

Federal Court



Cour fédérale

Date: 20220301

Docket: IMM-4546-21

Citation: 2022 FC 288

Ottawa, Ontario, March 1, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ALI FALLAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated June 9, 2021. The RAD confirmed the decision of the Refugee Protection Division [RPD] finding the Applicant is neither a Convention refugee nor a person in need of protection. This application for judicial review is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the following reasons, I believe that the application for judicial review should be allowed.

I. **Background**

[3] The Applicant, Ali Fallah, is a 50-year old citizen of Iran. He alleges he was arrested and detained in 2009 for participating in anti-regime demonstrations. He became disenchanted with Islam and the enforced religious culture in Iran and developed an interest in Christianity following his release from detention in 2009. He started exploring Christianity through a friend affiliated with underground churches in Iran and started attending one of these underground churches and reading books about Christianity, which he also shared with his family. Later, the Applicant claims he started attending an Armenian church in the City of Shiraz on an almost weekly basis. On one occasion as the Applicant was exiting a church, he was arrested by the “Sepah”, Iran’s religious police. He was detained for three nights and released on bail on condition that he return to court in three months. Rather than attend court, the Applicant and his daughter, Melika Fallah, who had become interested in Christianity as well, left Iran and arrived in Canada with visitor visas on October 15, 2018. The two began attending the Nejat Church in Coquitlam, BC and claimed refugee protection on February 18, 2019. The Applicant’s wife and younger son remain in Iran.

[4] In its oral reasons delivered January 10, 2020 (Notice of Decision issued January 23, 2020), the RPD accepted the Applicant’s daughter’s refugee claim but rejected the Applicant’s claim that he faced a serious forward-looking risk of persecution in Iran on the grounds of religion. The RPD’s rejection of the Applicant’s claim was based on the following grounds:

- The Appellant's evidence that he attended church in Shiraz contradicted the objective evidence contained in the National Documentation Package (NDP);
- The baptism certificate did not have the weight to overcome the credibility concerns;
- Email from the Appellant's spouse was not given much weight;
- Other supporting documents (social media posts, Instagram posts and video links) do not have weight to establish a *sur place* claim;
- The Appellant left his country with his own passport and was unlikely to face obstacles if he returned to Iran.

[5] The Applicant appealed the RPD Decision, arguing the RPD erred in its assessment of the evidence when finding his claim to have attended church in Iran was unreliable. The RPD also breached its duty of procedural fairness to the Applicant by failing to direct the Board's Research Directorate to conduct research regarding the language used in Iranian churches. Further, the RPD erred in its assessment of the Applicant's evidence regarding his alleged conversion to Christianity in Canada, and in its assessment of the evidence in the National Documentation Package [NDP] when determining that the Applicant's social media posts were unlikely to be found by Iranian authorities.

A. ***Decision under Review***

[6] The RAD first considered whether to admit new evidence submitted by the Applicant but declined to admit the evidence, finding none of the items met the requirements of *IRPA* s. 110(4). The Applicant does not challenge this finding on judicial review.

[7] The RAD considered the Applicant's submissions that the RPD erred in its assessment of his *sur place* claim by failing to consider the totality of his evidence, particularly: his social media posts, his daughter's BOC narrative, and his baptismal certificate. The RAD found the RPD reasonably assessed the Applicant's social media posts expressing religious or spiritual sentiments, including photos of the Applicant attending the Nejat church in Coquitlam and videos of him getting baptized in Canada. The RPD reasonably determined these social media posts did not establish a forward-looking risk of persecution in Iran as the video links were password-protected, the Applicant is not easily identifiable by his account ID or posts, and there was no evidence Iranian authorities had identified him so far.

[8] The RAD found there was nothing in the Applicant's daughter's BOC narrative that would have contributed to the RPD's assessment of the Applicant's *sur place* claim by shedding light on the genuineness of the Applicant's Christian faith. Given the presumption, the RPD considered the evidence before it and absent relevant evidence on this point in his daughter's BOC. The RAD found the RPD did not err in its assessment of this evidence.

