

Federal Court



Cour fédérale

**Date: 20131204**

**Docket: IMM-12463-12**

**Citation: 2013 FC 1214**

**Toronto, Ontario, December 4, 2013**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**TAHMINEH GOUGOUSHVILI,  
THROUGH HER LITIGATION GUARDIAN  
TEIMOUR GOUGOUSHVILI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] A lack of inherent logic to the Applicant's own narrative, in and of itself, leads to a lack of credibility. When a transcript of the words of an applicant, or his or her designated representative, in a hearing brings out an overall cacophony between it and the written Personal Information Form [PIF] of an applicant, credibility becomes the issue.

## II. Introduction

[2] The Applicant seeks a judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated November 15, 2012, wherein, it was determined that the Applicant was not a Convention refugee under section 96 nor a person in need of protection under section 97 of the *Immigration and Refugee Protection Act, SC 2001 c 27* [IRPA].

## III. Background

[3] The Applicant, Ms. Tahmineh Gougoushvoli, is a 50-year-old woman from Tehran, Iran.

[4] According to the Applicant's PIF narrative, she and her husband applied for permanent residence in Canada and were planning to immigrate together under the Provincial Nominee Program.

[5] The Applicant arrived to Canada on September 12, 2011 without her husband. Upon arriving to Canada, the Applicant was informed that she was not eligible to land in Canada as a permanent resident without her husband, who was represented to immigration authorities as being a successful provincial nominee of Prince Edward Island.

[6] A few days later, on or about September 16, 2011, the Applicant explains that her husband attempted to leave Iran; however, he was prevented from doing so by Iranian authorities. His passport was seized at the airport and he was subsequently detained and tortured.

[7] On October 21, 2011, the Applicant submitted a refugee claim.

[8] On November 15, 2012, the RPD determined that the Applicant was neither a Convention refugee nor a person in need of protection.

#### IV. Decision under Review

[9] After considering all of the documentary and testimonial evidence, the RPD found that a number of aspects of the Applicant's claim lacked credibility. In particular, the RDP noted that the Applicant's narrative significantly evolved at the hearing, and that there were a number of significant omissions in the Applicant's PIF:

- a) The Iranian authorities were interested in the Applicant, and not only her husband;
- b) The Applicant's husband had been detained twice after his initial arrest at the airport;
- c) The Applicant participated in anti-regime demonstrations with her husband;
- d) The Iranian authorities have photographs of the Applicant at demonstrations.

[10] The RPD further found that the Applicant had failed to provide corroborating evidence to support her claim, which further diminished her credibility.

[11] In light of the inconsistencies on material facts of her claim, and a lack of objective evidence to support her claim, the RPD concluded that the Applicant had not established her allegations of a serious possibility of persecution or risk of torture or cruel and unusual punishment if returned to Iran.

## V. Issues

- [12] (1) Did the RPD breach its duty of procedural fairness by not providing the Applicant an opportunity to address deficiencies in the evidence?
- (2) Is the RPD's credibility determination reasonable?
- (3) Did the RPD fail to consider relevant evidence?

## VI. Relevant Legislative Provisions

- [13] The following legislative provisions of the *IRPA* are relevant:

### **Convention refugee**

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### **Définition de « réfugié »**

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### **Person in need of protection**

**97.** (1) A person in need of protection is a person in Canada

### **Personne à protéger**

**97.** (1) A qualité de personne à protéger la personne qui se

whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care.

médicaux ou de santé  
adéquats.

**Person in need of protection**

**Personne à protéger**

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

**VII. Position of the Parties**

[14] The Applicant argues that the RPD failed to apprise her of concerns that affected her credibility before rendering its decision. The Applicant states that the RPD ought to have informed her of the deficiencies in the documentation provided and of any missing information in her file prior to rendering its decision.

[15] The Applicant also argues that the RPD erred in relying on inconsistencies between her PIF and her designated representative's testimony to draw a negative credibility finding as the PIF was out of date.

