

CANADA / JUDGMENT

TB8-15323

COURT

Refugee Appeal Division

DECIDED

30 January 2020

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RAD File / Dossier de la SAR : TB8-15323 TB8-15324 / TB8-15325 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto,
ON Appel instruit / entendu à Date of decision January 30, 2020 Date de la décision Panel
Kimberley Foreman Tribunal Counsel for the persons who are the subject of the appeal Mehran
Youssefi 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] XXXX XXXX (Principal Appellant), XXXX XXXX (the Associate Appellant) and XXXX XXXX (the Minor Appellant), all citizens of Iran, appealed a decision of the Refugee Protection Division (RPD), dated June 4, 2018, rejecting their claims for refugee protection.
- [2] The principal Appellant, XXXX XXXX, acted as the Designated Representative for the minor Appellant.
- [3] The Appellants submit that the RPD erred in its credibility analysis and made microscopic credibility findings. They further submit that the panel breached procedural fairness and principles of natural justice by allowing additional evidence, while having a preconceived idea of the probative value of those documents. The Appellants ask the Refugee Appeal Division (RAD) to overturn the RPD's decision and allow the appeal, or in the alternative, to send the matter back to the RPD for re-determination by a differently constituted panel.
- [4] Throughout my analysis of the matter, I have considered and applied the Chairperson's Guideline 3 on proceedings involving child refugee claimants¹ and the Chairperson's Guideline 4 on proceedings involving women refugee claimants fearing gender-based persecution.² DETERMINATION OF THE APPEAL
- [5] The RAD confirms the decision of the RPD and dismisses the appeal pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act³ (IRPA). Background of the Claim
- [6] The Appellants are married and have one child. They fear that if they were to return to Iran, the principal Appellant will be detained by the authorities for his involvement in anti-government protests.

- [7] The principal Appellant was a XXXX XXXX who was required to join a XXXX syndicate in 2011. Five years later in July 2016, the XXXX were forced to increase their fees to the government, an increase they were told would be used to fund the civil war in Syria. The drivers protested in October of 2016. The protest was raided by the state authorities, and the principal Appellant was detained for twenty days where he was assaulted and interrogated.
- [8] After his release, the Appellants took a trip to Brazil in XXXX 2016. His family advised that they should take some time away and put him in touch with a family friend. While in Brazil, on January 3, 2017, the Appellants' received a phone call from Iran, informing them that the Sepah (the Revolutionary Guard) had raided their house and then proceeded to the home of the principal Appellant's father, where they told him he was now wanted for anti-government activities.
- [9] The Appellants sought the assistance of a smuggler in Brazil, who helped them depart the country in XXXX of 2017. The Appellants allege that they fear the Iranian government. Role of the RAD
- [10] When reviewing the RPD decision, the panel is required to independently assess all the evidence and determine whether the RPD erred in relation to each error of law, fact or mixed fact and law. For this assessment, the panel has applied the standard of correctness as per the Federal Court of Appeal decision in Huruglica.⁴ If the panel finds that the RPD had a meaningful advantage in a particular circumstance, the panel may defer to the RPD's credibility assessment of oral testimony. Appellants' Argument on Appeal
- [11] The Appellants submit that the RPD erred in its credibility assessment. Specifically, the Appellants argue that the RPD erred in: * failing to take into consideration all relevant information before making its decision; * making assumptions of fact outside the Appellants' testimony and documentary evidence; and * breaching principles of natural justice by proceeding with a tainted mind.
- [12] The Appellants have not submitted any new evidence for this appeal; they have requested a hearing, however since there is no new evidence submitted, there is no jurisdiction to hold one. RAD Analysis of the Merits of the Appeal
- [13] I find that the determinative issue in this claim is credibility. The Appellants submit that the RPD failed to make a full and complete assessment of facts as required, and that the panel was merely paying lip service by stating it had, while failing to properly assess the testimony or documentary evidence.
- [14] While the Appellants argue that the RPD made an unreasonable decision and did not take into consideration relevant information and made assumptions of fact outside the Appellants' statements and the documentary evidence, I do not agree. While some of the observations may have been microscopic, they are not fatal. The RPD considered many aspects of the Appellants' claim, their testimony, statements in their Basis of Claim (BOC) form, the Port of Entry (POE) interview and their corroborative documents. I see no error in

the RPD analysis in this respect. The Appellants' Departure from Iran

- [15] The Appellants allege that the RPD's findings regarding the Appellants' departure from Iran was based on inferences about the Revolutionary Guards and a disregard for the objective documentary evidence. The Appellants testified that at the protest of October 2017, he was detained and held by the Sepah for approximately 20 days. He stated after his detention, he had to surrender the ownership to his vehicle and the vehicle itself. When questioned about his departure from Iran, the principal Appellant testified that his family left Iran on their own passports with no difficulty. He noted that at the time they left Iran, they were not yet on a list of people who were barred from exit.
- [16] The Appellants argue that there is no reason for the RPD to find that the Appellants should have had difficulty leaving Iran because the principal Appellant was released without charges and not prosecuted. The Appellants submit that the same documentary evidence cited by the RPD in its decision also notes that "individuals can be prohibited from traveling abroad 'only if an active prosecution case is underway.'"⁵ The principal Appellant testified at the hearing, and they argued again in their memorandum, that the principal Appellant was no longer of interest to the authorities until after their departure from Iran, when he testified his colleagues provided the Sepah information that he was the leader of the protest.
- [17] I have reviewed the transcript of the hearing in its entirety, as well as the RPD Record. While the principal Appellant testified at the hearing that the authorities did not retain an interest in him until after his departure from Iran, the principal Appellant omitted this information from his BOC narrative and his POE interview indicates that "they branded me as a leader of the protest" during his interrogation.⁶ Furthermore, the documentary evidence is more mixed than what the Appellants indicate.
- [18] In addition to the findings of the RPD, where "if the passport holder is registered on a list of individuals who have an outstanding issue with the government or for other reasons are not allowed to leave Iran, this information will appear on the screen,"⁷ the document also notes that: [p]assengers entering and leaving [Iran] are checked against two watchlists issued by the Ministry of Intelligence and Security (MOIS) and the Revolutionary Guard. Those flagged are either arrested on the spot, allowed to pass through and surveilled while in the country, or have their passports confiscated and enter Iran on the condition they attend interrogation sessions at MOIS offices.
- [19] While the article also notes that individuals can slip through undetected due to a twelve-hour delay in manually uploading 'fugitives' names from MOIS lists, this is not relevant to the Appellants, as their departure from Iran took place months after his detention, not hours. Although the article notes individuals can be prevented from departure "only if there is an active persecution case is underway," the document also notes that an Iranian attorney who has represented those who were prevented from leaving Iran has stated that: [p]olitical and human rights activists, artists, writers and other civil activists...have been exit banned. However, no reason or reasons for their exit ban has so far been issued to them," and that in

there were "no judge's orders putting the ban in place.⁸

- [20] This information would indicate that individuals who have been involved in political and civil activism have been banned from exit without a case pending against them, or without a judicial order preventing their exit.
- [21] After a review of the testimony of the principal Appellant and the information he provided at the Port of Entry on his interaction with the Sepah, I find that he would have difficulty exiting Iran on his own passport. As noted before, the documentary evidence on exit from Iran after having contact with the authorities is somewhat mixed; however, I prefer the bulk of the evidence which notes that those who have been of interest to the government authorities would have difficulty exiting. The principal Appellant testified he was held for approximately twenty days prior to his release. He was required to relinquish the ownership of his vehicle to guarantee his release from detention. The principal Appellant also provided to the officer at the Port of Entry that he was deemed a leader of the protests by the Sepah. Based on this evidence provided by the Appellants, I find that the principal Appellant would have fit the profile of an individual who would be, at the very least, questioned prior to his departure from Iran on his own passport. The fact that he had no difficulties in departing his home country leads me to find on a balance of probabilities that the central allegation of the claim, that the principal Appellant was detained and now wanted by the Iranian authorities, is not credible. Lack of corroborating documents relating to Syndicate membership
- [22] The principal Appellant testified that in 2011, he became a member of a XXXX syndicate. He noted that he paid the fee monthly until his arrest, out of his bank account on his Tashmund card. Since that time, the documents relating to his XXXX ownership and syndicate membership were seized with his vehicle. The principal Appellant was asked if he had any banking or other documents that would establish his involvement with the syndicate. The principal Appellant testified that he did not have any banking documents, as when he left for vacation in Brazil, he had no need to think he would need them. When asked why he had not tried to obtain the documents since coming to Canada and making a claim for refugee protection, the principal Appellant noted that the bank would not provide those documents unless he was there in person.
- [23] I agree with the Appellants that the fact that the family left Iran without any banking information should not detract from their overall credibility. I do not find it reasonable to expect the family to have left Iran with documents relating to the syndicate or banking records in hand.
- [24] However, the principal Appellant notes that he is in regular contact with his brother-in-law and father who remain in Iran. When asked at the first sitting why he had not made an attempt to gather information that establishes his membership in the Syndicate since coming to Canada, the principal Appellant stated he had not made any effort because to get access to his banking information, he would have to be present in Iran, or have a power of

attorney to get the information. When asked why he had not tried since arriving in Canada to establish a power of attorney to do so for him, the Appellant stated his father was scared to do so because he had been threatened.

