appeal Division (RAD), dismissing their appeal and confirming the Refugee Protection Division's (RPD) determination that they are

neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] The applicants' credibility was the determinative issue before the RPD. On appeal, the RAD concluded the RPD did not err in finding that the applicants were not credible in the genuineness of their faith as Christian converts.

[3] The applicants submit the RAD breached procedural fairness by raising a new issue about their credibility without providing notice and an opportunity for the applicants to respond. They also submit that the RAD's decision is unreasonable. In this regard, the applicants submit the RAD committed a number of reviewable errors by refusing to admit new evidence and convene an oral hearing, misconstruing the applicants' testimony, failing to address arguments that were raised by the applicants on appeal, and improperly discounting corroborative evidence.

[4] The RAD did not breach procedural fairness and it did not commit a reviewable error by refusing to admit new evidence and convene an oral hearing. However, in my view, the RAD misconstrued the applicants' testimony, failed to address arguments that were raised by the applicants on appeal, and failed to adequately justify its decision. Accordingly, this application for judicial review is granted.

## II. Preliminary Issue: Style of Cause

[5] The style of cause is hereby amended to properly name the respondent as the Minister of Citizenship and Immigration.

III. **Issues and Standard of Review**

[6] The issues on this application for judicial review are:

1. Did the RAD err in refusing to admit new evidence and convene an oral hearing?
2. Did the RAD breach procedural fairness by raising a new issue without notice?
3. Did the RAD err by misconstruing the applicants' testimony, failing to address arguments that were raised by the applicants on appeal, or improperly discounting corroborative evidence?

[7] The first and third issues are reviewable according to the revised framework for reasonableness review as set out in the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. See also *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230 [Singh] at paras 23 and 29.

[8] *Vavilov* has not changed the approach for questions of procedural fairness. The second issue relates to procedural fairness and is reviewable on a standard that is akin to correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [Canadian Pacific Railway]. The duty of procedural fairness is "eminently variable", inherently flexible, and context-specific: *Vavilov* at para 77. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

IV. Analysis

A. *Did the RAD err in refusing to admit new evidence and convene an oral hearing?*

[9] The applicants submit the RAD erred in refusing to admit new evidence on appeal consisting of a pastor's letter, certificates of church membership, and a photograph of the applicants with their certificates. The applicants submit that this evidence is relevant, credible, and arose after the rejection of their claim by the RPD. As such, they contend the evidence meets the conditions for admissibility under s. 110(4) of the *IRPA* as well as the conditions outlined in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No 1632, and adopted in *Singh*.

[10] I am not persuaded that the RAD erred in refusing to admit the evidence. The RAD has no discretion to admit evidence that fails to meet the s. 110(4) conditions—even if the evidence meets the *Raza* conditions of relevance and credibility: *Singh* at paras 34-36. Thus, the RAD may not admit new evidence on appeal unless it arose after the RPD's rejection, or it was not reasonably available or the applicant could not reasonably have been expected to have presented it at the time of the RPD's rejection: s. 110(4) of the *IRPA*; *Singh* at paras 34-36.

[11] In my view, the RAD reasonably found that the tendered documents do not satisfy the requirements for the admission of new evidence under s. 110(4) of the *IRPA*. In their written submissions to the RAD, the applicants had argued that Raheleh Sadeghi “was issued the new evidence after the rejection of her claim,” and in her affidavit, Ms. Sadeghi stated that the evidence “became available to [her] after the RPD hearing.” Although the documents post-date

the RPD decision, the RAD found that the content of the pastor's letter pre-dates the decision and the applicants had failed to explain why the certificates could not have been issued earlier. The RAD found that the need for these documents was foreseeable, as the genuineness of the applicants' faith was a central issue in their claim.

[12] I am not persuaded by the applicants' argument that the letter was submitted to demonstrate the applicants' continued attendance at church and practice of their faith after the RPD's decision. The letter post-dates the RPD decision by only three weeks. It does not address the applicants' attendance at church and practice of their faith during that three-week period, but rather, speaks generally to the applicants' attendance at church since 2018.

[13] The RAD may hold an oral hearing if new evidence is accepted: s. 110(6) of the *IRPA*. As the RAD did not admit new evidence, there was no basis to convene an oral hearing.

B. *Did the RAD breach procedural fairness by raising a new issue without notice?*

[14] The RAD found that the timing of the applicants' baptism—three years after converting to Christianity in December 2015 and six months after arriving in Canada—undermined the applicants' belief in “getting baptised at the earliest opportunity”.

