

Federal Court



Cour fédérale

Date: 20230502

Docket: IMM-5362-22

Citation: 2023 FC 635

Ottawa, Ontario, May 2, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**ANDREY KRASILOV AND
ELENA KRASILOVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Andrey Krasilov and Elena Krasilova (Principal and Associate Applicant respectively) are citizens of Russia who allege a fear of persecution by the Russian authorities as practising Jehovah's Witnesses. They seek judicial review of a May 10, 2022 decision of the Refugee Appeal Division (RAD) confirming the refusal of their claim for refugee protection by the Refugee Protection Division (RPD). The Applicants' appeal to the RAD centred on the numerous credibility issues identified by the RPD.

[2] For the reasons that follow, the application is dismissed. The Applicants have not persuaded me that the RAD member breached their right to procedural fairness by having an assistant review and provide editorial suggestions for their decision. In addition, the Applicants' arguments that the RAD rubber-stamped the RPD decision and unreasonably required them to disprove the evidence submitted by the Minister are not persuasive. The RAD addressed the arguments raised on appeal and its analysis of the credibility issues in issue presents a clear chain of reasoning that is responsive to the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. Background

[3] The Applicants allege that they joined the Jehovah's Witnesses (JW) in 2016 and began to attend meetings and study the bible. They also married in the fall of 2016 to comply with JW teachings. The Applicants started to talk to acquaintances and visit houses under the guidance of JW elders and were often met with insults and threats to call the police.

[4] In April 2017, the Russian authorities banned the JW faith as an extremist sect. The Applicants moved to a new apartment and stopped openly practicing their religion. One month later, a profane message referring to their religion was written on their apartment door and the building owner soon wanted them to leave.

[5] In August 2017, the Principal Applicant's car was vandalized outside a Kingdom Hall and he was beaten by two unknown people later the same week. He went to the hospital and was

interviewed by police officers after a call from the doctor. The police subsequently summoned the Principal Applicant to the station where they questioned him about his JW activities.

[6] The Applicants decided to leave Russia and came to Canada in December 2017, claiming refugee protection two months later.

[7] The RPD rejected the Applicants' claim on November 18, 2021. The panel found that the Applicants (1) had failed to explain why their Basis of Claim (BOC) narrative is strikingly similar to that of an unrelated Russian refugee claimant and (2) had not credibly established that they were genuine JW adherents. The RPD also rejected the Applicants' *sur place* claim.

[8] The Applicants appealed the RPD's decision to the RAD.

II. Decision under review

[9] The RAD refused to admit new evidence filed with the appeal and the Applicants do not contest the refusal. The RAD then summarized the Applicants' appeal submissions and made the following findings:

- (a) The Applicants concede that the similar story in the other BOC filed by the Minister undermines the credibility of their history. Although their refugee claim was filed earlier than that of the other Russian claimant, the marked similarities between the two narratives casts doubt on both and requires substantive corroboration from the Applicants to overcome the concern attached to their BOC narrative.
- (b) The Applicants relied on a template support letter from a Russian friend that they knew contained misrepresentations. The RPD correctly gave no weight to the letter. The Applicants' reliance on the letter also casts doubt on the probative value of the other support letters in the record.

- (c) Contrary to the Applicants' submissions, the credibility of their JW faith was not dependent on them being perfect members, simply members on a balance of probabilities. The RPD raised numerous credibility concerns regarding their commitment to and knowledge on the central tenets of the JW faith and correctly rejected the Applicants' explanations. The cumulative negative credibility findings led the RAD to conclude that there was insufficient credible evidence to establish that the Applicants are genuine adherents of the JW faith.
- (d) The other support letters filed by the Applicants were written by individuals who were not JW members and were neither sworn nor accompanied by identity documents. The letters repeat what the individuals were told by the Applicants about the treatment of JWs in Russia and do not confirm any details of the Applicants actually engaging in JW activities.
- (e) Given the major credibility problems with most of the Applicants' evidence, the absence of any corroboration from actual JW members in Canada was unexpected.
- (f) The Applicants' scant observance of usual JW practices would be unlikely to have come to the attention of Russian authorities given they give no outward appearance of being JW practitioners.

[10] The RAD stated that there was much merit in the Minister's closing submission that the Applicants have simply taken advantage of the Russian Supreme Court's decision to ban the JW faith in order to manufacture a basis for a refugee claim. The RAD concluded that the Applicants are not genuine adherents of the JW faith and would face no serious possibility of religious persecution should they return to Russia.

III. Analysis

Procedural fairness

[11] The Applicants submit that their right to procedural fairness during the RAD process was breached because the RAD member had their decision reviewed and edited by an assistant. They argue that this practice offends the principle of "[the one] who decides must hear" the matter (*Johnny v Adams Lake Indian Band*, 2017 FCA 146 at paras 30-31). My review of this question

requires me to ask “whether the [RAD] procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 (*Canadian Pacific*)).

