

Federal Court



Cour fédérale

Date: 20221201

Docket: IMM-6851-21

Citation: 2022 FC 1655

Ottawa, Ontario, December 1, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MAHMMUD ABU AL-HALAWA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mahmud Abu Al-Halawa, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated September 14, 2021, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant submits that the RAD failed to properly assess the evidence and unreasonably upheld the RPD's finding that the Applicant failed to establish his genuine and sincere conversion to Christianity.

[3] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review is therefore dismissed.

II. Facts

A. *The Applicant*

[4] The Applicant is a 29-year-old citizen of Jordan. He was raised as a Muslim.

[5] In June 2018, the Applicant arrived in Canada on a student visa to pursue studies at Georgian College in Barrie, Ontario. While in Barrie, the Applicant claims he was introduced to Christianity by other Jordanian students who were Christian.

[6] Later that year, the Applicant moved to Ajax, Ontario. In November 2018, the Applicant met Maryet, an Egyptian woman and member of the Coptic Church, who spoke with the Applicant at length about Christianity.

[7] In his Basis of Claim ("BOC") narrative, the Applicant stated that Maryet invited him to attend a Coptic Church service with her. In his testimony before the RPD, the Applicant first

stated that he attended the Coptic Church service alone, but later stated that Maryet had pointed out the church to him and that she told him to attend.

[8] In February 2019, the Applicant moved to Mississauga, Ontario, and allegedly joined the New Life Kingdom Church in Brampton, Ontario. He claims that he asked the church priest to help him convert to Christianity, and that he continued attending ceremonies and learning about Christianity. The Applicant claims he was baptized on November 22, 2020 and provided a copy of his baptismal certificate to the RPD.

[9] The Applicant claims that as a convert to Christianity, he would be regarded as an Apostate under Sharia law in Jordan and would be subject to violence.

B. *RPD Decision*

[10] The RPD rejected the Applicant's claim, finding that the evidence advanced to establish his genuine conversion to Christianity lacked credibility.

(1) Introduction to Christianity

[11] The RPD noted a contradiction between the Applicant's oral testimony and written evidence regarding his friend Maryet. In his BOC narrative, the Applicant claimed that Maryet brought him to a Coptic Church service, but later testified at the RPD that he had attended the service alone. The Applicant failed to provide a reasonable explanation for this discrepancy.

[12] The RPD noted that the Applicant failed to submit evidence to corroborate that his three friends from Barrie introduced him to Christianity. The RPD found it reasonable to expect the Applicant to make efforts to obtain this evidence and submit it to the RPD in support of his claim. The RPD found that the Applicant failed to establish that he was introduced to Christianity by three school friends upon arrival in Canada.

(2) Membership in a Christian Church

[13] Although the Applicant testified that he belonged to the New Life Kingdom Church since February 2019, met with church members virtually, and knew some members personally, he did not provide corroborative evidence of these activities, evidence from other members, a letter of support from the church pastor, or show efforts to obtain such evidence. The RPD drew a negative credibility finding from the Applicant's failure to take these steps, given that his membership in a church in Canada is a central aspect of his claim.

[14] When asked about which denomination the New Life Kingdom Church belongs to, the Applicant replied that it is an Anglican Church. The Applicant's counsel did a Google search of the New Life Kingdom Church and found that nowhere on the church's webpage does it state that it is an Anglican church. The Applicant testified that he knows it is an Anglican church because it is not under the authority of the Pope. The RPD rejected this explanation and found it reasonable to expect that the Applicant would know this detail if he was a member since February 2019.

(3) Knowledge of Christianity

[15] When the Applicant was asked about his knowledge of Christianity, the RPD noted that the Applicant failed to answer two questions about the most important prayer for Christians, and the day on which Jesus was crucified. The RPD found that it is reasonable to expect that after alleging to be a practising Christian and being a member of a church for two years, the Applicant would be able to answer these questions correctly. Since he failed to do so, the RPD found that he did not establish his genuine religious belief.

[16] Citing this Court's decision in *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 ("*Gao*"), which states that the RPD is "not obligated to defer to a pastor's opinion and take the baptismal certificate at face value" (at para 21), the RPD found that the baptismal certificate proffered by the Applicant was insufficient to overcome the credibility concerns regarding the genuineness of his conversion to Christianity.

