Federal Court  Cour fédérale

Date: 20211213

Docket: IMM-733-21

Citation: 2021 FC 1403

Toronto, Ontario, December 13, 2021

PRESENT: Madam Justice Go

BETWEEN:

SEYED FARSHID HOMAUONI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Seyed Farshid Homauoni [Applicant] made a refugee claim on the basis that he fears religious persecution in the Islamic Republic of Iran due to his conversion to Christianity. The denial of his claim by the Refugee Protection Division [RPD] was upheld by the Refugee Appeal Division [RAD] in a decision dated January 11, 2021 [Decision].

[2] The RAD refused to admit new evidence submitted by the Applicant and confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or person in need of protection under the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 [*IRPA*].

[3] I allow this application because the Applicant was denied procedural fairness in connection with his appeal to the RAD. The Decision was influenced by an adverse credibility determination on a new question to which the Applicant was not given an opportunity to respond. Further, the Decision not to admit new evidence was unreasonable.

II. **Background**

A. ***Factual Context***

[4] The Applicant is a citizen of Iran. In his Basis of Claim [BOC] narrative, the Applicant claims that he was born into a Muslim family but had a longstanding interest in other faiths. In 2016, he and his wife became friends with N., a Christian. Through N.'s introduction, the Applicant was baptised and converted to Christianity at N.'s house church in or about December 2016. In early 2017, another friend of the Applicant, S., was going through a hard time. Though not his intention, the Applicant facilitated S.'s conversion to Christianity. S. got baptised later in 2017. S. and N. got married in 2018.

[5] The Applicant left Iran on November 10, 2018 for Canada to visit his cousin. About two weeks after he arrived, the Applicant learned from N. that S. had not been seen for days. A few days later, the Applicant received a call from his wife saying she had been detained and that their house had been searched by the Ministry of Intelligence, which had seized their electronics. She was released after she denied being a Christian and provided proof of her Muslim faith. N.'s house had also been searched; she had been released, but no one had heard from S. The authorities interrogated both N. and the Applicant's wife as to the Applicant's whereabouts.

[6] The Applicant fears that S. has identified him as the one who converted S. to Christianity. The Applicant states that he cannot ask the government for protection, as they are the ones seeking him, and there is nowhere in Iran he can flee from the Ministry of Intelligence.

B. ***The RPD Decision***

[7] The Applicant's RPD hearing took place on December 11, 2019. In a decision dated February 5, 2020, the RPD found that the Applicant was not credible, due to the Applicant's inability to recall certain dates such as the Persian date of him becoming baptised, when his wife called him about the arrest and search, or when he decided to stay in Canada. The RPD also found the Applicant's testimony inconsistent as to when he felt himself to be a Christian, at first stating it was before he was baptised and later saying after he was baptised. The RPD also noted the Applicant did not visit a church until two months after he arrived in Canada, after he had made his claim for protection.

[8] The RPD noted the Applicant's explanation that he could not remember the exact dates because he was in shock, but still drew a negative inference regarding his credibility, as he had not provided any medical evidence in support of a cognitive impairment related to his memory.

[9] The RPD acknowledged the support letter from the Applicant's church, dated September 17, 2019, which stated that he has been in attendance since January 2019, but noted churches in Canada are public institutions and any member of the public can attend. While finding the Applicant has some knowledge of Christianity, the RPD considered this factor and his attendance in church insufficient to overcome the above credibility concerns.

C. ***Decision under Review***

[10] Before the RAD, the Applicant sought to submit a Psychological Report [Report] dated February 23, 2020. The Report was written by a psychologist and a psychotherapist, who assessed the Applicant on two occasions between January and February 21, 2020. The Applicant also received counselling services from the psychotherapist twice in December 2019. The Report mentions the Applicant's sleep issues, nightmares, anxiety and depression, as well as cognitive decline and issues remembering dates. It also recounts that the Applicant felt sleepy, confused and anxious on the day of his hearing, and that he has been taking Lorazepam and Sertraline prescribed by his family doctor for his anxiety and depression. The RAD found the Report not credible as it is silent as to what documentation was available at the time of the assessment, it was based on self-reporting, and it contained internal inconsistencies. Specifically, the RAD took issue with the authors of the Report administering the Beck Depression Inventory II and the Beck Anxiety Inventory [together as Beck Inventories], as they are "self-reporting tests".