[12] The Applicants obtained a series of internal emails between the RAD member and an assistant working at the RAD that indicates the assistant reviewed the member’s draft decision and provided “comments and edits”. After receiving her comments, the member wrote back thanking the assistant for the footnote assistance and indicating that the member would not change the terminology used in the draft decision for “member” and “follower”. The Applicants submit that this email exchange leads to uncertainty as to what portions of the decision were actually written by the member. They also submit that neither the parties nor the Court can be confident that the RAD member reviewed all of the materials in the record and took ownership of the decision.

[13] The Applicants correctly refer to the fundamental requirement that a decision maker must decide each matter independently after review of the evidence and must write their own decisions (*Apotex Inc. v Janssen-Ortho Inc.*, 2009 FCA 212 at paras 73-79). However, this requirement does not preclude all discussions with colleagues or the use of administrative and proofreading assistance as long as, in every case, the ultimate decision is that of the decision maker (*Iwa v Consolidated-Bathurst Packaging Ltd.*, [1990] 1 SCR 282; *Satnarine v Canada (Citizenship and Immigration)*, 2012 FC 91 at paras 22-23).

[14] I have reviewed the exchange of emails in question. I find that they describe nothing more than the typical administrative assistance provided by support staff to decision makers. The position of the assistant is set out in the emails as “Assistant to Members / Refugee Appeal Division – Central Region”. The exchange begins with an email from the RAD member to the assistant stating that the member has received a draft back from legal review. The assistant responds two days later stating that they will have a draft ready for the member the same day. The assistant later sent comments, indicating the assistant has provided all of their “comments and edits in the first draft attached above”. The assistant also alerts the member that there is an amended record for the file. According to the Applicants, it is the member’s response that suggests a problem. The RAD member responds that they did work from the amended record and explains their acceptance (or not) of the suggested edits. The member also thanks the assistant for the footnote additions. In turn, the assistant thanks the member for the explanation.

[15] The Applicants’ argument that the exchange of emails undermines any certainty that the RAD member reviewed the file materials and wrote the decision relies on speculation to suggest that the assistant may have had a substantive role in writing the decision. I find that the argument is not supported by the content and tone of the emails and disregards the roles of the assistant and member reflected throughout the emails. In my view, the emails indicate that the assistant reviewed a draft of the RAD member’s decision, inserted footnotes for some documents referenced in the decision and made editorial suggestions. Equally, the emails indicate that the member reviewed the footnotes and comments and accepted the footnotes, but did not accept certain edits. I agree with the Respondent that the email exchange contains no indication of any

reliance by the member on information unknown to the Applicants or any substantive influence by the assistant.

[16] Accordingly, I find no breach of the Applicants' right to procedural fairness in the involvement of a RAD assistant in the finalization of the decision under review.

Reasonableness of the decision

[17] The RAD's credibility findings and assessment of the evidence are subject to review for reasonableness (*Vavilov* at paragraphs 10, 23; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 672 at para 6). The Applicants, as the challenging party, must satisfy the Court that there are sufficiently serious shortcomings in the RAD's decision such that it is not justified, intelligible and transparent (*Popoola v Canada (Citizenship and Immigration)*, 2022 FC 6 at para 27).

[18] The Applicants first submit that the RAD unreasonably required them to disprove the evidence submitted by the Minister, an adverse party in the proceeding. They state that the Minister filed the similar BOC of another Russian refugee claimant for the purpose of undermining their claim. The Applicants argue that the Minister bore the burden of demonstrating that the similarities between the two BOCs rebutted the presumption of truthfulness of their evidence, namely their BOC narrative. Only if the Minister discharged that burden should the Applicants be required to submit corroborative evidence. In the present case, the RPD and the RAD simply accepted the Minister's position. The two panels did not grapple with the onus on the Minister to overcome the presumption of truthfulness.

[19] The Applicants' submission is not persuasive. The RAD made no finding that the other BOC was authentic or inauthentic, nor was it required to do so. Rather, the RAD stated that the existence of the two BOCs, chronicling nearly identical religious journeys and events, "casts serious doubts on both of them". The panel reviewed the other BOC and noted the Applicants' concession that the similar story of the other Russian claimant undermined the credibility of their history. The RAD accepted the reasoning in another RAD proceeding that it is speculative to assume that either of the two BOCs is authentic (*X (Re)*, 2018 CanLII 101516 (*X(Re)*)).

[20] At the hearing before me, the Applicants' counsel conceded that, had the RPD introduced the other similar BOC and the RAD had concluded that the other BOC cast doubts on the truthfulness of both BOCs, there would be no issue. I find that the Minister's involvement does not change the analysis required of the two BOCs by the RAD or require inclusion in the decision of an analysis of the presumption of truthfulness. The RAD did not err in finding that the obvious similarities in the two narratives undermined the Applicants' BOC and their credibility (*Ravichandran v Canada (Citizenship and Immigration)*, 2015 FC 665 at paras 18-19; *Uwejyah v Canada (Citizenship and Immigration)*, 2020 FC 849 at paras 19-20). As a result, it was open to the panel to require the Applicant to substantiate their own story because there was reason to doubt the veracity of the central elements of the history (*Warrich v Canada (Citizenship and Immigration)*, 2022 FC 76 at para 32).

