



**RAD File / Dossier de la SAR : XXXXXX
XXXXXX**

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

**Persons who are the subject of
the appeal**

XXXXXX
XXXXXX

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

July 26, 2021

Date de la décision

Panel

M. Lee

Tribunal

**Counsel for the persons who
are the subject of the appeal**

Massood Joomratty

**Conseil des personnes en
cause**

Designated representative

XXXXXX

Représentant(e) désigné(e)

Counsel for the Minister

Jennifer Mensink

Conseil du ministre

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**IRB Representative
Représentant de la CISR**

REASONS FOR DECISION

OVERVIEW

[1] The Minister of Public Safety and Immigration, Refugees and Citizenship (Appellant), appeals a decision from the Refugee Protection Division (RPD) dated February 25, 2020. The RPD issued a positive decision for XXXXXX (Principal Respondent) and XXXXXX (Minor Respondent), citizens of Iran.

[2] An independent designated representative (DR) was appointed for the RPD hearing and different independent DR was appointed for this appeal.

DECISION

[3] The Refugee Appeal Division (RAD) dismisses the appeal. The RPD was correct in finding that the Respondents are Convention refugees.

BACKGROUND

[4] The Principal Respondent alleges to fear domestic violence from her husband in Iran. The Minor Respondent alleges to fear abuse from his father (the Principal Respondent's husband). The Respondents traveled to Vancouver together on August 26, 2018. They made a refugee claim shortly afterward. The Appellant intervened in person at the RPD hearing on Article 1F(b) of the *United Nations Convention*,¹ alleging that the Principal Respondent did not have consent from her husband to bring the Minor Respondent to Canada to live permanently.

[5] The RPD heard the claim over the course of three separate hearings: July 12, 2019, November 7, 2019, and December 17, 2019. An independent DR was appointed to assist the Minor Respondent.

[6] On February 25, 2020, the RPD issued a positive written decision for the Respondents, finding that there were not serious reasons for considering that a serious non-political crime was

committed. The RPD found that the Respondents were credible, on a balance of probabilities, and accepted their claims.

[7] The Appellant submits that the RPD erred in its decision and failed to conduct a proper exclusion analysis. The Appellant also submits that the independent DR failed to competently fulfill her duties on behalf of the Minor Respondent. The RAD carefully considered the merits of the appeal in the decision below.

Role of the RAD

[8] According to the Federal Court of Appeal's ruling in *Huruglica*,² the RAD will review decisions of the RPD on a standard of correctness after conducting an independent analysis of the evidence.

[9] The RAD will defer to certain findings of the RPD where the RPD enjoys a meaningful advantage in assessing the oral evidence at the hearing.

The Appellant provided credible and trustworthy evidence to accompany submissions

[10] The Appellant provided the Immigration and Refugee Board of Canada (IRB) *Designated Representative's Guide* and an excerpt from Black's Law Dictionary as documentary evidence which it relied upon in written submissions.³ The Appellant is not requesting an oral hearing.⁴

[11] The RAD finds that these are credible and trustworthy evidence, which will be considered in its decision.⁵

ANALYSIS

No violation of procedural fairness or of principles of natural justice

[12] The Appellant submits that the RPD violated the procedural fairness and the principles of natural justice, as the Minor Respondent's best interests and right to be heard were not represented by separate counsel.⁶ The Appellant submits that legal counsel who was present at the RPD

hearing was representing the Principal Respondent, whose actions resulted in the Minor Respondent being taken from the home without regard to the rights of lawful access by the father, within Iran.⁷ The Appellant further submits that the Minor Respondent was not adequately represented by the independent DR at the hearing.⁸ The independent DR did not retain counsel for the Minor Respondent or make any representations at the hearing.⁹

[13] The Respondents submit that the Appellant was given an opportunity to call the Minor Respondent as a witness.¹⁰ The Appellant declined until all the testimony was completed. The principles of natural justice were never triggered, given that the Minor Respondent was not called as a witness.¹¹ If the Minor Respondent were called to be a witness, then the independent DR would have a duty to appoint separate counsel, but this was not the case. Given the correspondence that preceded the RPD hearing, it was not anticipated that the Minor Respondent would be called upon to testify.¹² The independent DR said she would stay in the room and explain the proceedings to him.

[14] The RAD agrees with the Respondents. The RAD finds that the independent DR was competent and there has been no breach of procedural fairness or natural justice.