[11] The Applicant also submitted a letter dated March 9, 2020 from the pastor of the second church he attended in Canada [Church Letter]. The Church Letter stated that the Applicant has been an active member since December 2019, and that he is a genuine and sincere Christian. The RAD found that much of the information in the Church Letter predated the RPD's rejection decision, and that it was an attempt to rehabilitate an aspect of the RPD hearing with which the Applicant was not satisfied. As such, the RAD did not admit the letter.

[12] The Applicant also asked for an oral hearing, which the RAD found was not warranted after finding the Report and other new evidence not credible or relevant. As the Applicant based his appeal solely on the admission of the new evidence, hoping to establish that "the entirety of his testimony was in error" as a result of his previously undisclosed mental health issues, the RAD concurred with the RPD's credibility assessments after refusing to admit the new evidence.

III. **Issues**

[13] The issues in this application are:

a) *Did the RAD breach procedural fairness?*

b) *Was the RAD's decision to not admit the Report unreasonable?*

c) *Was the RAD's decision to not admit the Church Letter unreasonable?*

d) *Was the RAD's decision unreasonable on the grounds that it failed to consider a sur place claim?*

IV. **Standard of Review**

[14] The presumptive standard of review of the merits of an administrative decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The onus is on the Applicant to demonstrate that the RAD decision is unreasonable. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[15] The Respondent submits that the standard of review is reasonableness for the RAD's assessment of the new evidence and its decision not to hold an oral hearing (*Hamid v Canada (Citizenship and Immigration)*, 2021 FC 100 [*Hamid*] at para 18; *Hundal v Canada (Citizenship and Immigration)*, 2021 FC 72 at para 16). For the procedural fairness issue, the Respondent submits that the standard of review is correctness (*Zidan v Canada (Citizenship and Immigration)*, 2021 FC 170 at para 20, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69). The Applicant makes no submission on the standard of review.

[16] When reviewing the RAD's decision whether to admit new evidence or hold an oral hearing, the reviewing court typically applies the reasonableness standard, asking whether the

RAD reasonably applied the statutory criteria in subsections 110(4) and 110(6) of *IRPA* (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at paras 22-29; see also more recent post-*Vavilov* jurisprudence of the Federal Court such as *Awonusi v Canada (Citizenship and Immigration)*, 2021 FC 385 at para 10; *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at para 8; *Hamid* at para 18).

[17] Nonetheless, this Court has also used the correctness standard to review issues of procedural fairness, even if those issues touch on the application of statutory criteria in subsections 110(4) and 110(6) of *IRPA* (*Zidan* at paras 20, 31-39). In *Mohamed v Canada (Citizenship and Immigration)*, 2020 FC 1145 [*Mohamed*] at para 9, Justice McHaffie found that although the interpretation and application of subsections 110(4) and 110(6) of *IRPA* are typically reviewed on a reasonableness standard, the question of whether it was unfair for the RAD not to conduct an oral hearing before making determinations regarding the Applicant's allegations against his former counsel was a question of procedural fairness.

[18] As such, I have separately addressed the procedural fairness issues raised by the Applicant, which I have reviewed on a standard of correctness, and the substantive elements of the RAD's decision, which I have reviewed on the standard of reasonableness.

V. **Legal Framework**

[19] The admission of new evidence at the RAD is governed by both statute and case law. Subsection 110(4) of *IRPA* sets out a requirement related to the timeliness of the evidence:

110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[20] Further, in *Singh*, the Federal Court of Appeal found that in addition to considering the evidence's timeliness under subsection 110(4) of *IRPA*, the RAD must also consider the relevant factors set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], which include the newness, relevance and credibility of the evidence.

[21] The RAD's decision on whether to hold an oral hearing is governed by subsection 110(6) of *IRPA*, which states:

110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	110(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

VI. **Analysis**

a) Did the RAD breach procedural fairness?

[22] The Applicant submits that the RAD breached procedural fairness by not informing him of concerns about the credibility of the Report or giving him an opportunity to respond by way of further submissions or evidence. The Applicant cites *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 25 [*Baker*] for the proposition that the degree of fairness is higher when the stakes of the decision are high for the person affected.

