

Federal Court



Cour fédérale

**Date: 20230209**

**Docket: IMM-1097-22**

**Citation: 2023 FC 192**

**Toronto, Ontario, February 09, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**MUHAMMAD AMIN  
SHAHNAZ AMIN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, citizens of Pakistan, assert that they face risk of religious persecution from extremist groups in Pakistan, particularly the Majlis-a-Tahaffuz-e-Khatme Nabuwwat [Majlis] and more broadly from Sunni Muslims, due to their conversion to the Ahmadiyya (or Ahmadi) sect of Islam. They seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated January 11, 2022, which dismissed their appeal of the decision of the Refugee Protection Division [RPD]. The RPD found that the Applicants are neither

Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] The Applicants assert that the RAD erred: (a) in finding the Applicants' new evidence to be inadmissible; (b) in its assessment of whether the RPD had provided responsive reasons for its decision; (c) by ignoring country condition evidence which contradicts the finding of the RAD; and (d) by requiring corroborative evidence.

[3] For the reasons that follow, I am not satisfied that any of the grounds of review advanced by the Applicants warrant the Court's intervention. Accordingly, the application for judicial review shall be dismissed.

## **I. Background**

[4] The Applicants are spouses. Muhammad will be referred to herein as the Principal Applicant and Shahnaz as the Associate Applicant. The Applicants state that while visiting Canada for the first time in March of 2017, they met an Ahmadiyya missionary. The Applicants took interest in Ahmaddiya and learned its fundamentals. On May 17, 2017, the Applicants pledged their oath of allegiance to Ahmaddiya. At this point, they considered themselves to be converted from the Sunni sect of Islam to the Ahmadiyya sect of Islam. In June of 2017, the Applicants returned to Pakistan. The Applicants visited Canada in both 2018 and 2019 and practiced their new faith while in Canada.

[5] On September 28, 2019, the Applicants state that their son became aware of their religious conversion and engaged their family into attempting to renounce the conversion.

[6] The Principal Applicant states that on November 2, 2019, two neighbours confronted him about their religious conversion to Ahmadiyya, which he denied. The Principal Applicant feared that the neighbours would physically assault him or his life would be in danger if he admitted that he had converted. The Principal Applicant discussed this situation with his wife, who suggested that he move elsewhere to avoid further neighbourhood suspicion. The Principal Applicant went into hiding in another city with a childhood friend, claiming that he was being threatened by a local thug because of a debt.

[7] The Applicants claim that a week after the Principal Applicant went into hiding, a member of Majlis called to threaten them, ordering that they attend their offices to testify regarding their religious beliefs within the week to avoid being punished in accordance with Islamic law. The Associate Applicant also states that during this period, on November 15, 2019, some unknown people came to their family home making threats, stating there would be a price to pay for their conversion.

[8] The Applicants state that, fearing for their safety, they decided to leave Pakistan. The Applicants arrived in Canada on November 29, 2019 and claimed protection in March of 2020.

[9] In its decision dated August 31, 2021, the RPD found that the Applicants are neither Convention refugees nor persons in need of protection, finding insufficient reliable evidence to

support their conversion, and continued practice of, the Ahmaddiya faith. While the Applicants had presented a letter dated April 2021 showing that they made an application to the Ahmadiyya Jama'at in 2017, the RPD found that there was no evidence that they practiced the religion from 2017 to 2021 in Canada or in Pakistan.

[10] The RAD completed an independent analysis of the record before the RPD and agreed with the RPD's finding that the Applicants had failed to provide sufficient evidence of their conversion to the Ahmadiyya faith and that they are not genuine converts or practitioners.

## **II. Analysis**

[11] While the Applicants have raised a number of issues on this application, they all go to the reasonableness of the RAD's determination. Accordingly, the issues raised by the Applicants are reviewable on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[12] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

**A. The RAD reasonably assessed the new evidence**

[13] Subsection 110(4) of the *IRPA* addresses the admission of new evidence on appeal to the RAD and provides:

<b>Evidence that may be presented</b>	<b>Éléments de preuve admissibles</b>
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[14] Subsection 110(4) provides that the RAD can only consider new evidence if: (i) it arose after the RPD's decision; or (ii) if the evidence was not reasonably available at the time or the person could not reasonably have been expected to present it at the time of the RPD's negative decision. The strict statutory criteria reflect a restrictive approach to new evidence [see *Demberel v Canada (Citizenship and Immigration)*, 2016 FC 731 at para 31; *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 63]. The test set out in subsection 110(4) is disjunctive, meaning that the RAD must consider whether the new evidence fails to meet both conditions laid out in subsection 110(4) [see *Olowolaiyemo v Canada (Citizenship and Immigration)*, 2015 FC 895 at paras 19-20]. Further, even if the Applicants' evidence falls into one of the two categories covered in subsection 110(4), the RAD still has the discretion to accept it or not [see *Olowolaiyemo, supra* at para 20]. However, if the RAD determines that the new evidence does

not meet the requirements of subsection 110(4), the RAD has no discretion to admit the evidence [see *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at paras 23, 45].

[15] It must also be recalled that the Applicants must put forward their best case before the RPD and present all evidence that is available at that time. The RAD appeal is not an opportunity to improve a deficient record in response to weaknesses identified by the RPD [see *Singh, supra* at para 54; *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at paras 13-14].

[16] Turning to the case before me, the Applicants submitted the following new evidence for consideration by the RAD:

- A. A letter from Muhammad Dawood Khalid dated October 21, 2021 [Letter];
- B. A donation receipt for the Applicants' donation to the Ahmadiyya Muslim Jama'at in Maple, Ontario dated October 11, 2021 [Donation Receipt]; and
- C. A WhatsApp conversation regarding announcements made via the Ahmadiyya Muslim Jama'at from a group in Windsor, Ontario with dates from September 3, 2021 to September 21, 2021 [WhatsApp Conversation].

[17] The Applicants assert that, in relation to the Letter, the RAD failed to properly apply the disjunctive test in subsection 110(4). While the RAD assessed whether the Letter arose after the rejection of the claim, the Applicants assert that the RAD failed to consider whether the Letter was not reasonably available prior to the RPD's decision. Moreover, the Applicants assert that the Letter contains information regarding the Applicants' continued religious practices after the RPD's

rejection of their claim. The Applicants assert that this portion of the Letter does meet the first part of the subsection 110(4) test.

[18] I reject the Applicants' assertions. The RAD reasonably found that while the Letter was dated after the rejection of the claim, the Letter makes reference to events from 2017 to 2020. A document's "newness" cannot be tested solely by the date of its creation. What is important is the event or circumstances sought to be proved by the evidence [see *Tuncdemir v Canada (Citizenship and Immigration)*, 2016 FC 993 at para 34] and the Letter addressed events before the RPD's decision. Contrary to the Applicants' assertion, the RAD did go on to consider whether the Letter was reasonably available prior to the RPD's decision and expressly rejected the Applicants' explanation that they had problems obtaining documents because of the COVID-19 pandemic. The RAD properly noted that the Applicants provided "no explanation as to how the pandemic makes it difficult to arrange obtaining this document or why the author of the letter could not have written the letter prior to the rejection of the claim".

[19] While the Applicants assert that the Letter contains information about their on-going religious practices that post-dates the RPD's decision, the Letter is vague in terms of the timing of the events recounted by the author and does not clearly establish that the events recounted in the letter post-date the RPD's decision. In the circumstances, I find that it was reasonable for the RAD to find that the entirety of the Letter did not meet the requirements of subsection 110(4).

[20] In relation to the Donation Receipt and the WhatsApp Conversation, the RAD noted that both documents are dated after the RPD's rejection of the claim. However, the RAD found that

the Applicants were improperly attempting to file such evidence in order to complete a deficient RPD record. In that regard, the RAD noted that the RPD stated in its decision that the Applicants had not provided any donation receipts to establish their continuous practice of the Ahmadiyya faith and that they had not provided any evidence of membership at the Ahmadiyya Jama'at in Windsor. The RAD went on to state that even if it did admit the Donation Receipt and the WhatsApp Conversation into evidence, they would have been assigned low probative value as to whether the Applicants practiced the Ahmadiyya faith since 2017, as one would have expected that they would have donation receipts and similar communications from prior to the rejection of their claim.

[21] The Applicants assert that the RAD improperly speculated about the Applicants' motivation for submitting the Donation Receipt and WhatsApp Conversation, whereas the evidence before the RAD was that the evidence was proffered when it was due to the reduction in COVID-19 restrictions and the Applicants' resulting ability to interact more fully with members of their religious community. I reject this assertion and find that it was reasonably open to the RAD to find that the Applicants were improperly attempting to correct a deficient record, given that: (a) the RAD had already rejected the Applicants' suggestion that the pandemic prevented them from obtaining the new evidence earlier; (b) the RPD expressly rejected the Applicants' claim due to a lack of sufficient evidence, such as evidence of donations or communications related to religious activity or membership; and (c) the Donation Receipt and WhatsApp Conversation were dated only days after the RPD's rejection of their claim.



[22] I find that the RAD's assessment of all of the new evidence against the requirements of subsection 110(4) was clear and justified and its conclusions reasonable.