[15] In addition to their arguments that the RAD's finding is unreasonable, the applicants submit the RAD breached procedural fairness by raising a new issue of delay in being baptised. According to the applicants, the RPD did not make a negative credibility finding based on delay (in fact, the RPD acknowledged that the applicants could not have been baptised before they

arrived in Canada), and the RAD's finding does not stem from issues that were raised in the applicants' submissions on appeal. As a result, the applicants contend the RAD breached procedural fairness by failing to provide notice of its concern, and an opportunity for the applicants to respond. The applicants rely on *Ugbekile v Canada (Citizenship and Immigration)*, 2016 FC 1397 at para 22 and *He v Canada (Citizenship and Immigration)*, 2019 FC 1316 [*He*] at paras 22, 25-26.

[16] While I agree with the applicants that the RAD's finding is unreasonable (I will return to this point in the next section of these reasons), I disagree that the RAD breached procedural fairness by raising a new issue without affording an opportunity to respond.

[17] Where a hearing before the RAD is not warranted, the RAD may decide an appeal on the basis of the materials provided, "without further notice to the appellant and to the Minister": Rule 7 of the *Refugee Appeal Division Rules*, SOR/2012-257. There is an exception to this general rule when procedural fairness requires the RAD to give notice that it has raised a new issue, and provide an opportunity for submissions: *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 [*Kwakwa*]. New issues are "legally and factually distinct from the grounds of appeal raised by the parties and cannot reasonably be said to stem from the issues as framed by the parties": *R v Mian*, 2014 SCC 54 at para 30 [*Mian*] (citations omitted). Issues that are rooted in or are components of an existing issue are not "new issues": *Mian* at para 33.

[18] Regarding the applicants' refugee claim, credibility was the determinative issue before the RPD and before the RAD—including whether the applicants are genuine Christian converts.

On appeal to the RAD, the applicants had alleged that the RPD erred in assessing the importance of baptism to them. Furthermore, the applicants had argued that the RPD enjoyed no meaningful advantage in assessing the credibility of their oral testimony, and they urged the RAD to conduct an independent analysis of all the evidence before it instead of deferring to the RPD's credibility findings regarding their oral testimony. The RAD found there was a delay in being baptised as part of its independent analysis of whether the applicants are genuine Christian converts. I find that the RAD's analysis of the timing of the applicants' baptism stemmed from the issue the applicants had raised, about the importance of baptism to them.

[19] The applicants' reliance on this Court's decisions in *Ugbekile* and *He* is misplaced. In *Ugbekile*, the RAD raised a new issue by making credibility findings of central importance to its determination, when the determinative issue before the RPD was not credibility, but the existence of an IFA. In *He*, the Court found there was an "extraordinary difference" between the analyses conducted by the RAD and the RPD, and it could not be said that the applicants knew the case to be met on appeal (citing *Kwakwa*). The facts underlying the decisions in *Ugbekile* and *He* are distinguishable from the facts of this case.

[20] This Court has recognized that there may be a fine line between situations where the RAD raises a new issue, and those where the RAD makes additional findings on an issue that is not new: *Kwakwa* at para 29. However, the line is an important one, as questions on the merits of the RAD's decision and questions of procedural fairness engage different principles of review. The RAD is entitled to independently assess the evidence or make credibility findings when the issues raised and considered by the RAD are linked to the parties' submissions or the RPD's

findings: *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 870 at para 13; *Bebri v Canada (Citizenship and Immigration)*, 2018 FC 726 at para 16. In such a situation, the RAD's findings are reviewed under the deferential standard of reasonableness. While the applicants argue, and I agree, that the RAD misstated their testimony and that the RAD's findings regarding their delay in being baptised are unreasonable, this was not a new issue. In my view, the RAD did not raise a new credibility issue that would require an opportunity for the applicants to make further submissions: *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 380 at para 30.

C. *Did the RAD err by misconstruing the applicants' testimony, failing to address arguments that were raised by the applicants on appeal, or improperly discounting corroborative evidence?*

[21] The applicants allege that the RAD misconstrued their testimony, failed to address their arguments, and improperly discounted corroborative evidence. They allege the RAD committed reviewable errors with respect to: (i) the applicants' testimony about the timing and importance of baptism, the importance of Christianity, and the procedures during meetings at their house church in Iran; (ii) Ms. Sadeghi's testimony about whether she had marked up or highlighted passages in her bible; (iii) a letter and testimony from the applicants' pastor; and (iv) other corroborative evidence of the genuineness of their faith.

[22] I agree that the RAD misconstrued testimony and failed to address the applicants' arguments regarding their testimony about the timing and importance of baptism, the importance of Christianity, and house church procedures in Iran, and I agree that the RAD improperly



discounted the pastor's evidence. In my view, the RAD's reasons lack transparency, intelligibility and justification, and the decision must be set aside.

