

Federal Court



Cour fédérale

Date: 20221110

Docket: IMM-1792-21

Citation: 2022 FC 1536

Ottawa, Ontario, November 10, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MOHAMMAD SADR NOURI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mohammad Sadr Nouri, is a citizen of Iran who objects to forced military service on political and religious grounds and says he will face mistreatment in the military due to his Sufi faith. He also fears religious persecution more generally, and that he will be detained or punished as a spy because of his interaction with Canadian security service officials and as someone who has lived abroad for an extended period.

[2] The Refugee Appeal Division (RAD) dismissed his claim, confirming the decision of the Refugee Protection Division (RPD) that he was not a Convention refugee or person in need of

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] The Applicant argues that the RAD decision should be overturned because he was denied procedural fairness when the RAD made adverse credibility findings on new issues without giving him the opportunity to respond. The Applicant also argues that the decision is unreasonable because it is internally contradictory.

[4] I agree with some of the Applicant's submissions. For the reasons that follow, the application for judicial review will be granted, because faulty reasoning undermines the RAD's decision and the RAD failed to address an essential element of his claim.

I. Background

[5] The Applicant is an Iranian citizen, who says that he objects to conscription into the Iranian military because he disagrees with their actions and fears he may be forced to serve in Syria. He also fears mistreatment in the military because of his Sufi faith, as well as more general religious persecution in Iran. Finally, he fears he will be viewed as a foreign spy because he has given information to Canadian security officials and because he has lived outside of Iran for many years.

[6] In order to avoid military conscription, the Applicant pursued a number of educational opportunities. He obtained a deferral of his mandatory Iranian military service in 2011, when he moved to the United Kingdom as a student. In 2015, he came to Canada as a visitor after he could no longer afford to continue his studies in the United Kingdom. He made several

unsuccessful applications for a Canadian student visa. He was also pursuing status in the United States through sponsorship by his wife. After several extensions of his Canadian visitor visa, the Applicant's December 2018 request for a further extension was denied. In January 2019, he applied for refugee status.

[7] The RPD rejected the Applicant's refugee claim, finding he was not credible regarding his identity as a follower of the Sufi faith or that he would be conscripted into the military on his return to Iran. The RPD also found the evidence did not establish that he was at risk due to his interaction with Canadian Security Intelligence Service (CSIS) officials or his status as a failed refugee claimant.

[8] On his appeal to the RAD, the Applicant sought to adduce new evidence, including an affidavit he had sworn to address certain findings made by the RPD. He also provided other information to address the RPD's findings that it was not plausible that CSIS officials gave the Applicant a business card, and regarding whether he would be required to complete his mandatory military service.

[9] The RAD accepted some of this evidence, but rejected portions of the Applicant's affidavit, which it found repeated information already provided or was argumentative. The RAD also rejected the evidence regarding the rules on mandatory military service in Iran, because it found that this should have been provided at the RPD hearing.

[10] The RAD concluded that the Applicant failed to establish his identity as a follower of the Sufi faith, based on inconsistencies between the narrative in his Basis of Claim form and his

testimony, as well as credibility concerns regarding his wife's evidence. It also found the corroborative evidence was not sufficient to overcome these problems.

[11] Regarding the Applicant's credibility, the main issue for the RAD (as well as the RPD) was the inconsistency between the Applicant's narrative in his Basis of Claim form and testimony. In his narrative submitted with his refugee claim, the Applicant said he felt safe returning to Iran in 2014 because he did not actively practise Sufism. In his testimony, he said that he attended prayer gatherings each Thursday during his month-long trip, and when questioned on this he stated that he only attended once or twice.

[12] The RAD rejected the Applicant's explanation that when he said he was not "actively" practicing his faith he meant that he was not doing so publicly. The RAD found that "regular worship in a group, even a private one, can reasonably be considered as 'active practice' and if the [Applicant] only meant he was not practicing publicly, that detail should have been clearly set out in [his] narrative" (RAD Decision at paras 24-25).

[13] The RAD also found the Applicant's delay in claiming refugee status following his arrival in Canada undermined his credibility. It relied on inconsistencies between the Applicant's evidence and his wife's affidavit to question his credibility, and it found the copy of the certificate on his attendance at a Sufi course was not persuasive. Finally, on his claim to be an adherent of the Sufi faith, the RAD discounted the copies of text messages the Applicant submitted showing exchanges over several years between himself, his mother, and her religious advisor. The RAD found that these did not substantiate his claim because the messages lacked any reference to the Sufi faith.

[14] Turning to the issue of the Applicant's fears related to conscription into the Iranian military, the RAD agreed with the Applicant that the RPD erred in finding he would be exempt from such service. The RAD concluded, however, that since the Applicant had failed to establish his religious identity as a Sufi, conscription did not amount to persecution in his case.

[15] The RAD also rejected the Applicant's *sur place* claim, based on his interaction with CSIS agents and his lengthy absence from Iran. It found there was no evidence that Iranian authorities would find out about his contact with Canadian security officials, and the documentary evidence did not support a conclusion that he would face mistreatment upon his return.

[16] Based on these findings, the RAD dismissed the Applicant's appeal. He seeks judicial review of that decision.

II. Issues and Standard of Review

[17] The Applicant has raised a number of issues regarding the RAD decision, including that he was denied procedural fairness and the assessment of his claim was unreasonable and based on faulty reasoning that disregarded key evidence.