[23] The Respondent counters that the RAD was not required to put its concerns about the Report to the Applicant, as the case law is clear that "the rules of procedural fairness do not require refugee claimants to be confronted about information that they are aware of and which they have, in addition, provided themselves": *Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93 at para 9 [*Moïse*], cited in *Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 at para 46; see also *Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 29 [*Gu*], *Qiu v Canada (Citizenship and Immigration),* 2021 FC 166 at para 28 [*Qiu*].

[24] In *Daodu v Canada (Citizenship and Immigration)*, 2021 FC 316 at para 23 [*Daodu*], Justice Southcott considered the different authorities and concluded there is no divergence in jurisprudential principles but only "the application of basic principles of procedural fairness to different sets of facts" (citing *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at para 25; *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 [*Ching*]). Justice Southcott returned to Justice Kane's decision in *Ching* at para 74 and concluded that genuinely new issues are those that are legally and factually distinct from the grounds of appeal raised by

the parties (*Daodu* at para 24). Justice Norris reached a similar conclusion in *Canada (Citizenship and Immigration) v Alazar*, 2021 FC 637 [*Alazar*].

[25] In a recently released decision, *Lopez Santos v Canada (Citizenship and Immigration),* 2021 FC 1281 at para 45, Justice Norris summarized this test as follow:

> ...while it is open to the RAD to make findings that go beyond those made by the RPD, if they do not reasonably stem from the issues raised on appeal, procedural fairness requires that the appellant be given notice and an opportunity to be heard. Put another way, the RAD may not "make additional findings or analyses on issues unknown to the applicant" (*Kwakwa* para 24).

[26] Applying these principles to the case at hand, I conclude that the RAD's rejection of the Report on the basis of credibility is "a new issue in the sense that it is legally and factually distinct from the grounds of appeal advanced and cannot reasonably be said to stem from the issues on appeal as framed by the parties" (*Alazar* at para 77), and the RAD has made additional findings or analysis on issues unknown to the Applicant.

[27] That the Report was provided by the Applicant himself does not necessarily mean that the issues raised by the RAD concerning the credibility of the Report are not new. As noted above, the RAD took issue with the two health care professionals administering the Beck Inventories, describing both as "self-reporting tests", and then concluded that the testing "does not represent objective validation of the alleged mental health issues, but rather is an extension of the significant degree of self-reporting that is the very foundation of the Report". These concerns speak specifically to the diagnostic tools chosen by the health care professionals, and are distinct

from any concern the RAD may have regarding the information provided by the Applicant himself.

[28] More critically, the decision to include (or not to include) the documentation relied on in the Report was made by the two health professionals, not by the Applicant. Yet the RAD noted the lack of reference to "professional journals, publications or other documentary diagnostic tools utilized" by the professionals in arriving at their conclusions, before reaching "the inescapable conclusion that no relevant documentation was consulted and that reference to such in the Report is superfluous or boilerplate and undermines the credibility of the Report". This finding appears to suggest that the two authors made a misrepresentation in the Report by stating they have consulted documents when in fact they did not.

[29] It is one thing for the RAD to find the Report not credible because it contains information that was inconsistent with that provided by the Applicant himself, or because it contains inherently inconsistent statements. However, it is quite another to question the credibility of the Report based on the professional ethics of the authors. It would require an incredible amount of foresight on the part of the Applicant and his counsel to conclude that such an issue would reasonably stem from the issues framed in the Applicant's appeal to the RAD.

[30] I find this case can be distinguished from some of the cases cited by the Respondent such as *Gu* and *Qiu*, where the credibility concern arose from the authenticity of the document provided by the applicant. Here, there is no issue about the authenticity of the Report, i.e. the RAD did not question that the two authors did write the Report. Also, unlike *Moïse*, the Report

was not rejected because the information contained in the Report was inconsistent with other evidence given by the Applicant. On the contrary, the Report was rejected ***because*** the RAD found that it was based on the Applicant's evidence, as well as because of the RAD's concerns about the Report's authors.

[31] I am mindful of the caution made by Justice Annis in *Czesak v Canada (Citizenship and Immigration)*, 2013 FC 1149 [*Czesak*] about the reliance on expert evidence obtained "for the purpose of litigation". He states that "unless there is some means to corroborate either the neutrality or lack of self interest of the expert in relation to the litigation process", these reports "generally should be accorded little weight" (at para 40). However, being cautious about assigning too much weight to experts' reports does not mean the tribunals get a free pass on their procedural fairness obligation when they raise new issues that do not stem from the appeal.

[32] The Respondent suggests that the RAD had to assess the credibility of Report under the *Raza* framework, and that it would not be logical to find the Report credible and then gave it little weight. That may well be the case. However, by calling the credibility of the Report into question based on the actions of the Report's authors, as opposed to that of the Applicant, the RAD has clearly gone beyond the issue in the appeal, namely whether the Applicant suffered from cognitive impairment at the time of the RPD hearing which may have affected his testimony.

[33] By failing to provide the Applicant an opportunity to address the RAD's concerns about the Report authors' professionalism, before dismissing the Report as not credible, the RAD has breached procedural fairness.

[34] The Applicant also submits that the RAD breached procedural fairness by not holding an oral hearing under subsection 110(6) of *IRPA* with respect to the credibility of the Report. Citing Justice Shore in *Hassankiadeh v Canada (Minister of Citizenship and Immigration)* 2015 FC 1284 at para 1, the Applicant submits that stakes in this case are extremely high as Christian converts in Iran "face persecution by the authorities and even punishment by death".

[35] The Respondent argues that oral hearings at the RAD are not to assess the credibility of evidence—they are only to assess credibility of the claimant once new evidence has been admitted, citing *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17, and *Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at para 44.

[36] The Respondent further argues that the Report would not have been determinative of the Applicant's claim, because he argued before the RAD that his "entire testimony was an error, due to his mental health problems". It then follows, according to the Respondent, that if the Applicant's cognitive difficulties make him unable to give credible testimony, there would be no evidence upon which to allow the claim, and the psychological report therefore cannot be determinative of the claim. Even if the Report was accepted, argues the Respondent, it still cannot justify granting the refugee claim.

[37] In my view, the Respondent is overstating the meaning of the poorly-worded statement by the Applicant that his "entire testimony was an error". The Applicant clearly has not sought to amend or retract any of the allegations about his conversion to Christianity, the disappearance of his friend S., or any other related issues that he had testified to at the RPD hearing. Even the Report that is relied upon by the Applicant does not suggest that he lacked the capacity to provide a credible testimony at the RPD hearing, but rather speaks to his inability to recall dates, which formed the basis of the RPD's finding of credibility, and to which the statement can be reasonably interpreted to be referring.

[38] That said, I agree with the Respondent that the RAD could only hold an oral hearing after it decides to admit new evidence. In *Mohamed*, this Court found that an oral hearing is only possible once new evidence has been admitted (at para 21). *Mohamed* also highlights that subsection 110(6) is the *only* statutory provision that permits the RAD to hold an oral hearing, and that the common law duty of procedural fairness does not oust statutory requirements—unless there is a constitutional challenge of the statutory provisions (at para 22).

[39] In light of this jurisprudence, I agree with the Respondent that the RAD could not have held an oral hearing about whether to admit the new evidence—it had to have admitted the new evidence in order to have the statutory authority to hold an oral hearing.

[40] In conclusion on this issue, I find the RAD breached procedural fairness by not allowing the Applicant to respond to concerns about the credibility of the Report. The issue with respect to

an oral hearing should be left to a newly constituted panel to decide, based on its finding with respect to the admission of the Report.

b) Was the RAD's decision to not admit the Report unreasonable?

[41] In seeking to admit the Report as new evidence, the Applicant argued that his impaired mental health adversely impacted his ability to give testimony at the RPD, thereby impacting the RPD's negative credibility finding. The Applicant's former counsel stated that he had not been aware of the Applicant's psychological issues during or before the RPD hearing.

[42] The RAD accepted that the psychological report was not reasonably available prior to the RPD's rejection of the claim, in accordance with subsection 110(4) of *IRPA*. However, the RAD declined to admit it as new evidence on the grounds that it was not credible for the reasons outlined above: the lack of objective documentation, the use of self-reporting during the clinical interview, and the lack of objective measures administered.