**B. The RAD's decision was otherwise reasonable**

[23] The Applicants have alleged a number of additional errors made by the RAD, but I will address them together as they all relate to the RAD's determination that the Applicants did not provide sufficient evidence of their conversion to, and practice of, the Ahmadiyya faith.

[24] The Applicants made a number of arguments regarding alleged errors made by the RAD in requiring corroborative evidence and finding that the evidence provided by the Applicants (such as the letter from Baitul Islam, the Full Particulars document and the affidavit from a friend, together with the evidence of the Applicants themselves) was insufficient to support their claim. The Applicants assert that there is a presumption of truthfulness in the testimony of the Applicants and the circumstances did not trigger any requirement for corroboration. By requiring corroborative evidence in such circumstances, the Applicants assert that the RAD was actually impugning their credibility.

[25] I reject these various assertions. An applicant cannot rely on the presumption of truthfulness of a sworn statement without providing sufficient evidence to support the key elements of a claim [see *Lin v Canada (Citizenship and Immigration)*, 2022 FC 341 at para 28; *Barros Barros v Canada (Citizenship and Immigration)*, 2022 FC 9 at para 50]. Evidence is said to be sufficient if it makes the existence of the fact at issue "more likely than not" or based on a balance of probabilities [see *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 at para 30].

[26] Moreover, it cannot be assumed that in cases where the RAD finds that an applicant's evidence does not establish the applicant's claim, that the RAD has not believed the applicant. An applicant may have tendered evidence of each essential fact to make out a particular claim, but they may not have met the legal burden because the evidence presented does not prove the facts required on a balance of probabilities [see *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 23; *Gao v Canada (Citizenship and Immigration)*, 2014 FC 59 at para 32].

[27] In this case, I find that the RAD made no finding regarding the Applicants' credibility (veiled or otherwise). Rather, the RAD engaged with the evidence provided by the Applicants and was simply not satisfied that sufficient objective evidence had been presented by the Applicants on their conversion to, and practice of, the Ahmadiyya faith. The RAD is entitled to significant deference where findings of sufficiency are concerned, provided that the insufficiency is explained and not used as a disguised means of making credibility findings [see *Magonza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at para 35]. Here, the RAD adequately explained the deficiency in the Applicant's evidence by pointing to the limitations in the evidence provided and what was missing therefrom. I find that the RAD's concern regarding the absence of corroborative documents was reasonable given that the Ahmadiyya faith is one with specific, standardized documents described in the National Document Package [NDP] that should exist for all practitioners but were not provided by the Applicants, and the Applicants had failed to adequately explain the absence of such documents [see *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968].

[28] The Applicants further assert that the RPD improperly relied on its specialized knowledge and extrinsic evidence of the process for converting to the Ahmadiyya faith, which was not made known to the Applicants and thus deprived them of an adequate opportunity to respond thereto. I reject this assertion. The decision at issue before the Court is that of the RAD, not the RPD. The RAD conducted a *de novo* assessment of the Applicants' claim and thus the sufficiency of the RPD's reasons is not relevant. In considering the RAD's decision, I find that the RAD very clearly set out the portions of the NDP that it relied upon in making its determination of the documentation that should have been available to support the Applicants' claimed conversion to the Ahmadiyya faith, which NDP information was available to the Applicants.

[29] The Applicants further assert that the RAD's decision lacks significant detail and rationale for the conclusions made, given that the RAD did not note any inconsistencies or disbelief at aspects of the Applicants' claim and testimony. I reject this assertion. As noted above, the RAD's reasons intelligibly and clearly set out that the RAD's concern was not with the evidence that was provided by the Applicants, but with the evidence that was not provided by the Applicants in circumstances where corroborative evidence should have existed. It was a question of sufficiency of the evidence provided, not one of inconsistency.

[30] Moreover, I similarly reject the Applicants' assertion that RAD erred by selectively relying on the evidence before it. The RAD did not ignore any of the evidence produced by the Applicants. Rather, the RAD was not satisfied that the Applicants had provided sufficient evidence to support their claim.

[31] I find that, as a whole, the RAD's decision, in terms of its both rationale and outcome, is transparent, intelligible and justified.

**III. Conclusion**

[32] As the Applicants have failed to demonstrate that the RAD's decision is unreasonable, the application for judicial review shall be dismissed.

[33] The parties have proposed no question for certification and I agree that none arises.

**JUDGMENT in IMM-1097-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1097-22

**STYLE OF CAUSE:** MUHAMMAD AMIN AND SHAHNAZ AMIN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 09, 2023

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** FEBRUARY 09 2023

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