[16] The Applicant also contends that the RPD did not consider the evidence that she submitted in support of her claim (no reference to specific evidence is given).

[17] The Respondent submits that there were important contradictions and omissions in the evidence provided by the Applicant and that these elements served as a basis for a negative

credibility finding. Additionally, there was no reliable or independent evidence submitted to the RPD to possibly displace its negative credibility finding.

[18] The Respondent asserts that it was reasonable for the RPD to expect corroborative evidence in support of the Applicant's claim in these circumstances (*Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (QL/Lexis) (FCA)). The Applicant's failure to produce such evidence permitted the RPD to draw an adverse inference.

### VIII. Analysis

#### *Standard of Review*

[19] The applicable standard of review for the first issue raised by the Applicant of procedural fairness is the standard of correctness (*Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 3 FCR 392 at para 53-54; *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2009 FC 709, 347 FTR 76 at para 29; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[20] In contrast, the applicable standard of review for the issues involving the RPD's weighing of evidence and credibility findings is the standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993) 160 NR 315 (FCA) at para 4).

(1) Did the RPD breach its duty of procedural fairness by not providing the Applicant an opportunity to address deficiencies in the evidence?

[21] With regard to the first matter raised by the Applicant, the Court finds that the RPD made no reviewable error. This Court has often noted that the RPD may draw an unfavourable conclusion

from the fact that a refugee claimant has not produced sufficient corroborating evidence in support of his or her testimony when there are concerns to his or her credibility (*Adu*, above; *Chsherbakova v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1308; *Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473).

[22] In the recent case of *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 442, Justice Michel Beaudry summarized the Court's jurisprudence on this point:

[15] On numerous occasions, this Court has confirmed that the panel may draw a negative inference because a claimant has not produced corroborative evidence to support his or her testimony when the panel has credibility concerns (*Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473, 105 A.C.W.S. (3d) 725; *Muthiyansa v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 17, 103 A.C.W.S. (3d) 809; *Dhindsa v. Canada (Minister of Citizenship and Immigration)*, 102 A.C.W.S. (3d) 165, [2000] F.C.J. No. 2011 (F.C.T.D.) (QL); *Quichindo v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 350, 115 A.C.W.S. (3d) 680).

[23] Contrary to the Applicant's position, the RPD did not have an obligation to put all of its concerns regarding her credibility before her, nor inform her of any "missing" documentation or deficiencies that may have been present in such documentation prior to rendering a decision (*Morales v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1239 at para 24). The onus was on the Applicant to establish her claim.

[24] In any event, the Court finds that the Applicant was sufficiently made aware that her credibility was at issue in this case, and that corroborative evidence was expected from her. In the Notice to Appear and Screening Form, the Applicant was clearly informed that she was required to provide "acceptable, original documents" establishing her identity and the central elements of her claim (Certified Tribunal Record [CTR] at pp 36-40); this included, explicitly, her "civil status" and



“political affiliations”. The Screening Form, in particular, also noted that the Applicant’s credibility, which included the “reliability of her documents”, was considered a central issue in her claim (CTR at p 39).

[25] Additionally, a reading of the hearing transcript shows that the RPD also informed the Applicant’s designated representative several times during the hearing in regard to its concerns as to the lack of corroborative evidence supporting the claim (Hearing Transcript at pp 9, 16 and 18); however, the Applicant’s designated representative did not provide any further corroborative documentation, nor did he provide a satisfactory explanation for why it was missing. He also did not indicate what steps, if any, were taken to obtain documentation to support the Applicant’s claim.

[26] Based on these facts, the Court cannot accept the Applicant’s claim that the RPD failed to inform her of its concerns regarding her credibility or the lack of corroborative evidence. The Applicant was given ample opportunity to disabuse the RPD of its concerns.

[27] As the Court finds that the RPD did not breach this requirement of procedural fairness, it cannot intervene on this ground.

(2) Is the RPD’s credibility determination reasonable?