- [25] At the second sitting, the principal Appellant testified that his brother-in-law attempted to speak to the bank about getting access to bank records and was told the account holder had to be present. The RPD asked the principal Appellant if he had contacted the bank himself. He stated he had not. He was asked if he had given his brother-in-law power of attorney; he testified he did not. He was asked by the RPD if his brother-in-law obtained documents corroborating the policies of the bank; he testified he had not. The Appellants also provided a letter from the PA's father⁹ and his brother-in-law¹⁰ during the third sitting of their claim. The letter from his father does not mention any attempts to getting banking information, or a fear of doing so. The letter from his brother-in-law speaks of an attempt to gather documents from the bank, but not of an attempt to get a power of attorney, which the principal Appellant indicated was necessary at the first sitting, before any attempts were made to obtain the banking information.
- [26] While I accept on a balance of probabilities that the principal Appellant was a XXXX XXXX in Iran, I do not find his failure to provide any documents linking him to the Syndicate, a group with whom his membership is central to his claim, to be reasonable. The principal Appellant did not attempt to contact his bank. He provided no documents regarding the policies of the bank. He provided no evidence of any attempt to contact legal counsel in Iran to secure the documents. The principal Appellant testified that he needed a power of attorney to access his bank records, however he made no efforts to secure one. The principal Appellant provided no documentary evidence that established his allegation that he was a member of the Syndicate in Iran, and protested in 2016 about the rise in fees the truck drivers had to pay to the group. While it is not necessary to do so, in this case I find it could be reasonably expected, and its absence detracts from the overall credibility of the Appellants. Political Activism
- [27] The Appellants allege that they are politically active in Iran, and are at risk of persecution if they were to return to Iran based on their activities. Neither of the adult Appellants provided oral testimony that they have been involved in political activities that could reasonably be seen as anti-regime, other than the activities alleged regarding the Syndicate. The Associate Appellant testified that women have been protesting the forced use of the hijab in Iran, and some have been imprisoned. She notes that she is not wearing a hijab while in Canada. She was asked by counsel what her plans for the future are. COUNSEL: I mean when you go back to Iran are you planning to cover your hair again or what ... what is your thought actually now if you go back to Iran about covering your hair? CO-CLAIMANT: Since we came to Canada actually I do not want to go back because I feel I am living, like I am living as a human person, I have my rights, my daughter does not have to cover her hair and I am afraid if I go back to Iran, I am very much afraid for my sake and for my daughter's sake.

- [28] The documentary evidence does indicate that women who refuse to wear the hijab will risk encountering the authorities.¹¹ After a review of the RPD Record, I note that no allegations were made by the Principal Appellant or Associate Appellant in their narrative, amendment, or their Port of Entry interviews that would indicate that the female Appellants do not wish to wear the hijab upon return to Iran. There are also no other allegations of political activity. Although counsel asked a direct question about whether the Associate Appellant would cover her hair if she were to return to Iran, she did not answer the question, only noted she did not want to go back because of the rights she and her daughter are entitled to in Canada. When questioned about what she feared at the oral hearing, the Associate Appellant described the general treatment of women in Iran.
- [29] I find that the Associate Appellant has not clearly explained how this is her personalized decision or how, why or when she came to decide she was no longer going to wear a hijab if she returned to Iran. I do note that refusal to wear the hijab in a country such as Iran can be found to be persecutory; however, I do not find on the balance of probabilities that the refusal to wear the hijab is a deeply held personal view of the Associate Appellant, or the minor Appellant. Therefore, I find there is insufficient evidence to suggest that the Associate and minor Appellants would not wear a hijab if they returned to Iran.
- [30] I find on a balance of probabilities that the Appellants are not at risk of persecution due to political activities in Iran.

CONCLUSION

- [31] The appeal is dismissed. Pursuant to subsection 111(1)(a) of the IRPA, the RAD confirms the decision of the RPD. (signed) "Kimberley Foreman" Kimberley Foreman January 30, 2020
Date 1 Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, September 30, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act [Guideline 3]. 2 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act [Guideline 4]. 3 Immigration and Refugee Protection Act, S.C. 2001, c. 27, last amended on February 6, 2014. 4 *M.C.I. v. Huruglica, Bujar* (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93. 5 Exhibit RPD-1, RPD Record, Exhibit 5, National Documentation Package (NDP) for Iran (January 31, 2018), item 14.1. Immigration and Refugee Board of Canada (IRB), Response to Information Request (RIR). IRN104624.E. October 21, 2013. 6 Exhibit RPD-1, RPD Record, Exhibit 1, p. 70. 7 Exhibit RPD-1, RPD Record, Exhibit 5, NDP for Iran (January 31, 2018), item 14.1. 8 Exhibit RPD-1, RPD Record, Exhibit 5, NDP for Iran (January 31, 2018), item 14.1. 9 Exhibit RPD-1, RPD Record, Exhibit 10, p. 231. 10 Exhibit RPD-1, RPD Record, Exhibit 10, p. 233. 11 Exhibit 5, NDP for Iran

(January 31 2018), item 5.4, Immigration and Refugee Board of Canada (IRB), Response to Information Request (RIR), IRN103920.E, 20 December 2011.

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RAD.25.02 (April 04, 2019) Disponible en français

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