

Federal Court



Cour fédérale

**Date: 20230109**

**Docket: IMM-6623-21**

**Citation: 2023 FC 33**

**Ottawa, Ontario, January 9, 2023**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**SHAHRBANOU GHORBANNIAY  
HASSANKIADEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Ghorbanniay is seeking judicial review of the rejection of her application for a pre-removal risk assessment [PRRA]. She alleges that the lawyer who prepared the PRRA application on her behalf did not represent her adequately, in that he failed to submit evidence pertaining to certain risks that she would be exposed to upon returning to her home country, Iran. I am denying her application. The outcome of the PRRA application would likely have been the

same, mainly because the proposed new evidence pertains to facts taking place before the refusal of Ms. Ghorbanniay's refugee claim and would thus be inadmissible on a PRRA.

I. Background

[2] Ms. Ghorbanniay is a citizen of Iran. After staying in the United Kingdom with her daughter, she came to Canada in November 2015. A few months later, she claimed refugee status.

[3] Her claim was based on long-standing persecution of her family by the Islamic regime in Iran, including the killing of one of her sons, as well as her alleged conversion to Christianity. She asserts that a few days after her arrival in Canada, the revolutionary guards arrested her son and searched her house in Iran, discovering items that could prove her conversion.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board dismissed her claim in November 2016. The RPD noted significant contradictions between her testimony and the allegations of her Basis of Claim [BOC] form, as well as inconsistencies in her narrative. It found that her credibility was seriously affected and that the alleged events did not happen.

[5] Ms. Ghorbanniay brought an appeal to the Refugee Appeal Division, but her appeal was never perfected and was deemed abandoned. In 2019, she was given the opportunity to apply for a PRRA. In support of her PRRA application, she filed a one-page statement. She asserted fear of persecution because of her Christian faith and abusive treatment by her Muslim husband. She

alleged that one of her sons was killed and another son and a daughter were detained, all because of religious persecution. She added that her husband had threatened to report her to the Iranian authorities and that she was “both mentally and physically not well.” She also stated that she was regularly attending a church in Canada since 2016 and provided a letter from her church that had already been filed with the RPD.

[6] Ms. Ghorbanniay’s PRRA application was refused in June 2020. The decision was communicated to her in July 2021. The PRRA officer accepted that Christian converts face persecution in Iran and that domestic violence is a serious issue. However, the officer found Ms. Ghorbanniay’s evidence insufficient to demonstrate that she is a Christian convert or that she would personally face domestic violence. With respect to her conversion, the officer noted that Ms. Ghorbanniay did not provide evidence that post-dated the RPD’s decision and would justify a different decision. With respect to domestic violence or abuse, the officer noted the lack of detail or corroborative evidence and found that Ms. Ghorbanniay had not proved on a balance of probabilities that she faces a risk. Lastly, the officer noted that Ms. Ghorbanniay’s health issues are not related to any risk covered by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[7] Ms. Ghorbanniay now seeks judicial review of the negative PRRA decision. She alleges incompetent representation on the part of the lawyer who prepared her PRRA application. She followed the Court’s *Protocol Regarding Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Persons Cases* (now sections 46–54 of the *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection*

*Proceedings* (June 24, 2022)) and sent a notice to her former counsel. The latter provided a detailed answer denying the allegations and attached copies of correspondence with Ms. Ghorbanniay and other documents on file. With her application, Ms. Ghorbanniay also filed the evidence she alleges she would have filed had her previous counsel acted diligently, which consists of a more fulsome statement from her, a statement from her son, pictures of her without a headscarf in various locations in Canada, including in a church, and country condition evidence regarding the oppression women and religious converts face in Iran.

## II. Analysis

[8] In exceptional circumstances, a lawyer's incompetent representation of the client may give rise to procedural unfairness. The conditions in which the Court may make such a finding have been described by my colleague Justice Alan Diner in *Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at paragraph 11:

1. The representative's alleged acts or omissions constituted incompetence;
2. There was a miscarriage of justice in the sense that, but for the alleged conduct, there is a reasonable probability that the result of the original hearing would have been different; and
3. The representative be given notice and a reasonable opportunity to respond.