(1) Baptism, Christianity and house church procedures

[23] I agree with the applicants that the RAD erred in finding that the timing of their baptism six months after arriving in Canada undermined their belief in being baptised "at the earliest opportunity". The RPD's reasons do not address the timing of the applicants' baptism, or any perceived delay, and the applicants were never questioned on these points at the RPD hearing. The applicants were only asked questions about the importance of baptism to them. When asked if she could accept Jesus Christ as God without being baptised, Ms. Sadeghi answered that "if you have time and opportunity to do so...[it] must be done, as Jesus Christ himself has been baptised." The RAD interpreted this as a statement that "it is important to get baptised as soon as possible", but those were not Ms. Sadeghi's words, and the RAD's interpretation is not a fair interpretation of Ms. Sadeghi's testimony when read in context. Furthermore, the RAD does not explain why being baptised six months after arriving in Canada was not "the earliest opportunity" for the applicants. The RAD failed to acknowledge or address Mr. Shateri's testimony that it was not possible to be baptised in Iran (to which the RPD member had responded "I know"), or the evidence in the National Documentation Package (NDP) indicating that Iranian Christian converts are baptised abroad, not in Iran. The RAD provided no basis for expecting that the applicants had an earlier opportunity and should have been baptised sooner in Canada, particularly since the applicants were never questioned on the point.

[24] Also, I agree with the applicants that the RAD did not justify its findings that the applicants' testimony about their religious practices and the importance of baptism and Christianity was generic and rehearsed, and did not relate to the applicants personally.

[25] The respondent submits that the RAD listened to the applicants' testimony, and concurred with the RPD that the applicants did not provide direct answers to the RPD's questions about how baptism and Christianity were important to them. However, the RAD's decision must be justified, not merely justifiable (*Vavilov* at para 86) and the RAD did not explain its findings. Furthermore, the RAD's findings are not supported by the transcript from the RPD hearing. The applicants testified that through baptism, they wanted their sins to be "washed away in water" and to be able to live a Holy life cured of sin. They stated that, according to the Bible, "Jesus Christ has been baptised himself" and "we have given our heart to Jesus Christ". It is unclear why the RAD considered these answers and others to relate to the importance of baptism "to the religion", but not to the applicants personally. The RAD did not explain why it believed that the applicants were avoiding direct answers to questions about the importance of baptism and Christianity. The applicants' answers to the RPD member's questions in this regard appear to be straightforward and reasonable.

[26] Similarly, the RAD's analysis of the applicants' evidence of the procedures at house church meetings is superficial, and fails to address the applicants' arguments about how the RPD erred in this regard—in fact, the RAD misstates the applicants' arguments. The applicants did not argue that the RPD "ignored the house church procedure testimony". The applicants challenged the basis for the RPD's negative credibility findings, including because the RPD's

findings were based on the omission of a minor detail in what the RPD acknowledged to be an accurate, step-by-step account of the procedures at the house church meetings.

[27] Like the RPD, the RAD acknowledged that Ms. Sadeghi's testimony about the house church procedures was consistent with the objective evidence in the NDP. The RAD then stated it must consider whether "this positive testimony outweighs the negative credibility findings." The RAD's negative credibility findings were based on the "overall theme" of the applicants' testimony, which the RAD described as giving evidence that was "largely in line with the NDP, but when asked personal questions such as the importance of Baptism and Christianity to them, the answers simply fall back to generic answers with no indication of personal characteristics." The "lack of personalized details not available in country documentation" led the RAD to conclude that the applicants' testimony was largely rehearsed, and that they were not credible. As noted above, these findings are not supported by the transcript of the applicants' testimony before the RPD.

[28] The applicants have established that the RAD's analysis and findings are not intelligible, transparent or justified.

(2) Testimony about highlighted passages

[29] The applicants submit the RAD misconstrued and microscopically analyzed Ms. Sadeghi's testimony when it concluded that she first gave a categorically positive answer to a question about whether she had highlighted a passage in her bible, and then wavered after the RPD member asked her to point to the passage. The applicants contend that the RPD asked a

two-part question. They submit that Ms. Sadeghi's answer "Yes, I did" could reasonably have been a response to the first part of the question, i.e. whether she brought her bible. The applicants submit the RAD was over-zealous: *Attakora v Canada (Minister of Employment and Immigration)* (FCA), [1989] FCJ No. 444. The respondent submits Ms. Sadeghi did not file an affidavit in this application for judicial review, and there is no evidentiary foundation for the applicants' argument.