[43] The Applicant cites *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 49 for the proposition that a psychological report will necessarily be based on a degree of hearsay and should not be discounted on that basis.

[44] The Applicant further argues that the RAD Member relied on his unsubstantiated personal opinion in finding a report by two experienced and educated psychology professionals to lack credibility. The Applicant submits that there was no evidence before the RAD that the

Report's methodology was unreliable and no evidence that contradicted the contents of the Report, nor did the Member have any training in psychology.

[45] The Applicant also relies on the "Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB" [Guideline 8] to support his position. Specifically, the Applicant points to section 8.1 of Guideline 8 stating that expert reports must be considered.

[46] The Respondent counters that section 7.4 of Guideline 8 mandates that the Guideline cannot be relied on without an application. I note, however, the same section states that the Immigration and Refugee Board [IRB] may "act on its own initiative" to apply the Guideline.

[47] The Respondent argues that caution should be exercised in relying on expert reports in administrative proceedings where there is no defined procedure to test or validate them: *Czesak* at paras 37-40. I would note however, Justice Annis' qualifier at para 40 of *Czesak* stating: "This is not to say that every expert report prepared for litigation should be dismissed as having no, or little, weight." Indeed, Justice Annis concluded two of the expert reports submitted by the applicant in *Czesak* were reliable.

[48] The Respondent also submits that a "psychological report based on a discredited story cannot rehabilitate that story": *Al-Sarhan v Canada (Citizenship and Immigration)*, 2019 FC 1438 at para 34. In this case, however, the Report was not admitted to rehabilitate the Applicant's story, but to provide context for the Applicant's inability to recall dates due to his

psychological condition – an issue acknowledged by the RPD but dismissed in the absence of medical documentation.

[49] The Respondent further argues that, according to a well-cited passage in *Saha v Canada (Citizenship and Immigration)*, 2009 FC 304 at para 16, "[i]t is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons." I note, however, the last sentence in the same paragraph quoted by the Respondent states that "there were no independent clinical studies performed to support the psychological assessment and no other medical basis for the diagnosis". Here, the Applicant can point to the Beck Inventories as a psychometric assessment that was performed, and more importantly, the medications prescribed by the Applicant's family doctor for his depression and anxiety, as the medical basis for the diagnosis.

[50] In addition, the cases cited by the Respondent all pertain to using a psychological report to assess a *claimant*'s credibility, and do not deal with the admissibility of new evidence based on the *report*'s credibility. It is one thing to say that a psychological report does not remedy concerns about the claimant's credibility, but it is another issue to say that the report itself is not credible and therefore not admissible.

[51] Further, there is case law establishing that a psychological condition may be a factor in credibility assessment. In *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4, this Court revisited some of the "principles which govern the assessment of credibility", one

of which is to take into account "the age, culture, background and prior social experience of the witness", as well as "a lack of coherence in testimony where the psychological condition of the witness has been medically established."

[52] I also note Guideline 8 in section 1.3 recognizes that vulnerable persons may find the hearing process difficult because their ability to present cases may be "severely impaired given a physical or psychological frailty", and articulates the IRB's "continuing commitment to making procedural accommodations" for vulnerable persons, which are defined in section 2.1 as "individuals whose ability to present their cases before the IRB is severely impaired". Such persons include "the mentally ill". Section 4.1 further acknowledges that a person's vulnerability may "affect memory, behaviour and their ability to recount relevant events".

[53] While the Guidelines are not binding, they are indicative of the type of considerations that the IRB may take into account when dealing with vulnerable persons. To that effect, I find section 5.3 of Guideline 8 particularly informative:

> 5.3 Similarly, evidence initially used to identify a vulnerable person and to make procedural accommodations may not have been tested through credibility assessments or other means. If such evidence is then used to adjudicate the merits of the case, the member should ensure that the parties are given an opportunity to address this evidence as it relates to the merits of the case. This means that submissions may be made about the relevance of the evidence, and the evidence may be tested through such means as questioning by the parties and the member, and other methods. The credibility and probative value of the evidence may then be assessed by the member, even though the IRB previously accepted the evidence, for the purpose of identifying vulnerability and making procedural accommodations.