[15] The RAD is guided by the Federal Court decision of *Benitez v. Canada*, where it states the following:

I would take the principle that an applicant must raise an allegation of bias or other violation of natural justice before the tribunal at the earliest practical opportunity. The earliest practical opportunity arises when the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection.¹³

[16] This refugee claim was completed over three separate days, in a six-month period. The independent DR was present during all three sittings. Counsel represented both Respondents during each of these proceedings as well. The RAD finds that the Appellant had ample opportunity to raise any objections to the Minor Respondent's legal representation or the independent DR's competency, at much earlier date and failed to do so. On appeal, the Appellant did not explain why it was unable to raise this objection at any of the hearings.

[17] Furthermore, there is no evidence to indicate that the Principal Respondent's interests and the Minor Respondent's interests were not aligned, such that the Minor Respondent required separate counsel. The Appellant was not a party to any discussions or decisions that the DR may have had with the Minor Respondent outside the hearing room. The RAD finds that the Appellant is assuming that the DR did not consider separate counsel and that she should have done so.

[18] According to the IRB *Designated Representative's Guide*, the DR's responsibilities include the following:

- deciding whether to retain counsel and, if counsel is retained, instructing counsel or assisting the represented person in instructing counsel;
- making other decisions regarding their case or assisting them to make those decisions;
- informing them about the various stages and procedures in the processing of their case;
- assisting in gathering evidence to support their case and providing evidence and being a witness at their hearing if necessary;
- protecting their interests and putting forward the best possible case to the Division; and
- informing and consulting them to the extent possible when making decisions about their case.¹⁴

[19] The Minister had the opportunity during any of the three hearings, to question the DR on whether she fulfilled the above responsibilities. The Minister chose not to pose any questions to the DR. The RAD finds that there is no evidence to indicate that the DR did not fulfill her duties adequately.

[20] Also, there was no evidence to show that the Principal Respondent was acting contrary to the Minor Respondent's best interests. According to their Basis of Claim (BOC), the Principal Respondent brought the Minor Respondent with her to Canada because of alleged child abuse from his father. While in Canada and living with the Principal Respondent, the Minor Respondent saw a psychologist and a report was submitted to the RPD in evidence. He has also been attending school

while in Canada and spending time with his relatives. All of these factors indicate that the Minor Respondent's essential needs were being met while he was in Canada.

[21] For the above reasons, the RAD finds that there were no breaches of procedural fairness or natural justice, and that the independent DR at the RPD proceedings was competent.

Article 1F(b) exclusion analysis

[22] Regarding exclusion, Article 1F(b) of the *United Nations Convention* indicates that:

F. The provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

[23] The Appellant submits that the RPD failed to go through a proper exclusion analysis to see if an offence had taken place.¹⁵ The Appellant further submits that the RPD made a finding that the Principal Respondent did not have the father's consent, but then concluded that the Minister did not establish that there were serious reasons for considering that a serious crime had been committed.¹⁶ The Appellant submits that the RPD assessed the defence of imminent harm without first making a finding on whether the Principal Respondent committed the serious non-political crime of child abduction.¹⁷

[24] The Respondents submit that the RAD has previously held in analogous cases that child abduction is not a serious crime.¹⁸ The most pertinent point in child abduction are the mitigating factors and low sentencing range.¹⁹ The most likely sentence that a mother would receive is much less than ten years.²⁰

[25] The RAD agrees in part with the Appellant. The RPD's assessment is very brief and does not address the factors as set out by the Federal Court of Appeal in *Jayasekara*.²¹ The lack of analysis is an error.

[26] However, after conducting its own independent analysis, the RAD agrees with the RPD, and finds that there are not serious reasons for considering that the Principal Respondent committed a serious non-political crime.

[27] Although the RAD finds that the Principal Respondent committed the offence of child abduction, the RAD finds that she has a full defence because of the imminent harm she faced from domestic violence. The RAD assesses the defence of imminent harm as one of the mitigating factors in its exclusion analysis. Considering this defence, along with numerous other mitigating factors, the RAD finds that the offence committed is not serious. Therefore, the RAD finds that the Principal Respondent is not excluded under Article 1F(b).

[28] The RAD's full Article 1F(b) exclusion analysis is below.

Serious reasons for considering

[29] The Appellant is the Minister, and therefore, it bears the onus to demonstrate that there are "serious reasons for considering" that the Principal Respondent committed a serious non-political crime. This is the standard of proof. Serious reasons for considering go beyond a mere suspicion, but below the threshold of a balance of probabilities.²² This is a very low threshold to meet.

Child abduction is a non-political crime

[30] The Appellant submits that the Principal Respondent has committed the offence of child abduction. There is no disagreement between the parties that this offence is non-political in nature. The RAD also agrees that the alleged offence is non-political.

Whether the crime is serious

[31] It is insufficient for the Principal Respondent to have simply committed the offence of child abduction. The crime itself must also be considered serious for the Principal Respondent to be excluded.

[32] To assess the seriousness of a crime for exclusion, the RAD is guided by the list of factors from the Federal Court of Appeal's decision in *Jayasekara*²³:

- a. The elements of the crime;
- b. The mode of prosecution;
- c. The penalty prescribed;
- d. The facts; and
- e. The mitigating and aggravating circumstances underlying the conviction.

[33] The RAD will examine the evidence under each of these factors to determine the seriousness of this crime, for the purpose of exclusion.

The elements of the offence

[34] The Canadian offence of child abduction is found in section 283 of the *Criminal Code of Canada*.²⁴

Abduction

283 (1) Everyone who, being the parent, guardian or person having the lawful care or charge of a child under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that child, whether or not there is an order referred to in subsection 282(1) in respect of the child, with intent to deprive a parent, guardian or any other person who has the lawful care or charge of that child, of the possession of that child, is guilty of

- a. an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- b. an offence punishable on summary conviction.

[35] The RAD finds that the elements of the offence are met. The Principal Respondent is the mother. The Minor Respondent is under the age of 14. The Principal Respondent has taken the child to Canada, knowing that this would deprive the father of the lawful care of their child. The Principal Respondent testified that there was no custody order in place when she left Iran with the Minor Respondent. Therefore, the RAD finds that the Principal Respondent's actions were intended to deprive the father who has lawful care of the child, and she has committed child abduction.

Mode of prosecution

[36] Child abduction can be prosecuted by way of indictment or by summary conviction, according to the *Criminal Code* provision stated above. In this case, the documentary evidence does not indicate whether child abduction would also be a hybrid offence in Iran. Furthermore, there is no evidence that the Principal Respondent has been charged with any offence in Iran. Therefore, there is no requirement that it be prosecuted as an indictable offence.

Penalty prescribed

[37] Since there is no evidence to indicate that the Principal Respondent was charged in Iran with an offence, there is consequently no conviction and therefore, no sentence.

[38] Nonetheless, the RAD considered the presumption of seriousness of this offence in Canada and the potential sentencing range, if the Principal Respondent was charged. In Canada, if prosecuted by way of indictment, the maximum sentence for child abduction would be ten years old. If by summary conviction, the maximum penalty would be two years less a day and a maximum fine of CAN\$5,000.

[39] The RAD is mindful of the Supreme Court of Canada's decision in *Febles*, where it indicates that the ten-year rule should not be applied in a mechanistic, decontextualized or unjust manner. In *Febles*, the Court indicated the following:

... Article 1F(b) is designed to exclude only those whose crimes are serious. The UNHCR [United Nations High Commissioner for Refugees] has suggested that a presumption of serious crime might be raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery (Goodwin-Gill, at p. 179). These are good examples of crimes that are sufficiently serious to presumptively warrant exclusion from refugee protection.²⁵

The RAD finds that "serious" crimes often involve a degree of sexual or physical violence, or death. The RAD finds that the Principal Respondent's actions do not involve any of these elements. Nonetheless, the RAD will also consider the aggravating and mitigating factors below.

Aggravating factors

[40] The RAD considers that the father did not consent to have the Minor Respondent move to Canada permanently. The RAD also considers the distance between the Minor Respondent and his father, as they are living in two different countries. This distance will inevitably make it challenging for the father to be involved in his child's life. There is no existing divorce or custody agreement permitting the Principal Respondent to leave Iran permanently with the child.

[41] The RAD finds that the Principal Respondent's decision to leave Iran with the Minor Respondent has a lifelong impact on the father's ability to take part in his child's life, and this is a significant aggravating factor.

Mitigating factors

[42] The RAD finds that there are several significant mitigating factors which are discussed below.

