

CANADA / JUDGMENT

TB8-04121

COURT

Refugee Appeal Division

DECIDED

27 January 2020

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RAD File / Dossier de la SAR : TB8-04121 TB8-04122 / TB8-04123 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered /
heard at Toronto, ON Appel instruit / entendu à Date of decision January 27, 2020 Date de la
décision Panel David Morris Tribunal Counsel for the persons who are the subject of the appeal
Manmeet Kaur Conseil des personnes en cause Designated representative XXXX XXXX XXXX
Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR
DECISION

INTRODUCTION

- [1] The Appellants XXXX XXXX XXXX XXXX (Principal Appellant), his wife, XXXX XXXX XXXX (Associate Appellant), and their female child, XXXX XXXX XXXX (Minor Appellant), citizens of Iraq, appeal a decision of the Refugee Protection Division (RPD), dated November 9, 2017, which rejected their claims for refugee protection.

DETERMINATION

- [2] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the Immigration and Refugee Protection Act (IRPA),¹ the determination of the RPD is set aside. I substitute my own determination that the appellants are Convention refugees.

BACKGROUND

- [3] The Appellants are ethnic Kurds. The Appellants lived in the city of Sulaymaniyah in the Kurdistan Region of Iraq (KRI) prior to fleeing the country for the United States of America (USA) on XXXX XXXX 2016. The Appellants arrived in Canada and claimed refugee status on XXXX XXXX 2017.
- [4] The Principal Appellant fears he will be persecuted or harmed in Iraq because he has converted from Islam to Christianity. The Associate Appellant fears her paternal uncles who have threatened and beat her because she does not conform to fundamentalist religious codes of dress and behaviour and because she has married an apostate. SCOPE OF THIS APPEAL

- [5] I have considered the entire Record to determine whether the RPD's decision is correct on questions of law, fact or mixed law and fact.²
- [6] The adult Appellants, the Principal Appellant and the Associate Appellant, were questioned by the RPD panel. I have reviewed their testimony in light of the documents they filed in support of their claims as well as the objective documentation. Having done so, I find that the RPD had no meaningful advantage over the Refugee Appeal Division (RAD) in evaluating this evidence. Therefore, I have not deferred to the RPD's findings. ISSUES ON APPEAL
- [7] The determinative issue in this appeal is credibility. The RPD found that the Appellants were not credible with regard to the Principal Appellant's profile as a convert from Islam to Christianity. The RPD further found insufficient evidence that the Associate Appellant's relatives intend to harm her or the other Appellants either because of her husband's conversion or her secular outlook.
- [8] Specifically, the RPD found the Principal Appellant lacked certain basic knowledge regarding Christianity. The RPD also found significant inconsistencies in the Principal Appellant's testimony.
- [9] The Appellants raise the following issues on appeal which I have reordered and revised for the sake of clarity:
1. The RPD erred by failing to independently assess the objective evidence;
 2. The RPD erred in its negative assessment of the Principal Appellant's credibility with regard to his conversion to Christianity;
 3. The RPD erred by ignoring relevant evidence and assigning little weight to the Appellants' documentary evidence; and
 4. The RPD erred by relying on objective documentation that was not applicable to the Appellants' claims. NEW EVIDENCE SUBMITTED WITH THE APPELLANTS' RECORD
- [10] With their Record, the Appellants submitted the following documents which I have considered for admission as new evidence:
1. A copy of the web page from Jesus Way Church;³
 2. A copy of the Facebook page from St. Joseph Chaldean Catholic Church;⁴
 3. An article from basnews.com entitled "Cleric, Member of KIG, Says Killing of Muslims Who Apostate Islam Legitimate";⁵
 4. An anonymous "threat letter";⁶
 5. Paragraph 8 of the "Appellant's Affidavit";⁷ and
 6. Transcribed excerpts from the RPD hearing with the transcriber's comments.⁸

[11] My jurisdiction to admit new evidence is limited. I may only admit new evidence if: 1) the evidence arose after the rejection of the claim; 2) the evidence was not reasonably available before the rejection; or 3) the appellant could not have been expected to present the evidence before the rejection.⁹ If one of these criteria is met, I must then determine whether the evidence is new, credible and relevant.¹⁰

1. Web page from Jesus Way Church

[12] Even if the web page met the requirements of subsection 110(4) of IRPA, this document cannot be admitted. This is because it is not new in the sense of being able to contradict a finding of fact made by the RPD. The RPD accepted, as do I, that the Principal Appellant has been attending this church since April 2017. The information contained in this web page is also not relevant as it does not address the central issue of the credibility of the Principal Appellant's conversion.

