

CANADA / JUDGMENT

TB9-09183

COURT

Refugee Appeal Division

DECIDED

21 September 2020

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RAD File / Dossier de la SAR : TB9-09183 TB9-09184 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision September 21, 2020 Date de la décision Panel Caitlin Maxwell Tribunal Counsel for the persons who are the subject of the appeal Mohammad Reza Rouhi Immigration Consultant Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] These are my reasons for granting the appeal of XXXX XXXX ("Principal Appellant") and XXXX XXXX XXXX ("Minor Appellant"). I am substituting a decision that the Appellants are Convention refugees.
- [2] The Principal Appellant claims a fear of persecution for herself and her daughter, both citizens of Iran, because of her conversion to the Baha'i faith from Islam, and because of the regime's strict dress code for women. The RPD determined that there was a lack of subjective fear and that the Principal Appellant had not credibly established her conversion to the Baha'i faith.
- [3] On appeal, the Appellants allege that the panel breached natural justice by failing to hear from their second witness, and erred in requiring corroborative evidence of the Principal Appellant's Baha'i practice in Iran, in assessing subjective fear, in engaging in an overly microscopic analysis of the evidence, and in making unsustainable plausibility findings. In addition, they submit that the Principal Appellant's membership card, issued by the National Spiritual Assembly of the Baha'is of Canada after the RPD decision, establishes the genuineness of her faith, and that the Iranian regime monitors the activities of the Baha'i community in Canada, resulting in further risk to the Appellants upon return. ROLE OF THE RAD

- [4] Generally, I must review a decision of the RPD on a standard of correctness.¹ The exception to this rule is where the RPD enjoys a meaningful advantage in assessing the credibility of oral testimony, which may attract deference in particular cases.² In this case, however, the RPD had no advantage. I have therefore considered whether its decision was correct. NEW EVIDENCE AND ORAL HEARING
- [5] The Appellants are seeking to admit several pieces of new evidence:
- a. Letter from psychotherapist, dated XXXX XXXX 2020, filed after the appeal record;
 - b. Declaration from XXXX XXXX, dated XXXX XXXX 2019, filed with the appeal record;
 - c. Declaration from XXXX XXXX, dated XXXX XXXX 2020, filed after the appeal record;
 - d. Membership card issued by the National Spiritual Assembly of the Baha'is of Canada, accompanied by an issuance letter, dated XXXX XXXX 2019, filed after the appeal record.
- [6] In assessing whether to admit new evidence, I must consider the statutory requirements of IRPA s. 110(4), i.e. whether the evidence arose after the rejection of the claim, or was not reasonably available, or could not reasonably have been expected in the circumstances to have been presented at the time of the rejection. I am also mindful of the Raza factors, which the Federal Court of Appeal confirmed in Singh are relevant to the assessment of new evidence before the RAD;³ namely, whether the evidence is new, credible, and relevant.
- [7] Rule 29 imposes additional requirements on evidence submitted after the Appellants' record has been filed. In order for a document to be admitted, I must first consider its relevance and probative value; any new evidence the document brings to the appeal; and whether the person subject to the appeal could have, with reasonable effort, provided the document with the record.⁴
- [8] First, while I accept that the Principal Appellant was experiencing distress for which she sought treatment by a psychotherapist after the RPD decision was issued, the letter does not speak to credibility issues identified by the RPD, but rather to the impact that waiting for an appeal decision, and not being able to visit with her husband, has had on her mental health. While it is relevant to the Appellants' request to have their hearing expedited-and I note that a virtual hearing was held as soon as possible with the Appellants' consent-it is not relevant to the substantive issues on appeal and therefore not admitted as new evidence.
- [9] With respect to the declaration filed with the appeal record, it is from an individual who identifies himself as Baha'i, who confirms that the Principal Appellant contacted him about attending Baha'i gatherings in Kitchener/Waterloo in XXXX 2018. There is no reason why this evidence could not have been filed prior to the RPD decision, which was issued in March 2019. It is therefore not new, and not admitted.
- [10] With respect to the declaration filed just prior to the appeal hearing, the Appellants were advised at the hearing that it was not filed in accordance with Rule 29-no submissions explaining the delay or its relevance and probative value were provided-and, further, that it

lacked information on the declarant's identity and relationship to the Principal Appellant. At the hearing, the Principal Appellant clarified that the declaration was from her uncle; counsel subsequently submitted a copy of his identity document by fax. The declaration simply states that the Principal Appellant is a Baha'i convert actively practicing her faith, and is at risk in Iran. While the document does not meet the requirements of Rule 29, as there is no reason it could not have been filed with the appeal record, and for that matter, s. 110(4), as there is no reason why it could not have been provided before the RPD, I am prepared to accept it because the Appellants sought to have it admitted in lieu of testimony at the appeal hearing. There appears to have been some confusion given the virtual proceeding. In any event, nothing turns on this document.

- [11] However, counsel should familiarize himself with the requirements of both Rule 29 and s. 110(4). Contrary to his repeated assertion in oral submissions, a RAD appeal is not a de novo proceeding. As Justice Walker explained in *Eshetie*, it is not a second chance to submit evidence to answer weaknesses identified by the RPD:⁵ In other words, responding to an inadequacy identified by the RPD in a party's case cannot be a legitimate foundation for the party to claim that had she known about the deficiency she could have presented better evidence [...]. This would make the RPD process a monumental waste of time, which is surely not Parliament's intention in providing appeal rights.⁶
- [12] While the Principal Appellant appears to have applied for a membership card at least in part because the RPD's rejection,⁷ I am nevertheless prepared to accept the membership documents as new evidence on appeal. They were issued after the RPD's decision and after the filing of the appeal record by the National Spiritual Assembly of the Bahais of Canada and appear to be credible on their face. They are highly relevant to the credibility of the Appellant's religious profile.
- [13] The RAD can only hold a hearing if there is new evidence that raises a serious issue with respect to the Appellants' credibility, which is central to the decision in the claim, and, if accepted, would justify accepting or rejecting the claim.⁸ A virtual hearing was held on 14 September 2020 to examine the probative value of the membership card and the credibility of the Principal Appellant's faith in light of its issuance.

