

Federal Court



Cour fédérale

Date: 20221214

Docket: IMM-1143-22

Citation: 2022 FC 1732

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MAHNAZ GHOLAMI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated January 4, 2022 [the Decision]. In the Decision, the RAD confirmed the decision of the Refugee Protection Division [RPD], which determined that the Applicant is neither a

Convention refugee nor a person in need of protection. The determinative issue before both the RPD and RAD was credibility.

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable.

II. **Background**

[3] The Applicant is an Iranian citizen. She seeks refugee protection in Canada because of her alleged conversion to Christianity. The Applicant states in her Basis of Claim [BOC] form that she was first exposed to Christianity while visiting family in Canada in March 2019. Following her return to Iran in June 2019, she learned that there were small meetings held in private homes where people could learn about Christianity.

[4] The Applicant claims that after a few months of attending these meetings she heard that other Christian converts in her city were being arrested and that others were placed under surveillance. She claims that she became worried that she would come under scrutiny as well and therefore decided to travel back to Canada in October 2019. She entered Canada on a visitor's visa and subsequently made a refugee claim.

[5] The Applicant claims that in Canada she started attending church on a regular basis on Sundays and later joined a bible study class. She alleges that she was told in January 2020 that Iranian security forces had gone to her mother and husband and inquired about her whereabouts and her participation in church meetings. She asserts a belief that she cannot return to Iran, as she

would not be able to freely pursue her interest in Christianity because the authorities are suspicious of her.

[6] The RPD found that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issue before the RPD was credibility. It found that the Applicant had not established the facts underlying her claim with credible and trustworthy evidence, and it found her not to be a credible witness. The RPD drew several negative credibility inferences based on material omissions and material inconsistencies between her BOC and her oral testimony. The RPD further drew negative credibility inferences from the Applicant's delay in claiming asylum in Canada and the lack of reasonably expected documentation to support elements of her claim.

[7] On appeal to the RAD, the Applicant submitted that the RPD erred in its credibility analysis and challenged most of the RPD's credibility findings.

III. **Decision under Review**

[8] The RAD found that the RPD correctly assessed the Applicant's claim and agreed that she failed to credibly establish her allegations of a forward-facing risk in Iran. It therefore dismissed the appeal and upheld the RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection.

[9] As a preliminary matter, the RAD accepted as new evidence an updated letter from the Applicant's pastor in Canada that outlined her ongoing attendance at church. This letter was

submitted because the RPD took issue with the fact that the first letter from her pastor spoke about the Applicant's attendance at church in the past tense. The RAD found this letter to provide new information that was relevant to the Applicant's allegation that she is a Christian convert.

[10] The RAD found that the RPD correctly concluded that the Applicant was not a credible witness and failed to present sufficient credible and trustworthy evidence to establish her allegations. In making this determination, the RAD noted that there were material omissions in the Applicant's BOC.

[11] In her BOC, the Applicant stated that she began attending Christian meetings in Iran and later decided to leave the country after hearing about the arrests and surveillance of other Christian converts in her city. However, at her RPD hearing, she testified that the Christian meetings she had attended had been cancelled after members of her own Christian group were surveilled and apprehended. The RAD found that this omission, which could not be explained by the Applicant at her RPD hearing, was significant and material. As such, the RAD agreed with the RPD's conclusion that this omission undermined her credibility.

[12] The RAD also found a second material omission in the Applicant's BOC, in that she testified in her RPD hearing that Iranian security forces were looking for her and had contacted her family members in Iran on a couple of occasions since January 2020. This information was not mentioned in her BOC, and she was unable to explain the omission. The Applicant argued that, because these alleged contacts occurred after her initial BOC was submitted, she was under

no obligation to provide a “rolling narrative” in which each event that occurred must be recorded in an amendment.

[13] The RAD disagreed. It found that the allegation that Iranian authorities have an ongoing interest in the Applicant and had pursued her could not be characterized simply as adding more detail to information already in her BOC. The RAD noted that the Applicant was asked at the outset of her RPD hearing if her BOC was true, complete and correct, and that she indicated it was. The RAD also noted that the Claimant’s Guidelines address changes to the BOC, including that a claimant must tell the RPD if the claimant receives additional information.

[14] In light of the credibility concerns based on omissions in her BOC, the RAD found that there was a requirement for corroborative evidence to establish the Applicant’s claims. The RAD concluded that there was corroborative evidence that could be reasonably expected to be available to the Applicant and, after having an opportunity to do so, she failed to provide a reasonable explanation for not obtaining it. This evidence included the possibility of corroboration from a friend of the Applicant who allegedly attended the Christian meetings with her in Iran and received a summons as a result, as well as corroboration from her mother and husband who were alleged to have had interactions with the Iranian authorities who were looking for her.

[15] In connection with the requirement for corroboration, the RAD also considered a summons alleged to have been issued against the Applicant by the Iranian authorities, requiring her to report for court proceedings on accusations of apostasy, conversion from Islam, and

cooperation with groups promoting non-Islamic religions in Iran. The summons was not mentioned in her BOC. The Applicant testified that her family received the summons in January 2020 and that it was shown to her family, but that a copy of the summons was not left with them. The Applicant testified that her husband was able to obtain a copy of the summons unlawfully and that, while she did not know the name of the person from whom her husband obtained the summons, she knew that the person worked for the government.

[16] The RPD had noted that the Applicant did not provide corroborative evidence from her husband to establish the circumstances of obtaining the copy of the summons, nor did she provide a reasonable explanation for failing to provide such evidence after being given an opportunity to explain. Having reviewed the objective evidence, the RAD concluded that the RPD was correct in finding the summons not to be a reliable document. The RAD found that the objective evidence was clear that, when a process server delivers a summons to an accused and the accused is not present to be served, a copy will be left with a family member or, if nobody is home, the summons will be put on the door. Further, given that the purpose of a summons is to order a person's appearance at a particular place on a particular date and time, the RAD found the alleged circumstances of the summons delivery not credible.

[17] The RAD also found a material inconsistency between the Applicant's BOC and her oral testimony with respect to her church attendance in Canada. The Applicant testified before the RPD that she began attending church in Canada in February 2020. However, her BOC indicated that she began attending in November 2019. When this inconsistency was put to the Applicant, she explained that she attended church for the first time in November 2019, but that she became

a Christian and member of the church in February 2020. The RAD nevertheless found there to be a material inconsistency.

[18] The RAD considered the level of Christian religious knowledge demonstrated by the Applicant's testimony and concluded that it was consistent with what could be expected from someone with her alleged religious profile. However, in the context of the serious credibility issues it had identified and because her knowledge could have been acquired for the purpose of supporting her refugee claim, the RAD concluded that the Applicant's knowledge was a neutral factor that weighed neither in favour of, nor against, the genuineness of her beliefs. Similarly, while the RAD concluded that the Applicant had presented credible evidence of her religious participation in Canada, it found this evidence insufficient to establish that she had undertaken these activities on the basis of genuine Christian beliefs, rather than for the purpose of supporting her refugee claim.

[19] The RAD then analysed whether there was sufficient evidence to establish a *sur place* claim based on the Applicant's activities in Canada. The Applicant did not dispute the RPD's finding that there was no evidence that the Applicant's religious activities had come to the attention of the Iranian authorities or that they would be likely to come to their attention in the future, on a balance of probabilities. The RAD found that the RPD erred in applying the balance of probabilities standard, instead of the serious possibility standard, with respect to the likelihood of future persecution. However, this error was not determinative, as the RAD found that the evidence did not establish a serious possibility that Iranian authorities would become aware of the Applicant's religious activities in Canada.

IV. **Issues**

[20] The Applicant raises the following issues for the Court's determination:

- A. Did the RAD err by failing to properly consider the Applicant's credibility?
- B. Did the RAD err in considering the Applicant's corroborating evidence?
- C. Did the RAD err by failing to properly consider the Applicant's risk profile?

