

CANADA / JUDGMENT

TB9-03379

COURT

Refugee Appeal Division

DECIDED

9 September 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : TB9-03379

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Person who is the subject of the appeal

XXXX XXXX

Personne en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

September 9, 2020

Date de la décision

Panel

E. Bobkin

Tribunal

Counsel for the person who is the subject of the appeal

Brian Ibrahim Cintosun

Barrister and Solicitor

Conseil de la personne en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] I dismiss the appeal brought by XXXX XXXX (the Appellant), a citizen of Iran.
- [2] The Appellant came to Canada on XXXX XXXX XXXX 2017. When he arrived, he informed border agents that he was here as a visitor. After he was informed that he was being denied entry into Canada, he stated that he was afraid for his life because he feared being targeted by the Sepah (Iranian Revolutionary Guards). According to interview notes, he stated that he feared the Sepah because they had discovered a plot he was involved in, with a group named the Brotherhood of Iran, to bomb the Sepah. The Appellant later denied that this was true. He alleged that he fled Iran because he was targeted by a member of the Sepah who wanted money from him to support the war in Syria because he was rich.
- [3] The Refugee Protection Division (RPD) found that the Appellant was excluded from refugee protection based on articles 1F(b) and 1F(c) of the Convention¹ based on the Appellant's statements of his involvement in a plot to bomb the Sepah. The RPD found that the Appellant's explanations about his statements - that there were interpretation issues and he was under stress - were not credible because the Appellant could not explain later statements contradicting his explanations.
- [4] The Appellant argues that the RPD erred. He argues that the RPD was wrong to reject the Appellant's testimony at his hearing and that there is no evidence to support an exclusion finding. He also argues that the RPD failed to give an explanation or state what evidence supported the exclusion finding. The Appellant argues that the RPD was selective in its credibility findings and improperly disregarded the psychological evidence. The Appellant argues that the RPD failed to consider sections 96 and 97 of the Immigration and Refugee Protection Act (IRPA). The Appellant did not submit new evidence with his appeal record. After receiving the Appellant's record, I notified him that I would be considering the Appellant's claim under sections 96 and 97. The Appellant then submitted a new affidavit and several news articles as new evidence.
- [5] I find that the RPD's conclusion on exclusion is not sustainable. However, the Appellant's lack of credibility leads me to conclude that he has not established his allegations, on a balance of probabilities, and he is therefore neither a Convention refugee nor a person in need of protection. I also considered the Appellant's risk based on his Azeri ethnicity and find that he has not established a section 96 or 97 risk on this basis.

DECISION

[6] I dismiss the appeal and confirm the decision of the RPD, for other reasons, that the Appellant is neither a Convention refugee nor a person in need of protection.

NEW EVIDENCE

[7] According to the law,² I can only accept evidence that:

(i) arose after the RPD's decision; or

(ii) was not reasonably available at the time of the decision; or

(iii) that could not reasonably have been expected in the circumstances to bring to the RPD before the decision.

[8] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.³ The evidence also must meet rule 29 as it was submitted after the perfection of the appeal.

[9] The Appellant submits a new affidavit, and four news articles: one on political protesters and three on Azeris in Iran. I find that all of the new evidence is admissible except for the article "Azeris" from the World Director of Minorities and the article "Southern Azerbaijan" by the UNPO. I do not find the test for an oral hearing is met.

The Appellant's affidavit

[10] The Appellant's affidavit alleges he attended anti-regime protests in Toronto in XXXX 2019 and XXXX 2020. I find this is admissible. These events occurred after the rejection of the claim and also the filing of the record. Therefore, they meet subsection 110(4) of the IRPA and are new, pursuant to the case law and rule 29. This also explains why the Appellant could not have included this information at the time of filing his appeal. The information is relevant to whether the Appellant is at risk in Iran and, as it comes in the form of a sworn affidavit, it is credible for the purposes of admission. I also find this establishes relevance and probative value for the purposes of rule 29. I therefore admit the affidavit.

[11] I do not find the affidavit meets the test for an oral hearing, as I do not find it determinative. As I will explain below, even accepting the Appellant attended the protests alleged, I do not find this determinative of a risk in Iran. Therefore, I cannot hold an oral hearing.

The Articles, "Protesters blocking roads in Isfahan" and "Situation of Human Rights of the Azerbaijani Turks in the Islamic Republic of Iran", are admissible

[12] The two articles, "Protesters blocking roads in Isfahan" and "Situation of Human Rights of the Azerbaijani Turks in the Islamic Republic of Iran", postdate the rejection of the refugee claim and the filing of the Appellant's record. Therefore, they meet subsection 110(4) and are new, pursuant to the case law and rule 29. This also explains why the Appellant could not have included this information at the time of filing his appeal. Given that they are third-

party news articles, I find them credible for the purposes of admission. I also find the articles relevant, as they speak to the situations of Azeris and political protestors, which are relevant to the appeal and have some probative value. I therefore admit the articles.