2. Facebook page from St. Joseph Chaldean Catholic Church

[13] It appears the events referred to in this Facebook page occurred on 15 April 2017 and were posted on 18 April 2017. It was therefore in existence approximately five months prior to the rejection of these claims. No submissions have been made on the Appellants' behalf as to whether this page was available prior to the rejection of their claims or why it could not reasonably have been expected to have been presented. Appellants are expected to provide detailed submissions with respect to the admissibility of new evidence. I decline to make arguments on the Appellants' behalf and determine the Facebook page is not admissible.

3. Article from basnews.com

[14] This article is not admissible.

[15] The article itself is from a reasonably well-known Kurdish online publication: Basnews. It reports on a cleric in the KRI who has called for converts from Islam to be killed. The cleric is reportedly a member of Komal - the same group to which the relatives who have threatened the Appellants belong. Although there is no date on the document, the Appellants indicate the article was published on 3 February 2017. It therefore arose and was reasonably available prior to the rejection of the Appellants' claims.

[16] No arguments have been made on the Appellants' behalf as to why they could not reasonably have been expected to present this evidence prior to the rejection of their claims.

[17] The issue of the treatment of apostates in KRI was central to the Appellants' claims. The Appellants were represented by counsel. The Appellants' provided substantial documentation in support of their claims in the clear expectation it would assist their case. I therefore find this article could reasonably have been expected to have been presented at the time of rejection.

- [18] In any case, I find the article brings nothing new to the appeal. This is because I accept, based on the objective documentation already on the Record, that if the Principal Appellant has indeed converted from Islam to Christianity, he could be at risk from fundamentalists in Iraq and the KRI, including the Komal group.
- [19] The information contained in this article is also not relevant as it does not address the central issue of the credibility of the Principal Appellant's conversion to Christianity.
4. Anonymous threat letter
- [20] This letter cannot be admitted as it does not meet the requirements of subsection 110(4) of IRPA.
- [21] In his affidavit the Principal Appellant states that after the Appellants left Iraq and arrived in the USA his brother-in-law found the letter at their home. He then mailed the letter to the Appellants in Canada. The letter is undated. However, the Appellants submit that the letter was provided to counsel prior to their hearing but never submitted on their behalf.
- [22] Once again, no submissions have been made on behalf of the Appellants as to how these circumstances meet the requirements of subsection 110(4) of IRPA. When did the Appellants become aware the document had not been submitted? We are not told why previous counsel did not submit the letter, why it was not submitted either between sittings or in the three weeks between the last sitting and the time of rejection, how is it that the Appellants did not notice that this crucial document was never referred to throughout two days of hearing sittings and so on.¹¹
- [23] It is for the appellant to make full and detailed submissions as to how any proposed new evidence meets the requirements of subsection 110(4) of IRPA.¹² The Appellants are represented by counsel who should be aware of his obligations in this regard.
- [24] In the absence of detailed submissions, I find this evidence cannot be admitted.
- [25] Even if this evidence had been shown to meet the requirements of subsection 110(4) of IRPA, I find that the letter lacks credibility with regard to the circumstances of its submission. It therefore does not meet the Singh test for admissibility.¹³ This is because the submission of this document now, which goes to the heart of the Appellants' claims, with no reasonable explanation as to how or why it was not entered into the RPD Record, is simply implausible. It calls the authenticity of the document into question.
- [26] I make no finding as to whether this should lead to an adverse inference with respect to the Appellants' overall credibility. I simply note for present purposes that I do not find the document itself credible as it relates to admission.
5. Affidavit of the Principal Appellant