[30] While the exchange between the RPD member and Ms. Sadeghi is ambiguous, in my view it is not apparent from the record that "Yes, I did" meant "Yes, I did bring my bible". As the respondent correctly notes, the RPD member did not ask a two-part question, but made a statement ("I see that you've brought a copy of the Bible,") followed by a question ("is this section highlighted in some way in your Bible?"). Also, I agree with the respondent that Ms. Sadeghi's later testimony suggests that she understood the RPD member's question, as there was a further exchange regarding whether she had highlighted parts of the bible or not. If Ms. Sadeghi misunderstood the initial question, she did not say so, and the applicants' counsel did not object to the RPD's question or attempt to clarify Ms. Sadeghi's testimony. There is no evidence before this Court regarding Ms. Sadeghi's understanding or the precise exchange between the interpreter and Ms. Sadeghi. Bearing in mind that it is not the Court's role to reweigh and reassess the evidence considered by the RAD (*Vavilov* at para 125), I am not satisfied that the RAD's assessment of Ms. Sadeghi's testimony on this issue is unreasonable.

(3) Church pastor's letter and testimony

[31] I agree with the applicants that the RAD's treatment of the pastor's evidence is unreasonable.

[32] On appeal to the RAD, the applicants had challenged the RPD's finding that the pastor's evidence was "insufficient to overcome the [RPD's] credibility concerns", and should be given less weight since he "cannot see inside the [applicants'] hearts and minds and is not trained in conducting credibility assessments". The applicants had argued that the pastor explained why he believed that the applicants are genuine Christian converts, that the RPD should have considered this, and that the RPD's analysis was flawed. The applicants provided detailed submissions, with references to the RPD's reasons and to segments of the audio recording of the pastor's testimony, to explain why they believed the pastor had provided evidence that was genuine, frank, and corroborative of the applicants' testimony and the practice of their faith in Canada.

[33] The RAD failed to address this key point. Instead, the RAD made the following two points about the pastor's evidence: (i) the RAD concurred with the RPD that the pastor is not trained to conduct credibility assessments; and (ii) the RAD found that it is part of a pastor's role to take an attendee's beliefs at face value and it is not part of their job description to question the genuineness of that faith. After stating that the RAD concurred with the RPD that the pastor is not trained to conduct credibility assessments, the RAD stated that this "was not addressed by the [applicants] in their Memorandum." However, it was addressed, as noted above. The RAD

failed to address the applicants' arguments, and failed to consider what the pastor had actually said.

[34] Furthermore, I agree with the applicants that the RAD provided no basis for its finding regarding the pastor's role and job description. This appears to be a subjective belief, and does not account for the fact that the pastor had spent time with the applicants over a few months, that he had observed them attending church, a weekly bible study group, and special events, and that he had given sworn testimony at the RPD hearing of having "come to know them personally as individuals".

[35] The RAD failed to engage with the applicants' arguments about the pastor's evidence, and the applicants have established that the RAD's analysis was not transparent, intelligible and justified.

(4) Other corroborative evidence

[36] Lastly, the applicants submit the RAD failed to respond to its arguments that the RPD had erred in dismissing relevant and probative documentary evidence on the basis of a global credibility finding, and then erred in its own assessment by failing to properly consider the corroborative evidence before it: *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at para 20 and *Elhassan v Canada (Citizenship and Immigration)*, 2013 FC 1247 at para 24. They submit the RAD failed to consider corroborating documents such as birth certificates, national ID cards, education documents, baptism certificates, and letters from the Salvation Army.

[37] The RAD expressly considered the letter from the Salvation Army, i.e. the church pastor's letter. It appears that the other documents relate to the applicants' identities and the fact that they have been baptised, which the RAD accepted. Therefore, I am not satisfied that the RAD made a reviewable error by failing to refer to the other documents in its reasons.

V. **Conclusion**

[38] The applicants have established that the RAD's decision is unreasonable. Accordingly, this application for judicial review is granted. The decision is set aside, and the matter shall be referred back for redetermination.

[39] Neither party proposes a question for certification, and in my view, there is no question to certify.

**JUDGMENT in IMM-414-20**

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

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper respondent.
2. This application for judicial review is granted.
3. The RAD's decision is set aside and the matter shall be referred back to a different decision-maker for redetermination.
4. There is no question to certify.

"Christine M. Pallotta"

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Judge



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

**DOCKET:** IMM-414-20

**STYLE OF CAUSE:** RAHELEH SADEGHI, HADI SHATERI, ROZE SHATERI v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 2, 2021

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** JUNE 14, 2021

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