ANALYSIS

- [14] The determinative issue on appeal is the credibility of the Principal Appellant's Baha'i practice in Canada. While I agree with the RPD that there were credibility issues in this case, particularly around a delay in claiming and events in Iran, I find that the Principal Appellant has made out a sur place claim based on her activities in Canada. It is not necessary for me to deal with the other arguments raised by counsel. Conversion to Baha'i faith established on a balance of probabilities

- [15] The Principal Appellant's Baha'i membership documents establish, on a balance of probabilities, that she has converted to the Baha'i faith. She was questioned at length about the membership process at the hearing of her appeal. She testified to having to provide supporting documents of her involvement in the Baha'i community, her study of the faith, and references from fellow practitioners, to receive a recommendation from the local spiritual assembly. Once approved by the local spiritual assembly, her application was submitted to the national spiritual assembly, who reviewed it, and decided to issue a membership. While the Appellants could have done a better job of documenting this process, perhaps avoiding the need for a hearing altogether, I am prepared to accept the Principal Appellant's testimony in this regard. I find the local and national bodies' recognition of her as a genuine Baha'i highly probative and give significant weight to this evidence.
- [16] While the Minor Appellant is only 16 years old, and has not formally adopted the Baha'i faith yet, she has been attending youth activities as part of the Baha'i community in Canada. Given her involvement in the community and her mother's formal conversion to the faith, I find that the Minor Appellant would be perceived as Baha'i upon return to Iran. Documentary evidence confirms objective risk of persecution
- [17] The documentary evidence demonstrates that the Iranian government continues to harass, interrogate, arrest, and detain religious minorities, including Baha'is.⁹ Apostasy is a capital offence.¹⁰ Those who espouse minority religious beliefs have been targeted and prosecuted by the Iranian state,¹¹ including with vague national security charges.¹² There are also credible reports that the security forces torture detainees and prisoners.¹³ Baha'is also face societal violence, which is condoned by the state, as well as widespread discrimination in areas such as employment and education.¹⁴ Baha'i students are barred from attending higher education.¹⁵ The online activities of Baha'is and other religious minorities are reportedly monitored by the Iranian government, including, in some instances, the activities of those abroad.¹⁶
- [18] I therefore find that the Appellants have established a serious possibility of persecution on the Convention ground of religion. No state protection or viable internal flight alternative
- [19] As the agent of persecution is the Iranian government, there is neither state protection nor a viable internal flight alternative available.

CONCLUSION

- [20] For the reasons set out above, the appeal is allowed. The RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) "Caitlin Maxwell" Caitlin Maxwell September 21, 2020 Date 1 Canada (MCI) v. Huruglica, 2016 FCA 93, para. 103. 2 Ibid., at para. 70. 3 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, at para. 74. 4 Refugee Appeal Division Rules (SOR/2012-257), Rule 29(4). 5 Eshetie v. Canada (Citizenship and Immigration), 2019 FC 1036,

at para. 33. 6 Ibid., citing *Abdullahi v. Canada* (Citizenship and Immigration), 2016 FC 260, at para. 15. 7 See counsel's submissions at Exhibit P-3, Counsel's submission accompanying membership documents, at paras. 3-4. At the RPD hearing, the Principal Appellant testified that she had not applied for a card, because it was primarily an administrative matter; it enabled one to vote in council elections and travel to the international headquarters in Haifa. She indicated that she had not been involved long enough in the Baha'i community in Canada to feel comfortable to vote. At the appeal hearing, she testified that she decided to apply for a membership card after the RPD rejected her claim, and also that membership was a means to deepening her involvement in the Baha'i community in Canada. 8 Immigration and Refugee Protection Act (S.C. 2001, c. 27), s. 110(6). 9 National Documentation Package ("NDP") for Iran (31 March 2020), Item 12.1, US Department of State, International Religious Freedom Report 2018: Iran, 21 June 2019, at p. 2; Item 2.4, Amnesty International, Human Rights in the Middle East and North Africa: Review of 2019 - Iran, 18 February 2020, at p. 4. 10 NDP for Iran (31 March 2020), Item 12.11, Iran Human Rights Documentation Center, "Apostasy in the Islamic Republic of Iran," 30 July 2014, at p. 6. 11 Ibid. 12 NDP for Iran (31 March 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices for 2019: Iran, 11 March 2020, at p. 17. 13 Ibid., p. 6. 14 NDP for Iran (31 March 2020), Item 12.1, US Department of State, International Religious Freedom Report 2018: Iran, 21 June 2019, at p. 2, 28; see also, Item 2.4, Amnesty International, Human Rights in the Middle East and North Africa: Review of 2019 - Iran, 18 February 2020, at p. 4; Item 2.5, Human Rights Watch, World Report 2020: Events of 2019 - Iran, January 2020, at p. 6. 15 NDP for Iran (31 March 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices for 2019: Iran, 11 March 2020, at p. 28. 16 Ibid., at pp. 19, 25-27; see also, Item 11.5, Carnegie Endowment for International Peace, "Iran's Cyber Threat: Espionage, Sabotage, and Revenge," 4 January 2018, at pp. 44-45; Item 11.6, Center for Human Rights in Iran, "Guards at the Gate: The Expanding State Control Over the Internet in Iran," 9 January 2018, at p. 35.

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