- [27] Included in the Appellants' Record is the Affidavit of the Principal Appellant.¹⁴ I find part of this Affidavit, specifically paragraph 8, to be new evidence. I find this evidence is admissible under subsection 110(4) of IRPA.
- [28] Specifically, the Principal Appellant asserts that when asked the name of the church he attended in Iraq, he misunderstood the question and answered with the name of the priest of the church. The Principal Appellant asserts that, while the interpreter did interpret the name "Amen", the interpreter failed to interpret the word "Father". This led the RPD to conclude that the Principal Appellant had testified the name of the church was "Amen Church".
- [29] Given the fact that a single word appears to have been missed by the interpreter, I find that this was an error that could easily have been missed without ascribing any lack of diligence to the Appellants, their counsel or the RPD. I therefore find the Appellants could not reasonably have been expected to present this error at the time of rejection as they were likely not aware of it.
- [30] I further find that this evidence is relevant to the RPD's finding that the Principal Appellant gave a different name for his church in testimony than he had in his BOC and documentation. The RPD placed significant emphasis on this apparent inconsistency. This evidence is therefore capable of proving or disproving a relevant issue and should be admitted.
6. Transcribed excerpts from the RPD hearing
- [31] I have determined that these excerpts were not reasonably available at the time of rejection.
- [32] Generally, I do not find it reasonable to expect that Appellants would normally have to obtain the recording of the hearing and have it transcribed prior to receiving the decision in their case. This may be different in cases where an appellant wishes to raise negligent, incompetent or inadequate interpretation. However, I do not find this is the case here. The Appellants are simply alleging that a single word was missed. Even if it were reasonable to expect the Appellants to have presented this evidence prior to rejection, I find that they would not have had reasonable time to do so between the close of the hearing on 20 October 2017 and the rejection of their claim on 9 November 2017.
- [33] However, I find the majority of the excerpts are not relevant as I already have the complete recording of the hearing sittings and the transcripts of those recordings before me.
- [34] There is one portion of these excerpts which I do find relevant nonetheless. This is where the transcribing translator notes that the interpreter had failed to interpret the word "Father" when the Principal Appellant replied "Father Amen".¹⁵ This goes directly to the issue of whether there was a significant inconsistency in the Principal Appellant's testimony. I therefore find that this portion of the excerpts submitted by the Appellants should be admitted into evidence. ORAL HEARING

- [35] Although I have determined that some of the new evidence is admissible, I find that an oral hearing is not necessary. I find this new evidence raises a serious issue with respect to the credibility of the Appellants that was central to the RPD's assessment of their claims. That is whether the Principal Appellant contradicted himself with regard to the name of the church he attended in Iraq.
- [36] However, I find accepting this evidence does not justify allowing or rejecting the Appellants' claims. This is because simply knowing the correct name of the church and the priest in question does not by itself establish the Principal Appellant's profile as a convert from Islam.
- [37] I find there is sufficient evidence already on Record for me to assess the Appellants' credibility and to determine whether their profiles have been established.
- [38] The request for an oral hearing is therefore denied.

ANALYSIS

- [39] I find that the Principal Appellant's evidence was somewhat lacking in detail. However, considering the totality of the evidence I find that he has established, on a balance of probabilities, that he has converted to Christianity. I further find that the Associate Appellant's profile as a woman who does not conform to fundamentalist codes of behaviour and dress would give rise to a serious possibility of persecution. I therefore find that the Appellants are Convention refugees.
1. The RPD erred in its negative assessment of the Principal Appellant's credibility with regard to his conversion to Christianity
- [40] Having reviewed the audio recording and transcripts of the hearing, paragraph 8 of the Principal Appellant's affidavit and the relevant portion of the transcribed excerpt of the hearing, I find the RPD clearly misapprehended the Principal Appellant's testimony. Specifically, when asked for the name of his church in Iraq, the Principal Appellant answered with the name of the pastor of that church: Father Amen.¹⁶ The RPD found this response was inconsistent with the documentary evidence which indicated the church was named Mar Youssef Chaldean Catholic church.¹⁷
- [41] The Principal Appellant immediately explained that he had thought he was being asked the name of the pastor.¹⁸ Unfortunately, the RPD compounded this error when it found "the claimant's answer to the panel's question about the name of the church was 'Amen Church'."¹⁹ The recording and transcript clearly show that the Principal Appellant answered "Father Amen" in the Kurdish language, and that only the word "Amen" was translated. The word "church" was simply not part of the Principal Appellant's answer.²⁰