[21] The parties agree (and I concur) that the applicable standard of review is reasonableness.

V. **Analysis**

A. *Did the RAD err by failing to properly consider the Applicant's credibility?*

[22] The Applicant submits that, in making negative credibility findings based on perceived inconsistencies or omissions in her oral testimony, the RAD engaged in a microscopic assessment of her evidence.

[23] In relation to the RAD's concern about the Applicant's failure to include in her BOC details of the detainment and surveillance of members of her own Christian group, she submits that her testimony as to such details represented permissible elaboration upon central facts that were found in her BOC (see *Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 at paras 12(vi) and 16). She notes that her BOC referred to "other" Christians in her

city being surveilled and arrested and argues that it was available to her to elaborate upon this information in her testimony by explaining that it included members of her own group.

[24] This argument does not undermine the reasonableness of the RAD's analysis. When the RAD raised this concern with the Applicant, she did not offer an explanation consistent with this argument. Rather, she responded that she did not know why her BOC did not mention that anyone she knew had been discovered. The RAD agreed with the RPD drawing an adverse credibility inference, because the Applicant was unable to explain the discrepancy between her BOC and her testimony. The assertion that authorities arrested members of the particular Christian group that the Applicant had been attending cannot be considered a peripheral detail.

[25] The Applicant also challenges the reasonableness of the RAD's finding that it was a material and significant omission that she failed to update her BOC to reference security forces contacting her family members in Iran to look for her on two or three occasions after January 2020. Again, this is clearly not a peripheral detail. The Applicant submits that the RAD's reasoning represents a triumph of form over substance, as she testified to these events at the hearing before the RPD. I find no merit to this submission. As the Respondent argues, it was available to the RAD to draw an adverse inference from her failure to amend her BOC to include these core allegations.

[26] The Applicant similarly argues that the RAD erred by focusing unreasonably on a minor error in her testimony as to when she started attending her church in Canada. She declared in her BOC that she started attending church in November 2019 but testified that she started attending

in February 2020. When the RAD questioned her about this inconsistency, she offered the explanation that she first attended the church in 2019 but became a member in February 2020. The RAD considered this testimony but was not satisfied with her explanation for the inconsistency. I agree with the Respondent's submission that it was available to the RAD to find this inconsistency material and to make an adverse credibility finding.

B. *Did the RAD err in considering the Applicant's corroborating evidence?*

[27] The Applicant relies on the principle that, because a refugee claimant's testimony is presumed to be truthful unless there is a good reason to doubt it, such testimony cannot generally be rejected solely because of a lack of corroborative evidence (*Maldonado v Canada (Minister of Employment Immigration)*, [1980] 2 FC 302, 1979 CanLII 4098 (FCA)). She submits that it was therefore an error for the RAD to draw an adverse inference from her failure to provide corroborative evidence from her friend in her church group, her mother, and her husband.

[28] While the principle the Applicant cites is sound, the RAD relied on the related principle cited by the RPD, that the lack of corroborative documentation can be important when there are significant credibility concerns in a refugee claim (*Sanaei v Canada (Citizenship and Immigration)*, 2014 FC 402 at para 40). The RAD referred to its credibility concerns with the Applicant's allegations in respect of the events in Iran, resulting in the need for corroborative evidence to establish the underlying allegations. I find nothing unreasonable in this analysis.

[29] The Applicant raises additional arguments related to the RAD's conclusion that the summons, which the Applicant provided as corroborative evidence, was not reliable. She takes

issue with the RAD's finding, based on the objective country condition evidence, that the absence of a verdict or judgment issued *in absentia* casts doubt on the authenticity of the summons. The Applicant argues that the RAD relied on item 9.15 from the National Documentation Package on Iran [NDP] and that this document provides no authority for the RAD's finding. However, the Applicant appears to have misread the Decision, which references item 9.10 of the NDP in this portion of its analysis. Item 9.10 does refer to a judgment *in absentia* being issued if a defendant does not show up in court.