[18] In my view, the determinative issues in this case are the reasonableness of the RAD's treatment of the Applicant's religion claim and its failure to assess the full basis of his objection to conscription.

[19] These questions are assessed within the framework of analysis set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[20] Under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the Applicant to satisfy the Court “that any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33). The *Vavilov* framework is intended to reinforce a “culture of justification” in public administration (see paras 2 and 14). In part, it seeks to accomplish this by requiring decision makers to be responsive to the main arguments brought forward by the parties (see para 125).

III. Analysis

[21] The Applicant’s claim rests on two key elements: his fear of persecution based on his religious identity as a Sufi, and his objection to conscription into the Iranian military. The RAD’s assessment of aspects of each of these claims is unreasonable, for the reasons set out below.

[22] The Applicant raises many objections to the RAD’s treatment of his claim that he is an adherent of the Sufi faith. While I do not find several of these arguments persuasive, I do agree that there is one fatal flaw in the RAD’s analysis on this issue. As noted earlier, both the RPD and the RAD relied on an inconsistency between the Applicant’s Basis of Claim form (in which he said he was not “actively practicing” his faith when he returned to Iran in 2014) and his

testimony (in which he said he attended private sessions with other adherents each week during his stay and then changed his testimony to state he only attended twice) to cast doubt on the credibility of his religious claim.

[23] The RPD also found that the Applicant's multiple trips back to Iran were inconsistent with his alleged fear of religious persecution. The RAD agreed with the Applicant's challenge to this finding, as set out in the following passage:

The [Applicant] argues that it was reasonable that he returned to Iran to visit family despite his fears because he kept his religion secret during his visits, and it is reasonable that he could be afraid yet still return while taking precautions to hide his religious beliefs. I agree that this is a reasonable explanation, and I draw no adverse inference.

(RAD Decision, para 27)

[24] The problem with this, as submitted by the Applicant, is that the RAD's decision is internally inconsistent. The crux of its decision is the RAD's conclusion that the Applicant had failed to establish that he is an adherent of the Sufi faith. As the Applicant puts it: "According to the RAD, the Applicant has not established his Sufism but he reasonably returned to Iran by practicing Sufism in secret. Both cannot be true."

[25] I agree with this submission. The RAD's decision exhibits one of the flaws that the Supreme Court has specifically identified as an indicator of an unreasonable decision, namely internally inconsistent reasoning (see *Vavilov*, at paras 102-104). While this, in itself, may not have been sufficiently serious to warrant overturning the decision, it is not the only major error in the decision.

[26] The second basis of the Applicant's claim was his objection to forced military service upon his return to Iran. The RAD found that the RPD had erred in concluding that he would be exempt from conscription and it accepted that "the [Applicant] is more likely than not to be subject to conscription in Iran" (RAD Decision, para 20). In paragraph 21, the RAD continued:

While I find that the RPD erred here, I do not find that it is a determinative error. It is established in law that mandatory military service is not tantamount to persecution unless it is established that a claimant's objection is based on genuine convictions grounded in religious beliefs, philosophical tenets or ethical considerations. For the reasons that follow, I find that the RPD correctly found that the Appellant had failed to establish that he is a genuine Sufi follower or that his objection to military service is based on a religious ground as alleged.

[27] The difficulty with this finding is that it does not reflect the basis of the Applicant's claim as set out in his narrative, which is worth quoting at length given that it is central to my finding on this point:

Military conscription

I have spent around the past eight years undertaking studies abroad in order to avoid military conscription in Iran and trying to secure my status in another country so I would not have to participate.

I do not agree with the wars that Iran is fighting and I fear that I will be forced to serve in places like Syria. I fear that my foreign language skills and my foreign education will also make me an asset to the Iranian army and that there will be no way for me to avoid conscription as there might be for others who could potentially pay their way out or rely on connections to avoid it.

Further, I do not want to participate in the Iranian military because of my Sufi beliefs, which includes a belief against participating in violent activities. I am also the kind of person who has strong beliefs about what is right or wrong and I do not think that this

would be well-received by the military in Iran; in fact, I think I would be punished for daring to have an opinion.

[28] While the RAD is correct that the Applicant pointed to his Sufi beliefs as one basis for his objection to conscription, it ignored the other ground on which he based his claim. The Applicant clearly expresses a moral, ethical, and political objection to forced military service. The point is emphasized by the use of the word “further” to introduce his religious objection; the plain reading of his narrative is that he is advancing two grounds here, yet the RAD only deals with the objection based on his religion.

[29] It is trite law that the RAD must consider all aspects of a claim. However, in this case the RAD failed to discuss an essential element of one of the two main bases for the Applicant’s refugee claim. That is unreasonable.

[30] I find the combined effect of the two errors in the RAD’s reasoning to be sufficiently serious as to call into question whether its conclusion is well-founded. For these reasons, the decision is unreasonable. It should be noted that this finding relates to the two points discussed above, and should not be understood to indicate my agreement with other arguments advanced by the Applicant.

[31] The application for judicial review is granted. The RAD’s decision is set aside and the matter returned to a different panel for reconsideration.

[32] There is no question of general importance for certification.

JUDGMENT in IMM-1792-21

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The RAD decision dated February 17, 2021 is quashed and set aside.
3. The matter is returned for reconsideration by a different panel.
4. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Jared Will FOR THE APPLICANT

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Wills & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario