Federal Court  Cour fédérale

Date: 20240306

Docket: IMM-6249-22

Citation: 2024 FC 377

Ottawa, Ontario, March 6, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SASAN AKBARIARMAND

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Akbariarmand, sought refugee protection in Canada. Mr. Akbariarmand's refugee claim was based on his fear of the government, his uncle and his former girlfriend's family. The Refugee Protection Division [RPD] refused his claim on the grounds that he failed to establish a nexus to a Convention ground, that there was no objective basis to his fear of harm, and, in the alternative, he could relocate safely to an internal flight alternative [IFA].

Mr. Akbariarmand appealed the RPD's refusal. The Refugee Appeal Division [RAD] dismissed his appeal solely on the grounds that it was safe and reasonable for Mr. Akbariarmand to relocate to Isfahan. This is the decision currently before me on judicial review.

[2] Mr. Akbariarmand makes two arguments challenging the RAD's decision: 1) that it was unreasonable for the RAD not to admit his new evidence on appeal; and ii) that considering that one of the agents of persecution is the state, the RAD's determination that he could safely relocate to Isfahan is unreasonable.

[3] I see no basis to intervene with respect to the RAD's decision not to admit the new evidence. I do, however, find that the RAD's IFA analysis is unreasonable. In particular, the RAD's analysis on the government's lack of motivation to locate Mr. Akbariarmand in Isfahan is unsupported by the evidence and leaves many questions unanswered. Overall, the RAD's IFA analysis does not "add up" and is not supported by the legal and factual constraints bearing on the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 104–105; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 65–66) and is therefore unreasonable and needs to be redetermined.

[4] Based on the reasons below, I allow the application for judicial review.

II. Issues and Standard of Review

[5] The issues raised on this judicial review relate to the substance of the RAD's determinations with respect to the new evidence filed by Mr. Akbariarmand and the IFA

determination. On both these issues, I have reviewed the RAD's analysis on a reasonableness standard (*Vavilov* at para 16, *Singh v Canada (Citizenship and Immigration),* 2016 FCA 96 at paras 29, 74; *Mohamed v Canada (Citizenship and Immigration),* 2020 FC 1145 at para 9.)

[6] The Supreme Court of Canada in *Vavilov* described a reasonable decision as "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). Administrative decision makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

III. Analysis

A. *New Evidence*

[7] The legal test for the admission of new evidence at the RAD is set out in subsection 110(4) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*]:

110(4). On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	**110(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[8] The RAD denied Mr. Akbariarmand's request to admit the new evidence, finding none of the documents met the statutory requirements set out in subsection 110(4) of *IRPA* because the

documents were not new, were reasonably available to him and were reasonably expected to have been provided in the circumstances. The RAD noted Mr. Akbariarmand's acknowledgement that the new evidence had been available to him even prior to the RPD hearing, and that there was no difficulty in obtaining these documents as his mother electronically sent them to him upon his request.

[9] I note, as the RAD also noted, that Mr. Akbariarmand appeared to be making an allegation about the incompetence of his former counsel, who represented him at the RPD hearing. No notice was provided to their former counsel as is required and the arguments were not developed as a basis for seeking relief. As such, I have not been able to consider this argument.

[10] Mr. Akbariarmand's counsel also acknowledged at the judicial review that since the RAD's rejection of the claim focused only on IFA, and no credibility findings were made, the new evidence could not have affected this member's decision.

[11] I am satisfied that there is no serious shortcoming in the RAD's analysis on admitting the new evidence.

B. *IFA analysis*

[12] Mr. Akbariarmand focuses his challenge on the RAD's determination on the first prong of the IFA test, which considers whether he could safely relocate to the proposed IFA of Isfahan (*Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA),

[1992] 1 FC 706). The RAD states at the outset that in making its IFA determination, it has not considered a number of the issues that were animating the RPD's decision and were part of the basis of Mr. Akbariarmand's challenge on appeal, namely "lack of nexus, objective basis for the claim, risk of harm, and the Appellant's credibility."

[13] It is well established that provided that the totality of a claimant's circumstances are considered, a decision-maker can move directly to an IFA determination without assessing credibility or whether there is a well-founded fear of persecution in their home region (*Kanagaratnam v Canada (Minister of Employment and Citizenship)*, (1994) 83 FTR 131 (TD), 194 NR 46 (FCA); *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at paragraphs 8–9). The problem here is that the RAD did not grapple with the nature of the agent of persecution and the harm feared in determining that there was no motivation to locate Mr. Akbariarmand in Isfahan by the state authorities.

[14] Unlike the RPD, the RAD expressly did not make any credibility findings. The RAD accepted that Mr. Akbariarmand was convicted of consuming and transporting alcohol in 2018, a day prior to him leaving the country. The RAD also accepted Mr. Akbariarmand's claim that his former girlfriend's father had contacted government authorities and alleged he had committed adultery.

[15] While the RAD finds that the evidence does not support that Mr. Akbariarmand would likely face execution for sexual activity outside of marriage, the RAD still finds he could face serious harm, including "up to 100 lashes and/or considerable detainment." Ultimately, the

RAD's determination that the government is not motivated to locate Mr. Akbariarmand is not because it does not believe a claim has been filed against him, or that the punishment could only be minor, but because there was no evidence that the government had looked for him since he left the country in 2018. This is the extent of the analysis; it is the same analysis that the RAD used with respect to its finding that his former girlfriend's family and his uncle would not be motivated to find him in Isfahan.

[16] The RAD's conclusion is not supported by the evidence and leaves many questions unanswered. The RAD's analysis is based on the assumption, unsupported by evidence, that the Iranian authorities are not interested in Mr. Akbariarmand because they have not sought him out while he has been out of the country. The RAD's analysis also overlooks that Iranian government authorities control the points of entry and exit of the country. The RAD fails to address the practical issue of Mr. Akbariarmand's interaction with government authorities upon entry to the country given the allegations that have been made against him. There is also no evidence that the nature of the state's interest in Mr. Akbariarmand would be different in Isfahan as opposed to Tehran or any other part of the country (*Sharbdeen v MEI*, [1994] FCJ No 371, (1994) 167 NR 158 (FCA) at para 5).

[17] Overall the RAD's analysis on the lack of motivation of state authorities to locate Mr. Akbariarmand in Isfahan does not "add up" (*Vavilov* at para 104). The RAD's IFA analysis does not grapple with a number of issues that are central to determining the key question of whether Mr. Akbariarmand would be able to safely relocate to Isfahan.

[18] Neither party raised a question for certification and I agree none arises.

JUDGMENT IN IMM-6249-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The June 14, 2022 decision of the RAD is set aside and sent back to be redetermined by a different member; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6249-22
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