[28] It is well-established that the accumulation of contradictions between an applicant’s testimony, port of entry statements and PIF, as well as omission of elements in the PIF, crucial to his or her claim, may legitimately serve as a basis for a negative credibility finding (*Trochez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1016; *Cienfuegos v Canada (Minister*

*of Citizenship and Immigration*), 2009 FC 1262 at para 1). Such findings can also be based on common sense, implausibility and a lack of inherent logic to an applicant's narrative (*Shahamati v Canada (Minister of Employment and Immigration)*), [1994] FCJ No 415 (QL/Lexis) (FCA)).

[29] When such findings are made, they are dispositive of a claim; unless the record contains reliable and independent documentary evidence to rebut it (*Sellan v Canada (Minister of Citizenship and Immigration)*), 2008 FCA 381).

[30] After reviewing the submissions of the parties and the evidence on the record, the Court is satisfied that the credibility concerns cited by the RPD led it to a conclusion that was within the range of possible, acceptable outcomes.

[31] The Court finds that the Applicant's PIF narrative contained important contradictions and implausibilities regarding central allegations of her claim. Likewise, there were significant omissions in her PIF regarding her involvement in the anti-regime demonstrations in Iran and her husband's attempted departure from Iran and his subsequent arrests. A significant part of the Applicant's narrative was only brought out on the date of the hearing. The Court agrees that these omissions considerably diminish the Applicant's credibility.

[32] In her submissions, the Applicant explains that her PIF narrative diverges from her testimony because it was simply out-of-date at that time of the hearing; however, as properly indicated by the Respondent, all omitted facts in her PIF took place prior to the submission of her PIF. It was therefore reasonable for the RPD to expect that these facts would have been included in

the PIF, especially given their significance to her claim; or could have, at the very least, been included in an amended PIF prior to the hearing.

[33] Consequently, the Court finds that the RPD had sufficient reason to make a negative credibility finding. The negative inferences drawn by the RPD were not just based on “minor or trivial variations or omissions”, but rather, on the central elements of her claim (*Chavez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 10 at para 13-15; *Moscol v Canada (Minister of Citizenship and Immigration)*, 2008 FC 657 at para 21-22; *Nsombo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 505).

[34] The Court does agree with the Applicant that there was an error made by the RPD regarding the date she claimed refugee status in Canada; however, this error, in and of itself, is not sufficient to render the RPD’s credibility determination unreasonable. Despite this error, the decision, nevertheless, remains justified, transparent and intelligible, and therefore, cannot be subject to the Court’s intervention.

(3) Did the RPD fail to consider relevant evidence?

[35] This Court has repeatedly confirmed that the RPD is best placed to assess the credibility of applicants and of evidence, and its determinations on such matters are owed significant deference (*Aguebor*, above). As such, in assessing the reasonableness of the RPD’s conclusions, the decision must be considered as a whole (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

[36] The RPD does not need to mention every piece of evidence in its decision; there exists a presumption that the RPD considered all the evidence before it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL/Lexis) (FCA); *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ No 946 (QL/Lexis) (FCA)).

[37] In the present case, it was up to the RPD to weigh the evidence and to make negative findings supported by that evidence (*Antrobus v Canada (Minister of Citizenship and Immigration)*, 2012 FC 3). It is not the function of this Court to reweigh the evidence and substitute its decision for that of the RPD.

[38] When considered as a whole, the Court finds that the RPD's decision was well within the range of possible, acceptable outcomes, and that its conclusions were reached having regard to all of the evidence before it. The Applicant has not shown what evidence could have further corroborated her version of the facts or assuaged the RPD of its credibility concerns. It is also important to note that the Applicant made no attempt in her submissions to the Court to explain what specific evidence she feels was ignored by the RPD.

## IX. Conclusion

[39] For all of the above reasons, the Applicant's application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-12463-12

**STYLE OF CAUSE:** TAHMINEH GOUGOUSHVILI, THROUGH HER  
LITIGATION GUARDIAN TEIMOUR GOUGOUSHVILI  
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**DATE OF HEARING:** DECEMBER 3, 2013

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