[54] In this case, the RAD ought to have been aware that the Applicant said at the RPD hearing that he could not recall dates because he was “in shock”. There was also information from the Applicant’s former counsel that he was unaware of the Applicant’s mental conditions at the time of the RPD hearing. Of note, none of these two facts were mentioned in the Decision.

[55] Rather than simply refusing to admit the Report based on its credibility concerns, the RAD could have provided the Applicant an opportunity to make submissions about the RAD’s concerns, and have the Report tested through such means by questioning and other methods. Admitting the Report would not have meant that the RAD would have had to accept the credibility of the Applicant’s entire self-reported narrative contained within the Report, but merely that it would have had to use the Report in assessing the RPD’s decision.

[56] Further, although the RAD states that it independently assessed all the evidence in reviewing the RPD’s credibility finding, its analysis on this point is negligible. It merely states that it concurs with the RPD. In so finding, the RAD has effectively engaged in circular reasoning, contrary to *Vavilov* at para 104. The RAD rejected the Report because it was based on self reporting, which entails an assumption that the Applicant’s self reporting was not credible—without considering whether cognitive difficulties might have affected the Applicant’s testimony at the RPD hearing in light of the Report and other evidence before it. Given all of the above, I find the RAD’s decision not to admit the Report unreasonable.

c) Was the RAD's decision to not admit the Church Letter unreasonable?

[57] The Applicant submits that the Church Letter was submitted to respond to the RPD's dismissal of the letter from the Applicant's first church, as the second letter includes details referencing his active participation as well as the sincerity and genuineness of his Christian faith.

[58] The Applicant relies on *Chen v Canada (Citizenship and Immigration)*, 2019 FC 334 at para 23, in which Justice Norris found that a letter stating the applicant continued to be an active member of a church was new because it related to events after the refugee hearing.

[59] The Applicant also argues that the RAD adopted an overly rigid approach to the timeliness requirements in subsection 110(4) of *IRPA*. The Applicant began attending his new church in December 2019, but by the time of the RPD decision in February 2020, he had not been attending his second church long enough for the pastor to know him well enough to write a letter.

[60] As the Respondent rightly points out, "the newness of documentary evidence cannot be tested solely by the date on which the document was created"; rather, "[w]hat is important is the event or circumstance sought to be proved by the documentary evidence": *Raza* at para 15. Much of the information contained in the Church Letter preceded the date of the RPD Decision.

[61] Further, the RAD considered the Church Letter to be "an attempt to rehabilitate one aspect of the hearing with which the Applicant was dissatisfied". In my view, this conclusion was reasonable as the Church Letter began with the statement that the Applicant was upset with

his previous pastor and felt betrayed by him because the latter did not mention his sincere belief in his "court letter". As the Respondent points out, an appeal to the RAD is not intended to provide an opportunity to complete a deficient evidentiary record before the RPD (see e.g. *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 33).

[62] The Respondent also submits that the Church Letter does not provide an unknown fact but restates a fact that is already known, citing paragraph 13 of *Raza*, which states that evidence may be considered "new" if it proves a fact that was unknown to the refugee claimant at the time of the RPD hearing. However, I note that paragraph 13 also provides for other ways in which evidence may be considered new, including "contradicting a finding of fact by the RPD (including a credibility finding)".

[63] On the one hand, it appears that the Applicant intended the Church Letter to respond to the RPD's credibility finding that church attendance does not prove genuine faith, yet at the same time, it is also an attempt on the part of the Applicant to complete a deficient evidentiary record before the RPD.

[64] In the end, given the facts in the Church Letter were known to the Applicant, and the Letter was procured in part to rehabilitate an aspect of the RPD finding, I cannot conclude the RAD's decision not to admit the Church Letter was unreasonable.

d) *Was the RAD's decision unreasonable on the grounds that it failed to consider a sur place claim?*

[65] Given my decision to return the matter back for redetermination, I will not deal with the Applicant's submission with respect to a *sur place* claim.

VII. **Certification**

[66] Counsel for both parties were asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VIII. **Conclusion**

[67] The application for judicial review is granted.

JUDGMENT in IMM-733-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.

3. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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