[17] The RPD concluded that the Applicant failed to establish his genuine conversion to Christianity and that he was therefore not a Convention refugee or a person in need of protection under sections 96 and 97(1) of *IRPA*. The Applicant appealed this decision to the RAD.

C. *Decision Under Review*

[18] In a decision dated September 14, 2021, the RAD dismissed the appeal and confirmed the RPD's determination. After conducting its own analysis of the Applicant's evidence and reviewing the RPD hearing, the RAD found the following about the Applicant's claim:

He may have attended Christian services, but he is not a Christian convert in the true sense of the word. Rather, he has latched onto Christianity as a means to construct a narrative as to why he risks being persecuted if he returns to Jordan. It is neither a sincere, nor genuine effort on his part to attempt to prove that he has renounced Islam.

[19] The RAD found that the Applicant provided little evidence to show the extent of his involvement in the New Life Kingdom Church, noting that the Applicant's baptism took place just two months before the RPD hearing and 30 months after the Applicant arrived in Canada. The RAD determined that the Applicant's baptism and association with the church "was merely a scheme which he devised to support his contention that he would face religious persecution if he returns to Jordan."

[20] The RAD also noted a lack of evidence to show that the Applicant shared his conversion to Christianity with any friends or family members living in Jordan. There is therefore no basis for the assertion that anyone would be aware of and attack him for his beliefs.

[21] The RAD found merit in the Applicant's concern regarding the RPD's line of questioning about fundamental precepts of Christianity. The RAD agreed with the Applicant that "assessing credibility ought not to be reduced to a game of religious trivia" and that, therefore, the Applicant's answers to these questions have no impact on his credibility.

[22] Although the lack of corroborative evidence to support a claimant's testimony is not typically a sufficient ground to draw an adverse credibility finding, the RAD found that corroborative evidence is essential in this case to establish the genuineness of the Applicant's

conversion to Christianity. A baptismal certificate only shows that one was issued at a church, and not that the Applicant is a genuine Christian. The RAD cited this Court's jurisprudence establishing that a failure to provide corroborative evidence can be considered where there are valid reasons to doubt the claimant's credibility, or where the evidence is reasonably expected and the claimant's explanation for failing to provide it is not accepted, citing *Radics v Canada (Citizenship and Immigration)*, 2014 FC 110 and *Rojas v Canada (Citizenship and Immigration)*, 2011 FC 849. The RAD agreed with the RPD's assessment that the lack of corroborative evidence is relevant in the Applicant's case and undermines the credibility of his claim.

[23] The RAD ultimately found that the Applicant failed to establish that his baptism reflects a genuine and sincere belief in Christianity and, in turn, that he would face persecution in Jordan for his religious activities in Canada. The RAD therefore dismissed the Applicant's appeal.

III. Preliminary Issue

[24] The style of cause lists the Respondent as the Minister of Immigration, Refugees and Citizenship. I note that the proper Respondent in this matter is the Minister of Citizenship and Immigration (*IRPA*, s 4(1); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)). The style of cause is amended, effective immediately.

IV. Issue and Standard of Review

[25] This application for judicial review raises the sole issue of whether the RAD's decision is reasonable.

[26] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree. This is consistent with this Court’s reviews of RAD determinations regarding the genuineness of religious belief: *Wang v Canada (Citizenship and Immigration)*, 2022 FC 546 at para 15; *Gao* at para 14; *Liu v Canada (Citizenship and Immigration)*, 2019 FC 1541 at para 24.

[27] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

V. Analysis

[28] The Applicant submits that the RAD erred in upholding the RPD’s finding that the Applicant provided insufficient evidence to support his claim. The Applicant submits that the RPD relied on a misquotation of *Gao* and that rather, Justice Southcott did not state that the baptismal certificate should not be taken at face value to assess the credibility of an applicant’s religious belief. The Applicant submits that the RAD erred in failing to address the RPD’s misstatement of this Court’s decision in *Gao*.