[9] The RAD noted concern about the RPD's weighing of the Applicant's baptismal certificate and photos of him at the Nejat church, in relation to the fact that no members of the Nejat church came forward as witnesses to support the Applicant. Nevertheless, the RAD found the RPD reasonably determined the baptismal certificate, photos, and a support letter from the church did not outweigh its credibility concerns regarding the sincerity of the Applicant's Christian faith. The RAD found the RPD asked the Applicant questions regarding his knowledge

of Christianity at his hearing and did not fail to effectively analyze his conversion to Christianity in light of the evidence.

[10] The RAD found the RPD reasonably assessed the Applicant's alleged attendance at Christian churches in Iran in light of the country conditions evidence in the NDP. The RPD reasonably found the Applicant was not credible with regard to his accounts of attending Farsi-language services in underground churches or registered Armenian churches. The evidence in the NDP indicated there were very few Farsi-language church services in Iran at the time of the Applicant's arrest by the Sepah and Armenian churches were generally only allowed to hold services in the Armenian language. The NDP's evidence indicated the Iranian state imposed severe sanctions on Armenian and other churches preaching in Farsi, or admitting or proselytizing to Muslims. Further, the Iranian state monitored such churches, particularly Armenian churches, checking the identities of congregants and barring entry to (and closing churches that allowed entry to) unregistered or unrecognized Christians. The evidence indicated, for these reasons, that Armenian churches would be unlikely to risk sanction by allowing the Applicant entry and that it would have been exceptionally difficult, if not impossible, for the Applicant to have been allowed entry.

II. **Issues**

[11] The issues before the Court are:

- A. *Did the RAD reasonably assess the Applicant's evidence supporting his sur place claim?*
- B. *Did the RAD reasonably assess the Applicant's alleged religious activities in Iran?*

III. Standard of Review

[12] The Respondent submits the applicable standard of review is reasonableness.

[13] The Applicant makes no submissions regarding standard of review. While the Applicant raised procedural fairness issues before the RAD, the Applicant has not raised any procedural fairness questions before this Court.

IV. Analysis

A. *Did the RAD reasonably assess the Applicant's evidence supporting his sur place claim?*

[14] The Applicant submits the RAD imposed an unduly high threshold in assessing his *sur place* claim by focusing on whether he had already been identified by the Iranian state and was at risk of imminent harm. The RAD should have assessed the possibility that he may be identified and face persecution in Iran based on his religious activities in Canada or potential activities upon return to Iran. [*Ejtehadian v Canada (Citizenship and Immigration)*, 2007 FC 158 at para 11]

[15] The Applicant further submits the RAD erred in unduly focusing on the genuineness of his Christian faith. There are many reasons why a person may want to practice Christianity or be part of a Christian community aside from genuine faith. It was incumbent on the RPD and RAD to consider whether the Applicant might practice the Christian faith in Iran and face persecution for that practice, regardless of whether his belief in the Christian faith is genuine. [*Mohebbi v*

Canada (Citizenship and Immigration), 2014 FC 182 at para 10; *Liu v Canada (Citizenship and Immigration)*, 2013 FC 1123 at para 25]

[16] The Respondent submits the Applicant's arguments regarding his potentially practicing Christianity without being a genuine convert amount to speculation, as there was no evidence on this point. The RAD's conclusion that the Applicant was not a genuine Christian convert was based on the Applicant's failure to credibly establish his central factual claim that he attended churches in Iran. Further, the RAD considered the possible risk that the Applicant may be identified by Iranian authorities, finding his social media posts were unlikely to lead to his identification. This Court's jurisprudence also supports the rejection of *sur place* claims when a claimant fails to provide evidence that foreign authorities have taken an interest in him based on his activities in Canada. [*Teklewariat v Canada (Citizenship and Immigration)*, 2016 FC 1026 at para 15; *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765 at paras 27-30]

[17] I agree with the Respondent. The RAD assessed whether the Applicant's social media posts depicting his religious activities in Canada were likely to bring him to the attention of the Iranian authorities and reasonably determined they were not. Further, the Applicant provided no evidence indicating that he would attend Christian services if returned to Iran beyond his testimony that he had already attended churches in Iran. The RPD did not believe this testimony and the RAD upheld the RPD's finding. It was open to the RAD to find the Applicant was unlikely to be identified by the Iranian state based on the evidence before it.

B. *Did the RAD reasonably assess the Applicant's alleged religious activities in Iran?*

[18] The Applicant submits the RAD erred in its assessment of the country conditions evidence in the NDP with regard to his allegations that he attended Farsi-language church services and Armenian Evangelical church services in Iran. The Applicant points to two sources in the NDP indicating that while uncommon, there are Armenian Evangelical churches and Farsi-speaking churches the Applicant could have attended.

[19] The Applicant acknowledges sources in the NDP cited by the RAD indicating it would be dangerous for such churches to admit the Applicant. He notes however that the RAD concluded there are not “many” churches that would allow the Applicant or provide Farsi-language services. In the Applicant’s view, it is irrelevant if *many* such churches exist. It was incumbent on the RPD and RAD to determine if the Applicant’s church was one of the few exceptions.

[20] The Applicant further submits the RPD and RAD both ignored the explanation he provided in response to the RPD’s concerns about the plausibility of his attending an Armenian church in Iran – the determinative issue for the RPD. He explained in his hearing before the RPD that he had been admitted to the Armenian church after attending underground churches for 3-4 months, because of a “trusted referee” whom he had known for many years and who advocated on his behalf. The RPD did not respond to this explanation during the hearing and neither the RPD nor the RAD addressed the explanation in their reasons.

[21] The Applicant cites *Sibanda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1187 at paragraph 17 [*Sibanda*] as an analogous case where the decision maker made an implausibility finding but failed to address the applicant's explanation in response to that finding in their reasons.

[22] The Applicant argues that the NDP evidence and his explanation about how a "trusted referee" helped him attend the churches support the plausibility of his account. [*Lin v Canada (Citizenship and Immigration)*, 2009 FC 254 at paragraphs 14-15 [*Lin*]. The Court in *Lin* found an Immigration and Refugee Board [IRB] decision unreasonable for failing to consider that the applicant's circumstances were reconcilable with the country conditions evidence.

[23] The Respondent submits it was reasonable for the RAD to find the NDP evidence outweighed the Applicant's testimony. Given the evidence indicating it would be exceptionally difficult for the Applicant to have attended an Armenian church or Farsi-language church service, the RPD and RAD reasonably found the Applicant's testimony differed so much from the country conditions evidence as to be untrue. The Applicant failed to present evidence substantiating his arrest outside the church, such as a court document supporting his release from detention or a statement from his brother who acted as his surety. [*Yang v Canada (Citizenship and Immigration)*, 2012 FC 1350 at paras 2, 9-10, 53, 61 (*Yang*)]

[24] The Respondent argues the Applicant's evidence concerning his "trusted referee" was minimal and his testimony did not explain how the Applicant was able to avoid Iranian state authorities to enter the church. The Applicant also failed to explain how the church, which was

not operating in secret, was able to conduct regular services in Farsi despite the Iranian state's restrictions.

[25] I agree with the Applicant. The RPD and RAD may make adverse credibility findings based on the implausibility of an applicant's story "provided the inferences drawn can be reasonably said to exist". However, such plausibility findings can only be made in the clearest of cases, such as "if the facts as presented are outside the realm of what could reasonably be expected". The RAD could not reasonably determine that this was the "clearest of cases" without considering the Applicant's explanation with respect to their central plausibility concern.

[*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7]

[26] While the RAD was entitled to prefer the NDP evidence over the Applicant's testimony, it was not entitled to completely disregard the Applicant's explanation: that a "trusted referee" helped him gain access to Christian services in Iran. The question of whether the Applicant could have plausibly attended the churches, or whether his account of doing so was credible, was the determinative issue for the RPD and RAD. If the RAD did not believe the Applicant's explanation or found it was unsubstantiated by evidence, the Applicant was entitled to be informed of these conclusions in the reasons for the Decision. The failure to even mention his explanation on this central, determinative issue renders the RAD Decision unreasonable.

[*Sibanda* at para 17; *Vavilov* at para 81]

[27] The RAD failed to consider the Applicant's primary explanation with respect to the central, determinative issue of his attendance at churches in Iran.

JUDGMENT in IMM-4546-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different panel for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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