[9] In my view, the application fails on the second prong of this test—Ms. Ghorbanniay has not shown that the outcome of her PRRA application would likely have been different had the officer considered her new evidence. This results in large part from the nature of the PRRA, which is not a forum to reargue a failed refugee status claim. For this reason, paragraph 113(a) of

the Act provides that PRRA applicants may only present evidence that arose after the rejection of their refugee claims or that they could not reasonably have been expected to bring forward at that time. Much of Ms. Ghorbanniy's new evidence pertains to facts that took place before the RPD rejected her claim for refugee status.

[10] In this regard, one should not lose sight of the fact that this is an application for judicial review of the PRRA decision, not the RPD's decision. Ms. Ghorbanniy cannot, in the context of the present application, allege the incompetence of her counsel before the RPD, who was not the same as counsel for the PRRA. In other words, this application does not allow Ms. Ghorbanniy to reverse strategic choices that she and her counsel made with respect to her refugee claim.

[11] Moreover, a PRRA officer is entitled to take into consideration the negative credibility findings of previous decision makers: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 66; *Alexander v Canada (Citizenship and Immigration)*, 2021 FC 762 at paragraph 52; see also, by way of analogy, *Satkunanathan v Canada (Citizenship and Immigration)*, 2023 FC 16 at paragraph 35. In this case, the RPD noted significant credibility concerns with respect to Ms. Ghorbanniy's testimony.

[12] I review below the main categories of new evidence that Ms. Ghorbanniy is putting forward and explain why they would likely not have affected the outcome of her PRRA application.

A. *Conversion to Christianity*

[13] Before the RPD, Ms. Ghorbanniay claimed that she converted to Christianity. In her PRRA application, she reiterated this claim, but did not provide any new evidence in support. She declared that she regularly attended a church in Toronto since 2016 and provided a letter from the church. The PRRA officer noted that the letter pre-dated the RPD decision and that Ms. Ghorbanniay did not explain why it could not have been submitted to the RPD. (In fact, the letter was submitted to the RPD.) The officer concluded that Ms. Ghorbanniay “has failed to provide me with new evidence that would allow me to come to a different finding than the RPD.”

[14] In the statement provided with her application for judicial review, Ms. Ghorbanniay does not significantly add to the evidence already provided. She declares that she identifies as a Christian, that she could not go to church in Iran as the regime considered her as being Muslim, that the revolutionary guards discovered a picture of her and her son, who also converted to Christianity, taken in Norway in 2011, and that she attended a church in Canada in 2016. There is no precise information about when she converted. Along with her statement, Ms. Ghorbanniay also provided pictures of her in a church in Vancouver dated September 2019.

[15] In my view, there is no likelihood that this information would have led the PRRA officer to reach a different conclusion. While the information is not always precisely dated, much of it predates the RPD decision and would have been inadmissible on a PRRA in any event. The story is essentially the same as the one with which the RPD had significant credibility concerns. Ms. Ghorbanniay has not attempted to explain how the new evidence alleviates these serious

concerns. In all likelihood, the PRRA officer would have relied on the RPD's decision and would have found that Ms. Ghorbanniay has not proved that she converted to Christianity.

[16] Ms. Ghorbanniay also filed reports about the treatment of apostates in Iran. This information, however, is irrelevant if she has not proved that she converted to Christianity. In any event, the PRRA officer did not question the fact that Christian converts would be at risk in Iran.

B. *Domestic Abuse*

[17] Ms. Ghorbanniay's refugee claim was not based on domestic abuse and the RPD did not mention this issue. Her PRRA application contains the statement that "my former Iranian husband has also kept threatening me to report to the authorities if I return to Iran." Her counsel's submissions did not touch upon this issue. The PRRA officer noted Ms. Ghorbanniay's allegation, but found it lacking in detail and corroborating evidence. The officer, therefore, concluded that she had failed to demonstrate that she faced a risk from her husband.