[30] The Applicant also takes issue with the RAD's concern that the portion of the summons document related to its delivery was blank. She relies on item 9.15 for its explanation that there is no standard for all issued summons, arguing that the RAD failed to consider the objective evidence that there is no standard procedure for the issuance of summons. However, the evidence to which Applicant refers states only that summons can be issued electronically, by hand, or through typed templates. Moreover, the RAD expressly considered this evidence and reasoned that, while it establishes that summons may be issued in various formats, the particular format of the document presented was clearly incomplete. The Applicant is asking the Court to disagree with the RAD's treatment of the evidence, which is not its role in judicial review.

[31] Finally, the Applicant submits that the RAD erred in its treatment of her evidence that the summons was brought to her family home in Iran in January 2020 by Iranian security agents and shown to her mother, but they did not leave a copy. She notes the RAD's reasoning that it would be inconsistent with the purpose of the summons to refuse to leave a copy when serving it, but she argues that this analysis unreasonably assumes the agent of persecution is a logical actor

(*Sivaraja v Canada (Citizenship and Immigration)*, 2015 FC 732 at para 34). I find no reviewable error in this aspect of the Decision, as the RAD relied not only on its reasoning as to the purpose of a summons but also upon the objective country condition evidence that, when a person is not present to be served, a copy will be left with a family member or put on the door.

C. *Did the RAD err by failing to properly consider the Applicant's risk profile?*

[32] In arguing that the RAD failed to properly consider her risk profile as a Christian returning to Iran, the Applicant relies on jurisprudence to the effect that even a claimant who is found to lack credibility may still have a well-founded fear of persecution based on their risk profile and objective country condition evidence (*KS v Canada (Citizenship and Immigration)*, 2015 FC 999 at para 41). She refers to the RAD's finding that her level of religious knowledge was consistent with what could be expected from someone with her alleged religious profile, in combination with the evidence the RAD accepted as to her practice of Christianity while in Canada. The Applicant submits that the objective evidence supports the conclusion that someone with her profile would be at risk in Iran.

[33] In analysing this argument, it is important first to note that the RAD found the Applicant had failed to establish that she is a genuine Christian convert. Notwithstanding its conclusion as to her level of religious knowledge, the RAD reasoned that this knowledge could have been acquired for the purpose of supporting a refugee claim. In the context of the numerous serious credibility issues identified in her evidence and testimony, the RAD found that her knowledge of Christianity was not persuasive evidence of the genuineness of her alleged religious beliefs. For

the same reason, the RAD found the evidence of her participation in religious activities in Canada insufficient to establish the genuineness of her beliefs.

[34] The Applicant argues that this analysis is unreasonable. However, this argument represents a disagreement with the manner in which the RAD weighed the evidence, which is not a ground for the Court to interfere in judicial review.

[35] The RAD therefore analysed the Applicant's risk profile, including her *sur place* claim, in the context of its conclusion that she is not a genuine Christian convert and therefore would not practice Christianity upon returning to Iran. The RAD found that the evidence did not establish a serious possibility that the Iranian authorities would become aware of the Applicant's religious activities in Canada.

[36] The Applicant's position, that she is not required to demonstrate that her religious activities would come to the attention of the authorities in Iran, is inconsistent with applicable jurisprudence. In *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064, in reviewing a *sur place* claim based on religious activities in Canada coming to the attention of the agent of persecution in the claimant's home country, Chief Justice Crampton explained that the applicant had the burden of demonstrating that those activities would likely come to the attention of the agents of persecution (at para 46).

[37] I therefore find no reviewable error in the RAD's consideration of the Applicant's risk profile.

VI. **Conclusion**

[38] Having considered the Applicant's arguments, I find that the Decision is reasonable and this application for judicial review must be dismissed.

[39] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1143-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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