[29] The Applicant submits that the facts in *Gao* are also distinguishable from his case. In *Gao*, the examination of the claimant was not strong enough to satisfy the panel, and this is not the case here. The Applicant submits that the RPD did not question him on his relationship with the pastor and therefore unreasonably determined that the baptismal certificate is insufficient to establish the Applicant's claim. The Applicant claims that the RPD erroneously "performed its analysis backwards" and used other evidence to discount a corroborative document.

[30] The Applicant submits that the RAD erred by failing to cure the RPD's alleged error on appeal and preferring the corroborative evidence of other congregants over the baptismal certificate. The Applicant claims that he provided a reasonable explanation for the lack documentation, in that he was not told to produce this evidence before the RPD and did not independently realize that he should do so.

[31] The Respondent maintains that the RAD reasonably found the Applicant's evidence insufficient to establish his conversion to Christianity, and the RAD's reasons rationally flow from the available evidence. The Applicant bears the onus to establish his claim and the RPD is entitled to draw a negative inference of a claimant's credibility on the basis of an applicant's lack of effort to obtain corroborative evidence, citing *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 32 ("*Ismaili*") and *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 28-36.

[32] The Respondent submits that the RAD and RPD reasonably found that the Applicant failed to seek corroborative evidence from individuals he claims are central to his journey to

Christianity. Counter to the Applicant's submission that he should not have been required to provide this evidence, the Respondent notes that this Court rejected this argument in *Ortiz Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 ("*Ortiz Juarez*") at paragraph 7.

[33] Concerning the Applicant's submission that the RAD's decision is unreasonable because it failed to cure the RPD's error in misquoting this Court's decision in *Gao*, the Respondent submits that the RPD correctly quoted paragraph 21 of the decision, which explicitly states that "the Board is not obligated to defer to a pastor's opinion and take a baptismal certificate at face value." The Respondent maintains that this Court in *Gao* ultimately agreed with the position that the RPD is not obligated to take a baptismal certificate at face value.

[34] The Respondent notes that the Applicant appears to impugn his previous representative by arguing that he was not aware of his requirement to produce corroborative evidence. The Respondent notes that the Applicant did not provide any evidence to demonstrate compliance with the *Federal Court's Protocol Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court* prior to his submissions, and did not meet the requirements of notice to his former representation of these allegations, meaning that his submissions impugning his previous representative are not properly before this Court.

[35] I find that the Applicant did not identify any reviewable errors in the RAD's decision. I agree with the Respondent that the Applicant failed to meet the notice requirements or provide

any evidence to discharge his burden of proof for an allegation against his previous representative. This particular argument will therefore not be addressed in this analysis, and I focus on the parties' central submissions regarding the probative value of the baptismal certificate and the lack of corroborative evidence.

A. *Baptismal Certificate*

[36] I agree with the Respondent that the RPD did not err in relying on this Court's decision in *Gao* to determine that it would not grant the baptismal certificate any weight. I note that although the quote attributed to *Gao* by the RPD is a direct excerpt of the decision at paragraph 21, it is quoted out of context. The RPD references the Court's comment regarding baptismal certificates as the finding in the case, but it is a summary of the Respondent's submissions, not the Court's determination on this point. That being said, this Court in *Gao* ultimately agreed with the Respondent's submission, stating:

[30] The Applicant's submissions note that he had filed documentary evidence in support of his claim, including a baptismal certificate and church letters. However, the Board asked the Applicant how his pastor was able to determine that he was a Christian. The Board considered the Applicant's responses and concluded that the pastor had asked very simple questions and expected very little in return. The Board did not give any weight to this evidence. This is consistent with the reasoning approved by the Court in *Cao v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1174 at paragraph 28:

[28] It is clear from the member's reasons that he arrived at the conclusion that the applicant's faith was not genuine in spite of the evidence that the applicant had been in regular attendance at a church in Toronto and had been baptized there. The applicant submits that the member should have accorded deference to the Pastor's opinion and

taken the baptismal certificate at face value. To do so would, in effect, substitute the Pastor's assessment of the genuineness of the claim of faith for that which the member was required to make. Taken as a whole, the decision cannot be said to be irrational or unsupported by the evidence.