[18] In support of this application, Ms. Ghorbanniay provides a somewhat more detailed narrative, in which she describes her husband as controlling and physically, verbally and psychologically abusive. Among other things, she says that her husband prevented her from going to school for a long time, and then denied her the possibility to work outside the home. Moreover, she provided a written statement from her son who lives in Canada. He confirms that his father has always been controlling and aggressive towards his mother. He also says that his

father has found out that his mother converted to Christianity and threatened to report her to the police if she returns to Iran.

[19] There is no serious likelihood that this additional evidence would have affected the outcome of the PRRA application. Once again, much of this evidence pertains to facts that took place before the RPD decision, when Ms. Ghorbanniay was still living in Iran. It would have been inadmissible pursuant to paragraph 113(a) of the Act. Ms. Ghorbanniay did not explain why it would have been impossible to argue the domestic abuse issue before the RPD. A PRRA is not an occasion to put forward an entirely new basis for a refugee claim that the applicant could have raised, but chose not to raise, when the matter was heard by the RPD: *Moumaev v Canada (Citizenship and Immigration)*, 2009 FC 712 at paragraphs 80–81; *Gharghi v Canada (Citizenship and Immigration)*, 2009 FC 1014 at paragraph 34.

C. *Health Issues*

[20] Ms. Ghorbanniay alleges that her former counsel failed to provide the PRRA officer with corroborative evidence regarding her health. She now provides a note from her family doctor listing a number of medical conditions she has been diagnosed with and her current medications.

The doctor concludes:

Ms. Ghorbanniay is suffering from multiple chronic conditions and needs continuation of medical care including using her medications. Discontinuation of her treatment will exacerbate her underlying diseases and she may suffer from significant consequences.



[21] Even accepting these conclusions at face value, there is no evidence of the treatment options available to Ms. Ghorbanniay, or the lack thereof, upon returning to Iran. Nor is there evidence linking these eventual consequences to a risk covered by sections 96 and 97 of the Act, for example a “well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion” (section 96) or a “risk to their life or [...] a risk of cruel and unusual treatment or punishment” (paragraph 97(1)(b)). In particular, subparagraph 97(1)(b)(iv) excludes any risk caused “by the inability of [the person’s] country to provide adequate health or medical care.” It is, therefore, difficult to see how the doctor’s note would have led to a different PRRA determination.

D. *Persecution as a Woman in Iran, Political Views and Sur Place Claim*

[22] Ms. Ghorbanniay also faults her former counsel for not providing evidence regarding the situation of women in Iran, her political views or what she describes as her *sur place* claim. In her statement in support of this application for judicial review, she expresses her disagreement with the manner the Iranian regime treats women. She also provides reports about the situation of women in Iran.

[23] There is little doubt that women in Iran are subjected to many forms of discrimination. However, Ms. Ghorbanniay did not claim refugee status on that basis, nor on the basis of her opposition to the regime. The facts she now puts forward were known when her claim was heard by the RPD. She has not explained why she could not have raised these issues at that time.

[24] In any event, apart from the November 2015 incident, which the RPD did not believe, there is no indication that Ms. Ghorbanniay ever came to the attention of the Iranian authorities.

[25] Ms. Ghorbanniay also argues that her former counsel failed to put forward her *sur place* claim. At the hearing, she clarified that this aspect of her claim is based on the fact that she does not wear the headscarf while in Canada and that she posted pictures of herself on social media without a headscarf.

[26] Even assuming this took place entirely after the RPD's decision, I am unable to conclude that this would likely lead to a positive PRRA decision. I have reviewed the objective evidence carefully and I have not found any indication that Iranian authorities are watching the social media presence of Iranian citizens who live abroad to check whether women wear the headscarf. Ms. Ghorbanniay has not cited any precedent where a woman who does not wear the headscarf while in Canada was held to have a *sur place* claim.

### III. Disposition

[27] As Ms. Ghorbanniay failed to show that her PRRA application would likely have been decided differently if her counsel had adduced more evidence, there was no breach of procedural fairness resulting from her alleged inadequate representation. Hence, this application for judicial review will be dismissed.

**JUDGMENT in IMM-6623-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6623-21

**STYLE OF CAUSE:** SHAHRBANOU GHORBANNIAY HASSANKIADEH  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 19, 2022

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** JANUARY 9, 2023

**APPEARANCES:**

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