[21] The fact that the Applicants filed their BOC before the other claimant was not determinative (*X (Re)* at para 62):

[I]t does not logically follow that that whoever submitted the narrative first is the original author of the narrative. This is speculative and it also assumes that one of these two narratives is authentic. This has not been established. The RPD happened upon the second narrative, it is possible there are other strikingly similar narratives in existence, perhaps submitted months or years earlier. I simply do not know. In these circumstances, suggesting that his narrative was submitted before the second narrative does not explain why his narrative should be believed to be authentic.

[22] Second, the Applicants submit that the RAD did not undertake a fulsome consideration of the evidence before it and the law. It contented itself with rubber-stamping the RPD's analysis and conclusions in two respects: the fact that the Associate Applicant wore a cross and had a tattoo of a cross, and the fact that she publicly posted pictures of herself in provocative clothing. The RAD failed to address the Associate Applicant's explanation of why she wears the cross and the evidence of another JW's public photographs of herself as a model. The Applicants argue that these omissions compromise the clarity and justification of the decision.

[23] I do not agree with the Applicants. The RAD stated that the RPD properly discounted the Applicants' explanations of their conduct and numerous failures to observe tenets of the JW faith, including the Associate Applicant's explanation that she posted the provocative photographs to promote her nail salon business. The Applicants did not raise before the RAD the evidence and testimony on which they now rely and the RAD is not required to consider possible errors that an appellant did not raise (*Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 23; *Owolabi v Canada (Citizenship and Immigration)*, 2021 FC 2 at paras 51-51). The Applicants argued on appeal that they did not claim to be perfect JW practitioners. They

were on a path of change and mistakes towards compliance with the tenets of the faith. The RAD directly responded to their argument, referring to “the reasonable expectation that there would be obedience to some of those laws during the first five years as followers”.

[24] Even if the two factual findings now contested by the Applicants are ignored, the remaining material credibility issues identified in the decision justify the RAD’s decision.

[25] At the risk of repetition, a brief summary of the RAD’s credibility findings that underpinned its conclusion that the Applicants are not genuine JW adherents is useful:

- The letter submitted by the Associate Applicant’s Russian friend was a template letter that contained clear misrepresentations. During her testimony, the Russian friend admitted that the Applicants had never made some of the claims set out and that she “had put something extra” in the letter.
- The Applicants lack of commitment to being baptized despite five years as full-fledged believers studying the Bible and the tenets of the JW faith; their failure to participate in the core requirement to preach the JW faith despite four years in Canada; and their continued celebration of holidays like Christmas and Halloween in contradiction of JW practice.
- The Applicants lacked knowledge of the strict JW tenet not to receive blood transfusions and the “no blood card” that is commonly carried.
- The Associate Applicant has a tattoo of a cross and wears a cross necklace and posted photos of herself wearing provocative lingerie, all against the precepts of the JW faith (the contested findings).
- The Applicants married in the Russian Orthodox Church rather than in a JW Kingdom Hall after they became full-fledged believers.
- They labelled photos from JW annual Congresses as if they were from two separate years when they were all taken at one Congress.
- The Applicants’ suggestion that the questionable, 20-paragraph BOC narrative of the other Russian claimant may have been copied by guests at their home for no apparent reason was not persuasive.

- The other support letters were not written by JWs and warranted little weight. The Principal Applicant’s explanation that JWs could not be involved in court or tribunal proceedings was not persuasive. He could point to no evidence for his proposition. In addition, the authors of the letters repeated in general terms what the Applicants told them about the treatment of JWs in Russia and did not confirm the Applicants’ participation in JW activities.
- The Applicants’ minimal participation in JW activities would be unlikely to come to the attention of the Russian authorities and was not sufficient to establish their *sur place* claim.
- The absence of corroboration from actual Canadian JW members was unexpected as it was reasonable to expect that fellow JWs would be forthcoming to assist the Applicants if asked.

[26] I find no reviewable error in the RAD’s analysis of the credibility issues apparent in the Applicants’ refugee claim. I find that the omission by the RAD to specifically reference the Associate Applicant’s testimony regarding her necklace and the photos of the JW model is immaterial in the context of the RAD’s comprehensive decision (*Vavilov* at paras 127-128). The RAD did not merely accept the RPD’s analysis. The panel looked to the evidence to determine whether there was sufficient corroboration that the Applicants are genuine adherents of the JW faith. The RAD’s conclusions are justified on the evidence and, accordingly, this application for judicial review will be dismissed.

[27] The parties have not proposed any questions for certification, and I agree that there are none.

JUDGMENT IN IMM-5362-22

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5362-22

STYLE OF CAUSE: ANDREY KRASILOV AND ELENA KRASILOVA v
THE MINISTER OF CITIZENSHIP AND
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