[37] This Court's decision in *Gao* confirmed that the baptismal certificate is insufficient proof of the genuineness of an applicant's adherence to Christianity, and the RPD therefore did not err by relying on this finding to afford the Applicant's baptismal certificate no weight. The RAD decision is, in turn, reasonably upheld the RPD's finding on this point, stating that the certificate "does not establish that he has a genuine attachment to Christianity at this time."

[38] I also disagree with the Applicant that the facts in *Gao* are sufficiently distinguishable from the case at hand. In finding that the RPD's assessment of the evidence was reasonable, my colleague Justice Southcott in *Gao* relies on this Court's decision in *Cao v Canada (Citizenship and Immigration)*, 2008 FC 1174 ("*Cao*"). In *Cao*, this Court states that to take the baptismal certificate at face value would, in effect, "substitute the Pastor's assessment of the genuineness of the claim of faith for that which the member was required to make" (at para 28). This Court does not state that the probative value of a baptismal certificate is dependent on evidence of some conversation between the claimant and the pastor. The applicability of this finding to the Applicant's case is not displaced by the RPD's failure to question the Applicant about his relationship with the pastor. The RPD reasonably relied on this Court's findings that a baptismal certificate is not proof of genuine religious belief.

[39] The Applicant did not proffer evidence of any conversation or relationship with his pastor surrounding his baptism that may have established a connection between the baptismal certificate and his genuine Christian beliefs. Absent any evidence establishing this connection, the RPD reasonably found that the baptismal certificate should not be taken at face value, in line with the jurisprudence. The RPD's reasoning for granting no weight to the baptismal certificate was intelligible and transparent (*Vavilov* at para 15).

B. *Lack of Corroborative Evidence*

[40] The RAD reasonably upheld the RPD's finding that the lack of corroborative evidence in support of the Applicant's claim undermines his credibility. Although the lack of credibility cannot be the sole reason for drawing negative inferences, the RPD is entitled to require corroborative evidence where it has credibility concerns and where certain evidence is reasonably expected but the applicant does not give a reasonable explanation for failing to provide it (*Ismaili* at para 36; *Byaje v Canada (Citizenship and Immigration)*, 2010 FC 90 at paras 26-27; *Ortiz Juarez* at paras 7-9; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10; *Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at para 22). In *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452, Justice Rennie confirmed that while "it would be an error to make a credibility finding based on the absence of corroborative evidence alone," the RPD "may draw a negative inference from a failure to provide corroborative evidence that would reasonably expected" where there is "a valid reason to question the claimant's credibility" (at paras 6-7).

[41] The circumstances in the Applicant's case make it reasonable for the RPD to reasonably expect corroborative evidence and draw negative inferences from both his failure to adduce this evidence and his lack of a reasonable explanation for failing to do so. The RPD had reason to doubt the credibility of the Applicant's claim and explained this reason intelligibly in its decision, noting a contradiction between the Applicant's oral and written evidence. The RAD, on its own assessment of the evidentiary record, stated that it does not believe the Applicant's narrative that he is a genuine convert to Christianity.

[42] It is also reasonable to expect that the Applicant would provide this corroborative evidence, given that his claim hinges on the narrative that he was introduced to Christianity by his friends in Canada and continues to practice Christianity alongside members of his church. The Applicant testified that he has information on his phone confirming that his friend Maryet told him about a Coptic Church service, but failed to provide it. He also testified that he is in contact with other members at the New Life Kingdom Church, but failed to provide evidence from these members to confirm this. Without corroborative evidence from any of these individuals to confirm key elements of his claim, evidence of his efforts to obtain such evidence, or reasonable explanations for failing to do so, the genuineness of the Applicant's claim that he is a sincere convert to Christian is directly at issue. It is reasonable for the RPD to draw negative inferences from the lack of corroborative evidence and for the RAD to uphold this finding.

VI. Conclusion

[43] The RAD's decision to uphold the RPD's determination that the Applicant failed to establish a genuine and sincere conversion to Christianity is reasonable as per the *Vavilov*

principles. This application for judicial review is therefore dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6851-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to the proper Respondent, the Minister of Citizenship and Immigration with immediate effect.
3. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6851-21

STYLE OF CAUSE: MAHMMUD ABU AL-HALAWA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 18, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: DECEMBER 1, 2022

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