

Federal Court



Cour fédérale

Date: 20240304

Docket: IMM-8902-21

Citation: 2024 FC 357

Ottawa, Ontario, March 4, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**JERJEES DANIAL KHAMES DAWOOD
BUSHRA JERJEES HIRMIZ HAQOO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Jerjees Danial Khames Dawood and Bushra Jerjees Hirmiz Haqoo, are a married couple. They sought refugee protection in Canada based on their fear of persecution in Iraq as Chaldean Christians. The Refugee Protection Division (“RPD”) rejected their claim on November 8, 2021. The Applicants are challenging this refusal on judicial review.

[2] The Applicants did not have the assistance of counsel in preparing for their refugee hearing, and were not represented by counsel at the RPD hearing. During the course of the hearing, it became apparent that the Applicants were not familiar with the contents of their refugee claim narrative and forms despite having testified earlier that it had been translated to them and they understood its contents.

[3] The RPD drew negative credibility inferences based on inconsistencies between the Applicants' refugee claim forms and their testimony at the hearing. The Applicants argued that the RPD made negative credibility findings based on a flawed hearing process that did not adequately consider that they had no legal representation. In my view, the Applicants' complaints are really about the merits of the RPD's credibility findings rather than the process that was followed at the hearing. I will review the RPD's credibility determinations on a reasonableness standard.

[4] The RPD relied on discrepancies to make negative credibility findings without grappling with the context in which the discrepancies took place, namely: claimants who had no legal representation, who indicated their minor granddaughter assisted them in completing the forms, and who appeared during the hearing to be surprised by the contents of their forms on key issues. Further, I find it unreasonable for the RPD to have drawn a negative inference based on the Applicants' failure to make a refugee claim in the United States without considering their explanation for not doing so.

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

II. Analysis

[6] The RPD makes a number of negative credibility findings based on discrepancies between the Applicants' refugee forms and the testimony they gave at their hearing. In making these findings, the RPD does not take into account or grapple with the evidence concerning how the forms had been prepared, nor the Applicants' reaction during their testimony to the information contained in the forms.

[7] In its decision, the RPD states that the Applicants were represented by counsel in the preparation of their refugee forms. This is incorrect. Preparation of the refugee forms was explicitly canvassed at the hearing. The Applicants explained that their granddaughter had assisted them with the refugee forms. The RPD asked about their granddaughter's age; Mr. Dawood stated that she was 19 or 20 years old at the time of the hearing. Though not explored further at the hearing, the granddaughter was likely a minor at the time she assisted the Applicants in completing their forms, given that the forms were completed approximately three years prior. Despite this explicit consideration at the hearing, the RPD inexplicably states in their decision that the Applicants were represented by counsel in preparing their refugee forms.

[8] I do not see this as a minor misstep, nor a mistaken choice of words. The fact that the Applicants allegedly had counsel in preparing their forms was part of the RPD's rationale for finding that the Applicants "do not reasonably explain the discrepancies in their testimony." The RPD's finding that the Applicants had counsel, means there is no consideration of the

Applicants' particular context where they completed their forms with the assistance of their granddaughter.

[9] Further, the Applicants' testimony at the hearing also reveals that there were problems with the reliability of the information in the refugee forms. The RPD's recounting of the Applicants' testimony does not capture the Applicants' surprise when they were confronted with particular information contained in their forms at the hearing. For example, one of the key discrepancies set out by the RPD is the different agent of persecution for the 2007 kidnapping of the Applicants' son in Baghdad: the refugee forms indicated it was ISIS; the Applicants indicated a criminal group was responsible. Both Applicants were clear in their testimony at the hearing that they had not written ISIS was responsible in their refugee forms; ISIS did not exist while they lived in Baghdad.

[10] The RPD explains neither this surprise nor the Applicants' insistence that they had not written ISIS was responsible. The RPD considers it a "change of evidence" that negatively impacts their credibility.

[11] The RPD relied heavily on discrepancies in the Applicants' evidence to draw negative inferences on their credibility. As explained above, this analysis was done without grappling with the full context, the factual constraints, surrounding the discrepancies in the evidence. This failure to grapple with the relevant factual constraints bearing on the decision renders the decision unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 101, 105; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 66).

[12] In addition, the RPD did not consider the Applicants' explanation when drawing a negative inference from the Applicants' failure to make a refugee claim in the United States. The RPD stated in its decision that when asked "why they [the Applicants] did not seek protection in the USA, they explained that their daughter residing there cannot support them." This is not an accurate reflection of Mr. Dawood's testimony. The exchange on this point is not very clear because he was never asked why they never made a refugee claim in the United States; instead he was asked why he "chose [...] to seek visa for United States and not for Canada." Further, the RPD does not reference or consider the Applicants' explanation in their refugee forms. The Applicants indicated that they did not make a claim in the United States because they were afraid that the Trump government would send them back to Iraq. This Court has held "the RPD must carefully consider any explanation provided by the applicant and give reasons for rejecting it" (*Salman v. Canada (Immigration, Refugees and Citizenship)*, 2022 FC 984 at para 29). The failure to consider this key aspect of the Applicants' evidence also renders the decision unreasonable.

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

JUDGMENT in IMM-8902-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The November 8, 2021 decision of the RPD is set aside and sent back to be redetermined by a different member of the RPD; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8902-21

STYLE OF CAUSE: JERJEES DANIAL KHAMES DAWOOD AND
BUSHRA JERJEES HIRMIZ HAQOO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 30, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MARCH 4, 2024

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