- [13] The articles raise no issues of credibility regarding the Appellant, as they are general country conditions articles. They therefore do not meet the test for an oral hearing.

The articles, "Azeris" and "Southern Azerbaijan", are inadmissible

- [14] The articles, "Azeris" and "Southern Azerbaijan", are inadmissible. The Appellant's Counsel argues that these postdate the claim, but they do not. One article states: "updated December 2017", and the other is dated January 31, 2017, and therefore they predate the rejection of the claim. The Appellant has not provided any evidence that these articles are something that was not reasonably available to him prior to the rejection of his claim or that they are something he could not reasonably have been expected to provide prior to the rejection of his claim. The Appellant discusses being Azeri in his Basis of Claim (BOC) and in his hearing. He had Counsel at that time who could have presented country conditions evidence. There is no explanation as to why these articles were not presented earlier. Therefore, the Appellant has not established that the articles meet the requirements of subsection 110(4). I am not admitting them.

THE ROLE OF THE REFUGEE APPEAL DIVISION (RAD)

- [15] My role is to look at all the evidence and decide if the RPD made the correct decision.⁴ There is an exception to this, where the RAD defers to the RPD if the RPD had a meaningful advantage in assessing the credibility of oral evidence. I do not find this case falls into the exception. Therefore, I will be looking at whether the RPD's decision was correct.

ANALYSIS

- [16] The RPD held that the Appellant lacked credibility and that therefore the Minister had met the burden of proof to establish the claimant is excludable under both articles 1F(b) and 1F(c) of the Convention. The RPD found that, based on the Appellant's initial statement to Canada Border Services Agency (CBSA), there were serious grounds to believe that the Appellant was part of a terrorist group which was planning on using a bomb against the Sepah.
- [17] The RPD found that this would be equivalent to section 83.18 of the Criminal Code of Canada⁵ which is "participation in activity of terrorist group," an indictable offence punishable by a maximum of 10 years in prison. The RPD found the crime was serious, based on the 10-year maximum and based on the sentencing range in the Toronto 18 group bomb plot case, as well as based upon the Jayasekara factors.⁶ The RPD found the crime was not political because a bomb plot is grossly disproportionate to any political aim. Therefore, the RPD found that the Appellant was excludable under article 1F(b). In the alternative, the

RPD held that the Appellant was still excludable under article 1F(c) because the United Nations have explicitly declared terrorism and terrorist bombings as contrary to their purposes and principles.

- [18] After reviewing the record, I find the RPD erred. The entirety of the exclusion case rests on the one statement made by the Appellant immediately after arriving in Canada that the group he was part of was plotting something like blowing up a bomb. I do not find this one statement constitutes serious grounds to believe, and I do not find the Minister has met its burden of proof for exclusion.
- [19] However, I also do not find that the Appellant has met his burden of proof to show that he is included in either section 96 or 97 of the IRPA. I do not find that the Appellant has established his allegations, with credible evidence, on a balance of probabilities. I also find that the Appellant has not established that he faces a section 96 or 97 risk on the basis of his Azeri ethnicity.

The Appellant's evidence

- [20] Generally, on appeal, I do not spend significant time recounting the Appellant's evidence. However, in this case, the Appellant's evidence was confusing and evolving over a period of years and bears repeating on appeal.
- [21] The Appellant arrived in Canada in the evening of XXXX XXXX XXXX 2017. He was interviewed by CBSA and, initially, stated that he wished to enter as a visitor. During his initial interview, he was asked if he feared for his life in Canada, and he stated no.⁷ CBSA informed the Appellant that he was being denied entry to Canada. At that point, according to interview notes, the Appellant stated that he feared going back to Iran because he was being targeted by the Sepah because they had discovered a plot that he was involved in to blow up targets against the Sepah.⁸ These statements are contained in the interview notes and a report made by Officer Shekdar of the CBSA.
- [22] The Appellant was also interviewed at the airport by a second officer on XXXX XXXX XXXX 2017. In this interview, he stated that he was active against the Sepah in a group called the "Brotherhood of Iran" which was secret and undercover.⁹ He stated the names of two individuals, one who was the director (XXXX XXXX XXXX) and another who was the deputy of the group, and he stated that they were actively speaking against the Sepah and had media and that their goal was to remove the Sepah.¹⁰
- [23] At these interviews, the Appellant had interpretation provided to him over the phone, and the notes state that the language of interpretation was Farsi, and the Appellant confirmed that he understood the language.¹¹

- [24] The Appellant submitted his BOC on February 7, 2017. In his BOC, he makes no mention of the group, "Brotherhood of Iran", or any activities against the Sepah. He states that he is an Azeri and is accused of disobeying Islamic Sharia law.¹² He states that he is a businessman and that a Sepah member, XXXX XXXX asked for donations for the fight in Syria and abused him when he refused.¹³ He alleges that he told XXXX XXXX XXXX he would go to Canada to sell XXXX and would pay him when he returned.
- [25] His only mention of what transpired at the airport is as follows: "I was stopped by the Immigration officers and they did not believe me I was a visitor and they would send me back; I could not go back. . . Then I made refugee claim in the Toronto airport."¹⁴ The Appellant's BOC contains an interpreter's declaration stating that the information was interpreted to the Appellant, but the language of interpretation is not stated.¹⁵ The Appellant wrote on his BOC that he speaks "Farsi/Azari" and requested a Farsi interpreter at his hearing.¹⁶
- [26] On XXXX XXXX XXXX 2018, the Appellant was interviewed by a CBSA officer as part of an inadmissibility investigation. In that interview, the Appellant stated that what he meant by the organization "Brotherhood in Iran" was that his XXXX company was named "XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX" and that they also wanted to be active and because they are Azeri the Mullah's did not like them so they created an alliance."¹⁷ He agreed that the Brotherhood of Iran was the name of the organization, and they wanted to gather together to organize activities against the government under the "pretention of that business."¹⁸ He said that the group had a charter, that they were recruiting membership to stand up against the government and shout slogans, but they never thought about using explosives.¹⁹ He said the group was hidden or undercover.²⁰ He said that, when he had a hunch that the government knew about the group, he decided to escape.²¹
- [27] At this interview, the Appellant stated that he recruited 30 people and that another individual (with the same name, XXXX XXXX XXXX, used at the airport) recruited 20 people, and he identified himself and XXXX as the founders.²² He also stated that the group distributed flyers by using 5,000 blank sheets and writing "down with Iranian Government down or debt, debt to the criminal regime", and they distributed these around the parliament at night time.²³ The Appellant stated that there were no weapons in the organization.²⁴ He said that the organization was not plotting against the Sepah, that after they distributed flyers, the goal was to go towards the Sepah slowly and that they wanted to ultimately change the regime.²⁵ The Appellant stated that the statement at the airport about plotting to blow up a bomb was a mistake made by the interpreter who was present by phone and not face to face.²⁶
- [28] At the first sitting of the RPD hearing, the Appellant's evidence again changed. He said that the interpreter at the airport in 2017 and the interpreter in the 2018 interview were Afghan Dari speakers and not Farsi speakers.²⁷ He said he signed the declaration that he understood the interpretation because he was scared of being deported.²⁸ He stated that his XXXX XXXX business was called XXXX because there were XXXX XXXX.²⁹ The Appellant

denied saying he was a member of the Brotherhood of Iran which was undercover and secret. He stated that what he had said was that a military officer wanted to get money from him to give to XXXX XXXX.³⁰ The Appellant stated that he was never a member of a political organization but that he was an Azeri, and the Azeris in his town worked to defend their rights.³¹ He testified that, because he was an elder Azeri, people trusted him and came to him.³² He also testified that, at the airport, he was very stressed and had not had a chance to rest.³³

- [29] The Appellant was asked about XXXX XXXX and he stated that XXXX had once or twice come to the Appellant and was also against the regime.³⁴ The Appellant denied recruiting anyone to a group.³⁵ He denied the group had a charter and said no one ever distributed flyers.³⁶
- [30] At the second sitting of the RPD hearing, the Appellant stated that he was part of a small Azeri group which would get together to discuss their rights as Azeris. He also stated that they would try to stick together to get things from the government, and this is why they collected money.³⁷ He again denied distributing flyers.³⁸ He stated that he did not mention XXXX XXXX XXXX at the airport because he was afraid of deportation.³⁹

The evidence does not meet the threshold of "serious reasons for considering"

- [31] The RPD set out that the threshold for serious reasons for considering is well below that required in connection with either the criminal law (beyond a reasonable doubt) or civil law (balance of probabilities). The RPD found that, given the Appellant was not credible, the RPD believed the Appellant's initial statements that he was part of a group planning to bomb the Sepah. Based upon this statement, the RPD found the serious reasons for considering threshold was met.
- [32] The Appellant argues that there was no evidence for the serious reasons to believe threshold, and the RPD's decision does not give an explanation for reaching this conclusion. I agree with the Appellant that the threshold was not met.
- [33] I find the RPD's logic confusing. If the Appellant is not a credible witness (a conclusion I ultimately agree with), then, in my view, little weight can be given to the Appellant's statement that he was planning to bomb the Sepah. While I do not accept that interpretation issues or stress explain all of the problems with the Appellant's multitude of changing statements, I do find it a relevant consideration to assessing the weight to be given to this particular statement. The one time the Appellant stated he was involved in something like a plot to bomb the Sepah was shortly after he was told he was going to be denied entry to Canada and while he had an interpreter over the phone. I do not find this to be particularly strong evidence.
- [34] The burden to establish the serious grounds for consideration is on the Minister. Yet, the Minister placed the burden on the Appellant. For example, the Minister suggested that the Appellant could provide an interpretation audit of the March 2018 interview if he believed the interpretation was inadequate, and this could assist with answering the general question

of whether interpretation was inadequate overall.⁴⁰ However, given that exclusion is the Minister's burden then it was the Minister's onus to audit the interpretation and provide evidence that it was in fact accurate (for the purposes of the exclusion finding).

- [35] Moreover, the Minister provided no other evidence in support of the claim that the Appellant was involved in a bomb plot. No evidence was provided to establish that the Brotherhood of Iran even exists, let alone that it was planning to bomb the Sepah. No evidence was provided that any of the people involved in the organization exist.
- [36] The bomb plot allegation is central to the exclusion case. This is because, if it existed, the organization could very well be a legitimate political opposition group. The remainder of the activities discussed - meeting and complaining about the government and distributing flyers - are valid political objectives. In fact, in the context of Iran, they could constitute grounds for a refugee claim.
- [37] The threshold for exclusion must be higher than mere suspicion. To contrast this case with other Federal Court jurisprudence, in a recent case, the Court found that it was an error to conclude that the threshold for serious reasons for considering was met even where a criminal warrant was presented as evidence without further analysis as to why the warrant should be believed.⁴¹ Here, there is even less evidence. Without documentary evidence establishing the existence of the group, or any specific plot, and with only the Appellant's admission which was provided under stress and in difficult circumstances and then later withdrawn, I find the Minister is merely speculating as was the RPD. Given that the Appellant is not a credible witness, as I will discuss further below, I do not find the one statement made at the airport sufficient to meet the standard of serious reasons for considering, which is the Minister's onus. For these reasons, I find the RPD erred in concluding the Appellant is excluded from protection.

The Appellant has not established that he is a Convention refugee or a person in need of protection

- [38] Given that I find the RPD erred in its exclusion analysis, I must consider whether the Appellant is included in section 96 or 97 of the IRPA. The Appellant argued that the RPD erred by failing to conduct this assessment. I disagree. If a refugee claimant is excluded from protection, then the RPD is precluded from conducting an assessment under sections 96 and 97. However, given that I am not upholding the RPD's exclusion finding, I am considering these issues. I provided the Appellant notice that I would be considering sections 96 and 97 and have considered the submissions received in response to this, along with the admissible new evidence. I find that the Appellant has not established his allegations, on a balance of probabilities. I also find that the Appellant has not established a section 96 or 97 risk based on his ethnicity.

The Appellant is not a credible witness

[39] I do not find the Appellant to be a credible witness, and therefore I do not find he has established his allegations, on a balance of probabilities. There are two reasons for this:

- (a) The Appellant's testimony was evolving and inconsistent; and
- (b) The Appellant was inconsistent about his interactions with XXXX XXXX.

[40] First, I considered the Appellant's testimony over the course of his interviews upon arrival in Canada, his interview over a year later and his testimony before the RPD. I find that the testimony is so evolving and inconsistent such that it significantly undermines the Appellant's credibility. I have attempted to summarize the Appellant's evolving evidence above, but this does little justice to reading all of the transcripts and appreciating just how non-responsive and evasive the Appellant's evidence was. Between the arrival interview, the 2018 interview and the RPD testimony, the Appellant gave evolving and inconsistent evidence about the following:

- (a) where the name, Brotherhood of Iran, came from (a political organization, his XXXX company, his XXXX XXXX company) or if the group exists at all;
- (b) what the purpose of the organization was;
- (c) whether the organization had structure such as a founder or director and whether an individual named XXXX was involved in the group and whether the group had a charter;
- (d) whether the organization had distributed flyers or politically protested;
- (e) whether the Appellant had recruited more members or used technology in support of the group;
- (f) whether and how the group took financial donations and what these donations were for; and
- (g) whether the group had been discovered and this led the Appellant to flee Iran.

[41] The Appellant's explanation for all of these issues is that he was stressed at the airport and that he had interpretation problems, mental health issues or, per his Counsel's suggestion, that he panicked at the airport. I do not accept these explanations.

[42] I accept that individuals making refugee claims at the port of entry encounter stress and that interpretation issues can occur over the telephone, as argued by Counsel.⁴² However, I do not accept that these issues explain all of the problems described above. There is no evidence that there was a Dari interpreter, as the interpretation declarations at the airport declare that the language of interpretation is Farsi.⁴³ Moreover, just as the Minister could have obtained evidence that the interpretation at the March 2018 interview was adequate and failed to do so, the Appellant failed to provide any evidence that the interpretation was deficient. A recording was provided to him at the first sitting in September 2018, and he did not do this in the almost two years since that point. I therefore do not accept that all of the

errors were caused by interpretation problems.

- [43] Additionally, while the Appellant may have feared immediate deportation at the airport, and may have been panicking, I do not find this explains his statements in the March 2018 interview and hearing. At that point, he had retained Counsel and was or ought to have been aware that he was not in immediate danger of removal. Therefore, I do not accept this as an adequate explanation for the credibility concerns.
- [44] As for whether the Appellant's mental health explains these issues, the RPD considered the report from XXXX XXXX XXXX and found it was of little weight because XXXX XXXX XXXX did not attend the hearing, and because the RPD found the report went beyond the scope of an expert by advocating for the Appellant and making credibility determinations.⁴⁴ The Appellant argues that this was an error as the report is based on an observation of symptoms which the RPD disregarded, and the RPD selectively considered the report.⁴⁵ I do not agree with the RPD's assessment of the report, but I do not find that it explains the credibility concerns.
- [45] I do not think that XXXX XXXX XXXX is expected to testify at every RPD hearing in which he prepares a report, and I find it was incorrect of the RPD to give little weight because XXXX XXXX XXXX did not appear. Moreover, while I agree there are some aspects of the report that overreach the scope of a psychological assessment, I do not think this renders the entire report of little weight.
- [46] For example, the report does set out the approach to the psychological assessment and symptoms experienced by the Appellant. The report states a diagnosis of major depressive disorder and PTSD with dissociative symptoms. I accept this diagnosis, as XXXX XXXX XXXX is qualified to make such a diagnosis. I do not accept that, because XXXX XXXX XXXX found the Appellant's responses to be credible and internally consistent, I must also accept the Appellant as credible. There is no indication that XXXX XXXX XXXX had access to all of the evidence in the file. Moreover, I do not find this report explains all the credibility problems discussed above. The report notes that the Appellant should be afforded ample breaks. I find the RPD did this, and I also find evidence that the Appellant was given breaks in his interviews with CBSA. ⁴⁶
- [47] The report also states that the Appellant has problems with concentration and memory and that he may have difficulty understanding questions and require questions to be repeated or rephrased or have difficulty providing clear and consistent testimony.⁴⁷ I find that the RPD and the Minister generally took steps to assist the Appellant in dealing with these issues. The Appellant was given opportunities to clarify, and questions were repeated and simplified. In fact, the RPD undertook an assessment of the Appellant's competency to testify, and it found the Appellant was competent, which is not being challenged on appeal. Given the steps taken to provide the Appellant the ability to testify and understand the proceedings, I do not find the Appellant's mental health explains the significant discrepancies described above.

- [48] Counsel for the Appellant also suggests that the Appellant is "unsophisticated" and that this explains the credibility concerns.⁴⁸ I do not find this persuasive. The Appellant has a high school education and has run two businesses: a XXXX XXXX business and a XXXX business.⁴⁹ He has previously travelled abroad.⁵⁰ I do not find the Appellant to be particularly unsophisticated, and I do not find this to be a reasonable explanation for the credibility concerns with his testimony. I therefore reject the Appellant's explanations for the evolving inconsistent testimony he provided.
- [49] I find the discrepancies described above are significant. For example, the Appellant's evolving story about his organization, the Brotherhood of Iran, contradicts his alleged reasons for fleeing Iran. In his BOC, he states it was because of the extortion from the Sepah to give money for the war in Syria, but in his descriptions of the Brotherhood, he states that the government had a hunch about them and that is when he decided to escape.⁵¹ Therefore, these inconsistencies and the evolving story go to the heart of the claim.
- [50] Additionally, as noted by the RPD, the Appellant was inconsistent in his evidence about what occurred before he left Iran. In his BOC, he states that he was approached by the Sepah officer XXXX XXXX XXXX and that he said "give me some time I would go to Canada take XXXX there to sell and collect some money from there" and that he would "pay him [XXXX XXXX XXXX] when I come back from Canada."⁵² On the contrary, in his hearing, the Appellant stated, "I never told him that I will be going to Canada" and that, if he did so, he would be arrested at the airport.⁵³ When this contradiction was put to the Appellant, he said he did not say he was going to Canada but rather that he had sent XXXX to Canada. The RPD found this did not explain why the Appellant had written clearly that he told XXXX XXXX XXXX he was going to Canada, and I agree. The Appellant has not challenged this finding.
- [51] Based on all of this, I find that the Appellant is not a credible witness. I find he has not established his allegations with sufficient credible evidence, on a balance of probabilities.

The Appellant provided no documentary evidence

- [52] The Appellant provided no documentary evidence in support of his claim. There is ample documentation which would reasonably have been available to the Appellant. This includes:
- (a) business documents about his XXXX business or XXXX XXXX business;
 - (b) letters to corroborate the Appellant's account of his organization (Brotherhood of Iran or the Azeri organization depending on the testimony); and
 - (c) letters from family members, neighbours or witnesses to the Appellant's abuse from XXXX XXXX XXXX.
- [53] The Appellant provided none of these. He was asked about his lack of documents at the RPD hearing.

- [54] Notably, the Appellant testified several times that he had documents about his business. However, he never submitted these documents, at either sitting or after the RPD hearing, or on appeal.⁵⁴
- [55] Additionally, the Appellant testified he wanted to get a letter signed about XXXX XXXX XXXX coming inside his store, but XXXX XXXX XXXX came and ripped up the letter. But later, the Appellant explained that occurred before he left Iran.⁵⁵ When asked what attempts he made in Canada, he said he contacted his brother to ask neighbours to sign a letter and have the Ministry of Foreign Affairs verify it, but the neighbours would not do that.⁵⁶ I can appreciate that individuals would not want to speak out against the Sepah in a document to be verified by the government, but I do not find this to be reasonable as to why the Appellant could not simply ask these people to write unverified letters. Further, the Appellant stated that he asked his brother to get a letter, but the Appellant initially testified that his brother was scared.⁵⁷ The Appellant then clarified that his brother was willing to help, but no one else would "testify".⁵⁸ I do not find this reasonable, as it does not explain why the brother himself would not write a letter stating what he knew personally. He could likely speak to the existence of the businesses and the Azeri gatherings, for example.
- [56] This also does not explain why the Appellant did not obtain letters from his wife who allegedly knew something of the Appellant's businesses and why he left Iran. The Appellant alleged that the Sepah had come to his wife looking for him.⁵⁹ No document was submitted about this.
- [57] Given that the Appellant's testimony is lacking in credibility and the presumption of truthfulness from Maldonado⁶⁰ is rebutted, it is incumbent on the Appellant to provide documents to support his claim (as it is in any claim). The fact that these documents were not provided, and the Appellant's explanations for the failure to do so were not reasonable, further undermines the credibility of the Appellant's allegations.

The Appellant's subjective fear

- [58] I find that the Appellant's credibility is further undermined by his failure to claim protection in Italy and France and return to Iran and his delay in departing Iran.
- [59] The Appellant travelled to France for two weeks and Italy for 10 days in 2016. He testified he was not afraid to return to Iran from Italy and that he thought of claiming protection in France but decided Iran has too much influence in France. Both of these trips took place around the same time that the Appellant alleges he started having problems with XXXX XXXX. Additionally, the Appellant had a valid Schengen visa for several months prior to the issuance of his visa to Canada, but, instead, he waited for his Canadian visa to be issued to leave Iran and claim protection.

- [60] The Appellant argues that, when he traveled for business, he had no intention of leaving Iran and intended to return, and he did not delay departing.⁶¹ He also argues that he did not delay leaving Iran because he used coming to Canada as an excuse to get out of Iran.⁶² I do not find these explanations or arguments persuasive.
- [61] There is no evidence that Iran has influence in France, and the Appellant could not explain why he believed he would be safe from Iran in Canada but not France. Moreover, the Appellant's explanation that the Appellant was not afraid when he was in Italy does not accord with his statement that he thought about claiming protection in France, as he stated that the France trip was before the Italy trip. Finally, the argument that the Appellant used coming to Canada as an excuse to get out Iran does not account for the fact that the Appellant could have left Iran on his Schengen visa, months before his Canadian visa was issued. Therefore, I do not find that the Appellant has provided reasonable explanations for these issues.
- [62] I find that the failure to claim protection in Europe, return to Iran and delay in departure further undermine the credibility of the Appellant's allegations. However, I do not find this issue is determinative, as I find the issues above determinative. I would have reached the same conclusion without considering subjective fear.

The Appellant's political involvement in Canada does not establish a risk

- [63] The Appellant provided affidavit evidence that he attended "anti-Iran regime protests at XXXX XXXX Square . . . on XXXX XXXX XXXX XXXX XXXX 2019 and again in XXXX XXXX XXXX, 2020 to protest against the Iranian regime in solidarity with the protestors in Iran . . ." ⁶³ His Counsel argues that he is a "vocal and open protestor of the Iranian regime".⁶⁴ I do not agree. I do not find the Appellant has established that he would face a serious possibility of persecution or a section 97 risk, on a balance of probabilities, on the basis of his political involvement in Canada.
- [64] As explained above, I do not find the Appellant's allegations of being a political opponent in Iran to be credible, on a balance of probabilities. I do not find that the attendance at three or four political protests in Canada is sufficient evidence that the Appellant is a genuine political opponent. The Appellant came to Canada in XXXX 2017. There is no evidence that he was politically active from XXXX 2017 until almost three years later in XXXX 2019. There is no information in the affidavit about what these protests were about (beyond being anti-regime), why the Appellant attended or why the Appellant feels this is important to him. Given the Appellant's lack of credibility generally, I find this attendance was to bolster his claim, on a balance of probabilities. Therefore, I do not find that the Appellant has established that he is a genuine political activist or opponent, on a balance of probabilities. I acknowledge the article on the treatment of political protestors submitted by Counsel, but I do not find this applies to the Appellant.

- [65] I accept that, if the Appellant were discovered to be attending anti-regime protests in Canada, this could put him at risk in Iran. However, I have no evidence to suggest that the Appellant's attendance at these protests has become known, or would become known, to Iranian authorities, on a balance of probabilities.
- [66] For these reasons, I find the Appellant has not established that he faces a section 96 or 97 risk based on his attendance at political protests in Canada.

The Appellant's ethnicity

- [67] The Appellant argues that he faces a risk on the basis of his profile as an Azeri activist.⁶⁵ As discussed above, I do not find the Appellant has established that he is a political activist or opponent of the regime, on a balance of probabilities. However, I have considered whether the Appellant's Azeri ethnicity places him at risk under section 96 or 97 of the IRPA. I find that the Appellant has not established such a risk on the basis of his ethnicity.
- [68] I find that the evidence on Azeris in Iran is mixed. On the whole, while there is some evidence that Azeris face discrimination in Iran, there is also much evidence that Azeris are well integrated into Iranian society. Considering this evidence along with the Appellant's personal circumstances, I find that the Appellant has not established that this amounts to a serious possibility of persecution or a section 97 risk, on a balance of probabilities, for him, on a forward-facing basis, should he return to Iran.
- [69] Information in the National Documentation Package (NDP) indicates that Azeris are the largest ethnic minority in Iran, that the group is politically and socio-economically diverse and that they "work in a variety of professions, have a wide range of income and wealth levels, and have attained a range of education levels."⁶⁶ Several reports note that Azeris are "better integrated into Iranian society, business and politics than are other ethnic minorities" and that the community has "substantial economic weight" and that several influential members of the state are part Azeri, as is the supreme leader.⁶⁷ There are some reports of discrimination against Azeris including the prohibition of the Azeri language in schools, harassment and arrest of Azeri activists and organizers, and the changing of Azeri geographic names.⁶⁸
- [70] The US Department of State (DOS) reports that minority groups including Azeris are disproportionately targeted by authorities and that minorities allege that the government mismanages natural resources in their areas.⁶⁹ There are also reports that there is some socio-economic discrimination with regard to "access to economic aid, business licenses, and job opportunities."⁷⁰ Articles submitted by the Appellant state that Azerbaijani (Azeri) activists can face harsh treatment by the Iranian regime, but as discussed above, the Appellant has not established that he is an activist.⁷¹
- [71] Looking at the Appellant's personal circumstances, as described above, the Appellant has completed high school, and he has operated two successful businesses.⁷² According to his narrative, he has traveled to "many countries" and owns houses in two different cities: XXXX

and XXXX.⁷³ He described himself as rich.⁷⁴ When I consider these personal circumstances together with the country conditions, I do not find the Appellant has established that he faces cumulative discrimination amounting to persecution on the basis of his ethnicity. He has had access to education, employment and housing. The evidence does not show that he faces a systemic risk of persistent harm which would lead to him facing an insecure future existence.⁷⁵

[72] I therefore find that the Appellant has not established a serious possibility of persecution or a section 97 risk, on a balance of probabilities, on the basis of his ethnicity.

CONCLUSION

[73] I find that the RPD erred in concluding that the Appellant is excluded from protection, pursuant to articles 1F(b) and 1F(c) of the Convention, as there is insufficient evidence to meet the "serious reasons for considering" threshold for exclusion.

[74] However, I find that the Appellant has not credibly established his allegations, on a balance of probabilities. He has not established with sufficient reliable and credible evidence that he is a genuine political activist or that he is being extorted by the Sepah in Iran, on a balance of probabilities. While I accept that the Appellant is Azeri, I find that the evidence does not establish that the Appellant would face a section 96 or 97 risk on this ground.

[75] Therefore, I dismiss the appeal and confirm the decision of the RPD, for other reasons, that the Appellant is neither a Convention refugee nor a person in need of protection.

(signed)

Erin Bobkin

E. Bobkin

September 9, 2020

Date

1 Office of the United Nations High Commissioner for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, reissued, Geneva, December 2011.

2 Subsection 110(4) of the IRPA.

3 M.C.I. v. Singh, Parminder (F.C.A., no. A-512-14), Nadon, Gauthier, de Montigny, March 29, 2016, 2016 FCA 96; Raza, Syed Masood v. M.C.I. (F.C.A., no. A-11-07), Linden, Sharlow, Ryer, December 6, 2007, 2007 FCA 385.

4 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93; Rozas Del Solar, Paola v. M.C.I. (F.C., no. IMM-2645-17), Diner, November 14, 2018, 2018 FC 1145.

-
- 5 Criminal Code of Canada, R.S.C., 1985, c. C-46, <https://laws-lois.justice.gc.ca/PDF/C-46.pdf>
- 6 Jayasekara, Ruwan Chandima v. M.C.I. (F.C., no. IMM-1603-07), Strayer, February 21, 2008, 2008 FC 238; Jayasekara, Ruwan Chandima v. M.C.I. (F.C.A., no. A-140-08), Létourneau, Sharlow, Pelletier, December 17, 2008, 2008 FCA 404, [2009] 4 F.C.R. 164
- 7 Exhibit RPD-1, RPD Record, at p. 63.
- 8 Exhibit RPD-1, RPD Record, at p. 64.
- 9 Exhibit RPD-1, RPD Record, at p. 79.
- 10 Exhibit RPD-1, RPD Record, at p. 79.
- 11 Exhibit RPD-1, RPD Record, at pp. 78, 61, 84, 62, 66.
- 12 Exhibit RPD-1, RPD Record, at p. 27.
- 13 Exhibit RPD-1, RPD Record, at p. 27.
- 14 Exhibit RPD-1, RPD Record, at p. 28.
- 15 Exhibit RPD-1, RPD Record, at p. 26.
- 16 Exhibit RPD-1, RPD Record, at pp. 18-25.
- 17 Exhibit RPD-1, RPD Record, at p. 225.
- 18 Exhibit RPD-1, RPD Record, at pp. 225-226.
- 19 Exhibit RPD-1, RPD Record, at p. 235.
- 20 Exhibit RPD-1, RPD Record, at pp. 236-237.
- 21 Exhibit RPD-1, RPD Record, at p. 238.
- 22 Exhibit RPD-1, RPD Record, at pp. 239-240.
- 23 Exhibit RPD-1, RPD Record, at p. 243.
- 24 Exhibit RPD-1, RPD Record, at pp. 244-245.
- 25 Exhibit RPD-1, RPD Record, at pp. 246-248.
- 26 Exhibit RPD-1, RPD Record, at p. 246.
- 27 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 6, 10.
- 28 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 7.
- 29 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 13.
- 30 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at pp. 15-16.
- 31 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at pp. 16-17.

- 32 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at pp. 18-19.
- 33 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 19.
- 34 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 21.
- 35 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at p. 25.
- 36 Exhibit RAD-1, Transcript of the RPD Hearing (September 21, 2018), at pp. 27 and 29-30.
- 37 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at pp. 25-30, 33.
- 38 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 39.
- 39 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 44.
- 40 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at pp. 7 and 23.
- 41 Marita, Dewi v. M.C.I. (F.C., no. IMM-4438-19), Bell, April 17, 2020, 2020 FC 528.
- 42 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 2.
- 43 Exhibit RPD-1, RPD Record, at pp. 78, 61, 84, 62, 66.
- 44 Exhibit RPD-1, RPD Record, at pp. 14-15.
- 45 Exhibit P-2, Appellant's Record, at pp. 30-34.
- 46 Exhibit RPD-1, RPD Record, at pp. 220.
- 47 Exhibit RPD-1, RPD Record, at p. 257.
- 48 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 2.
- 49 Exhibit RPD-1, RPD Record, at p. 54.
- 50 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 47.
- 51 Exhibit RPD-1, RPD Record, at pp. 28, 238.
- 52 Exhibit RPD-1, RPD Record, at p. 28.
- 53 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 43.
- 54 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 41.
- 55 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 54.
- 56 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 54.
- 57 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at pp. 52-53.
- 58 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 53.
- 59 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 59.

60 Maldonado, Pedro Enrique Juarez v. M.E.I. (F.C.A., no. A-450-79), Heald, Ryan, MacKay, November 19, 1979; [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

61 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 3.

62 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 3.

63 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 4.

64 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 3.

65 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 3.

66 NDP for Iran (March 31, 2020), item 1.8, Australia, Department of Foreign Affairs and Trade, "DFAT Country Information Report: Iran", June 7, 2018, at p. 18.

67 NDP for Iran (March 31, 2020), item 1.8 (ibid.), at p. 18; item 2.1, United States Department of State, "Iran: Country Reports on Human Rights Practices for 2019", March 11, 2020, at pp. 48-49.

68 NDP for Iran (March 31, 2020), item 1.8 (ibid.), at p. 18.

69 NDP for Iran (March 31, 2020), item 2.1, US DOS, "Iran: Country Reports on Human Rights Practices for 2019", March 11, 2020, at p. 47.

70 NDP for Iran (March 31, 2020), item 2.1 (ibid.), at p. 56.

71 Exhibit P-3, Response to Member's Direction (August 26, 2020), at p. 17.

72 Exhibit RPD-1, RPD Record, at p. 54.

73 Exhibit RPD-1, RPD Record, at p. 27.

74 Exhibit RAD-2, Transcript of the RPD Hearing (November 19, 2018), at p. 57.

75 X (Re), 2020 CanLII 24189 (CA IRB), at para 13.

RAD File / Dossier de la SAR : TB9-03379

RAD.25.02 (January 2020)

Disponible en français

2

Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (January 2020)

Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE [https://chat.esheria.ai/case-law/canada/
ExclusionunderArticle1Fband1FcoftheRefugeeConvention-refugee-appeal-
division-2020--6a40c3b24cf2c72690fb1e2e](https://chat.esheria.ai/case-law/canada/ExclusionunderArticle1Fband1FcoftheRefugeeConvention-refugee-appeal-division-2020--6a40c3b24cf2c72690fb1e2e)

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 26 October 2026 · Esheria