- [42] While I agree that there was confusion around this line of questioning, I find that the confusion arose from the word "Father" not being interpreted at the very outset and not because the Principal Appellant contradicted himself. I therefore find that the RPD erred in drawing a negative inference from this testimony.
- [43] I find the RPD also erred when it drew a negative credibility inference "from the fact that the claimant is not more aware or knowledgeable of basic doctrinal differences between these two fundamentally different Christian sects [i.e. Catholicism and Evangelism]."21 First, I find it is unclear what doctrinal differences the RPD is referring to or what the source of its knowledge is with regard to the supposed fundamental differences. Second, I find the Principal Appellant's knowledge, or lack thereof, of doctrinal differences between Evangelicals and Catholics simply does not bear on the sincerity of his conversion. Third, while I agree the RPD is free to assess rationality and common sense in assessing credibility, I do not find it did so in this case. Rather, it based this particular credibility finding on "doctrinal differences" that were never identified or even shown to exist.
- [44] I find the RPD also erred when it found that the Associate Appellant testified her husband had only been interested in Christianity since 2007, while her husband's testimony was that he had been interested much earlier. The Associate Appellant was clear that her husband had been interested in Christianity and intended to convert since the time they first met and started seeing each other.²² This does not contradict the Principal Appellant's testimony that he became interested in Christianity before he and the Associate Appellant met.
- [45] In reviewing the Principal Appellant's evidence, I find that he did express some knowledge of the Christian faith.²³ While I find his knowledge was not extremely detailed, it was consistent with what one might expect for someone who could not freely practice. The Principal Appellant also submitted a document from the Mar Youssef Church which indicates he was baptized in Sulaymaniyah on 7 February 2010.²⁴ Since I have found this document does not conflict with the Principal Appellant's testimony, I accept it as proof of his baptism. I also note that the Principal Appellant has presented a document from his church in Canada which indicates he has attended services there since April 2017.²⁵
- [46] I therefore find, on a balance of probabilities, that the Principal Appellant has converted from Islam to Christianity.

2. The Associate Appellant's claim

- [47] The Associate Appellant's claim was not solely based on that of her husband's. Although she did claim her paternal uncles and cousins had targeted her because she married a convert, she also alleged she was attacked and threatened by her relatives because of her secular views.
- [48] In fact, the RPD accepted that the Associate Appellant had "a secular outlook and that [she] does not wish to conform to fundamentalist religious codes of dress and behaviour for women. This was readily apparent from their demeanor in the hearing room."²⁶

- [49] Regardless of her husband's claim or his conversion, I therefore find that the Associate Appellant has established her profile as a woman who does not adhere to strict Islamic customs and norms.
3. The RPD erred in its assessment of the objective evidence
- [50] The RPD found that the objective evidence did not support the Appellants' claims.
- [51] The only document the RPD referred to was a March 2014 article from the Guardian which quoted the Head of the Kurdistan Regional Government's Department of Foreign Relations as saying that the KRI is an "open and secular [society]".²⁷
- [52] I find the RPD's assessment focuses on a single statement by a government official while ignoring substantial evidence from the same document which points to the opposite conclusion.
- [53] Specifically, this document shows that KRI is regarded as somewhat more tolerant with regard to religious issues than the rest of Iraq or Middle East.²⁸ Christians do live and practice their faith in KRI. However, the statement relied on by the RPD simply does not address the situation of converts from Islam (apostates) or women who do not conform to strict Islamic codes of behavior or dress.
- [54] The RPD also does not mention the other sources quoted in this document. These indicate that KRI remains relatively conservative with regard to religious issues,²⁹ that persons are not free to speak against religion (i.e., Islam),³⁰ that religious minorities are harassed and, at times, attacked or killed,³¹ and that atheists and apostates have been threatened with Fatwa by extremists.³²
- [55] The objective documentation also shows that the laws in Iraq discriminate against non-Muslims. While the Constitution provides for freedom of religion it also upholds the principles of Islam. Many, including religious and political leaders, believe that apostasy from Islam is punishable by death or regard killing apostates a religious duty.³³
- [56] The United Nations High Commissioner for Refugees (UNHCR) indicates that throughout Iraq, women and children may be killed or face violence for transgressing social, cultural or religious norms. So-called "honour crimes" are committed with impunity due to societal acceptance of their appropriateness as a response to perceived transgressions. While KRI, unlike the rest of Iraq, has repealed laws which allow "honour" as a mitigating factor in such crimes, the practice remains widespread there as well due to lack of enforcement.³⁴
- [57] The UNHCR concludes that women facing honour crimes are likely in need of international protection.³⁵
- [58] Having found that the Appellants have established their profiles, I find that the objective information, when read in context and as a whole does show their claims are well-founded.

[59] I therefore find that both the Principal Appellant and the Associate Appellant face a serious possibility of persecution in Iraq and in the KRI. I also find that their minor daughter, the Minor Appellant, would face a similar risk because of her relationship to her parents.

4. State protection and internal flight alternative (IFA)

[60] Given the extreme views that exist regarding conversion from Islam and the place of women in society, and the fact that many government officials seem to share these views, I do not find that state protection would likely be forthcoming to the Appellants.

[61] Based on the objective documentation discussed previously, I also find, on a balance of probabilities, that the Appellants would face a serious possibility of persecution throughout the KRI and Iraq. I therefore find no IFA is available.

[62] Having credibly established the subjective and objective bases of their fear and having shown that there would not be adequate state protection or a viable IFA, I find that the Appellants are Convention refugees.

CONCLUSION

[63] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, I set aside the determination of the RPD and substitute my own determination that the Appellants are Convention refugees. (signed) "David Morris" David Morris January 27, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Immigration and Refugee Protection Act, at sections 110 and 111; Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, [2016] 4 FCR 157, at para 103. 3 Exhibit P-2, Appellants' Record, at pp. 36-39. 4 Exhibit P-2, Appellants' Record, at pp. 40-41. 5 Exhibit P-2, Appellants' Record, at pp. 42-44. 6 Exhibit P-2, Appellants' Record, at pp. 45-47. 7 Exhibit P-2, Appellants' Record, at pp. 33-34. 8 Exhibit P-2, Appellants' Record, at pp. 15-31. 9 Immigration and Refugee Protection Act, at subsection 110(4). 10 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, [2016] 4 FCR 230. 11 This appeal was perfected on 13 February 2018. The Immigration and Refugee Board of Canada issued a "Practice Notice - Allegations Against Former Counsel" which came into effect on 10 September 2018. I find this Practice Notice is not applicable to this appeal as it came into effect subsequent to perfection. 12 Refugee Appeal Division Rules, SOR/2012-257, at section 3(3)(g)(iii). 13 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, [2016] 4 FCR 230. 14 Exhibit P-2, Appellants' Record, at pp. 32-25. 15 Exhibit P-2, Appellants' Record, at p. 25. 16 RPD Hearing Recording, 15 September 2017, at 01:49:30; Transcript of RPD hearing, 15 September 2017, at p. 29, lines 6-8; Exhibit P-2, Appellants' Record, at pp. 25, 33-34. 17 Exhibit RPD-1, RPD Record, Exhibit 5, at pp. 193-195. 18 RPD Hearing Recording, 15 September 2017, at 01:53:03; Transcript of RPD hearing, 15 September 2017, at p. 30, lines 25-36; Exhibit P-2, Appellants' Record, at pp. 26, 34. 19 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 7, para. 12. 20 RPD Hearing Recording, 15 September 2017, at 01:49:30 through 01:53:10; Transcript of RPD hearing, 15 September 2017, at p. 29, lines 6-50, and p. 30, lines 6-36. 21 Exhibit RPD-1, RPD Record, RPD

Reasons, at p. 9, para. 19. 22 Transcript of RPD hearing, 15 September 2017, at p. 21, lines 44-49; p. 22, lines 43-47. 23 Transcript of RPD hearing, 15 September 2017, at p. 36, lines 10-50; p. 37, lines 6-18. 24 Exhibit RPD-1, RPD Record, Exhibit 5, at pp. 193-195. 25 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 255. 26 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 13, para 35. 27 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Iraq (31 March 2017), item 12.4, at p. 1. 28 Ibid., at p. 1-2, 5-6. 29 Ibid., at pp. 2-3. 30 Ibid., at pp. 3-4. 31 Ibid., at p. 5. 32 Ibid., at p. 4. 33 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Iraq (31 March 2017), item 1.21, at p. 15. 34 NDP for Iraq (31 October 2019), item 1.7, at p. 92. 35 Ibid., at p. 96.

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Prepared on 26 October 2026 · Esheria