(i) Wide sentencing range

[43] The Appellant submits that the offence of child abduction carries wide sentencing range of zero to ten years, and this is a mitigating factor.²⁶ The RAD agrees. If a court were to convict the Principal Respondent of child abduction, it would be possible to receive a sentence well below the ten year maximum.

(ii) Respondents have full defence due to imminent harm

[44] As indicated above, the RAD has found that the Principal Respondent's actions meet the elements of the child abduction offence found in section 283 of the *Criminal Code of Canada*.

[45] However, the RAD finds that there is sufficient evidence to demonstrate both Respondents were in imminent harm. The RAD will mainly direct its analysis on the Principal Respondent, which is the focus on the Appellant's submissions.

[46] The RAD finds that the Principal Respondent's actions meet the full defence of imminent harm in section 285 of the *Criminal Code of Canada*:

285 No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the **person charged with the offence was escaping from danger of imminent harm** [emphasis added].²⁷

[47] The RAD finds that this is a significant mitigating factor, when considering the seriousness of the offence committed.

[48] On appeal, the Appellant submits that the RPD erred by concluding that there was imminent harm to the Principal Respondent by relying on her previous experiences of abuse to meet the requirement of imminent harm.²⁸ The Appellant provides a definition of "imminent" from Black's Law Dictionary as "near at hand; impending." The Appellant submits that the Principal Respondent sought state protection but did not "stay to see it through."²⁹ The Appellant further submits that the Principal Respondent took no action to leave the situation once she was able to do so and chose to wait three months and attend a wedding before coming to Canada.³⁰

[49] The Appellant further submits that it is mindful of the Supreme Court of Canada's decision in *R. v. Lavallee*.³¹ However, the Appellant submits that the *Lavallee* case involves a woman who shot and killed her partner who had battered her, whereas the Principal Respondent did not leave Iran once she had the means and support to do so.³²

[50] The RAD disagrees with the Appellant's interpretation of imminence. The RAD finds that it is insufficient to simply apply a legal dictionary definition of "imminence" without any regard to the gender and cultural context of this refugee claim.

[51] Respectfully, the RAD finds that the Appellant has misunderstood the *Lavallee* decision. The Appellant is presuming that the Principal Respondent would have left earlier if she was truly fearing imminent harm, and consequently, her decision to remain in Iran is an indication that she was not in danger. This very line of thinking is condemned in *R. v. Lavallee*. In her landmark decision, Madam Justice Wilson dispels popular mythology about domestic violence which

presumes that if a woman does not leave her abuser, then either she was not as badly beaten as she claims, or she would have left sooner.³³ The RAD finds that this principle is applicable to the case at hand. The RAD finds that the Appellant fails to appreciate the unique dynamics and the complexities involved in a domestic violence claim.

[52] The RAD does not find the Principal Respondent lacked subjective fear or that she was in any less danger because of a three-month delay in leaving Iran. At the RPD hearing, the Principal Respondent gave the following response when asked why she remained in Iran for a wedding before coming to Canada:

This fear was constant, I always feared him; what difference does it make if I go now and come back two months from now or if I go a bit later and come back, so nothing was going to change.³⁴

[53] The Appellant did not challenge the Principal Respondent's explanation for her delay in leaving. The RAD finds that the Appellant simply presumed when would be the safest time for the Principal Respondent to leave Iran and found that she was not in sufficiently immediate danger at the time she did leave.

[54] The RAD finds that the Principal Respondent provided a reasonable explanation for her delay, and that the threat of harm remained imminent at the time she left Iran. It is unclear why the Appellant refers to the Principal Respondent's abusive relationship as "past experiences of domestic violence."³⁵ In her BOC narrative, the Principal Respondent explained that she experienced incidents of violence on a weekly basis.³⁶ The RAD finds that the violence is not something that occurred in the distant past. The Appellant did not challenge the credibility of this evidence. A woman is not expected to wait until a physical assault is underway before her fear of imminent harm can be validated.³⁷

[55] From the Principal Respondent's perspective, there was no particular time to leave which would be safer, given that the threat of violence was always imminent. As explained in *Lavallee*, the issue is not what an outsider would have reasonably perceived, but what the battered spouse reasonably perceived, given her situation and her experience.³⁸ Over time, battered women develop the ability to anticipate the nature and extent of her partner's violence.³⁹ Taking these

principles into account, the RAD disagrees with the Appellant's submission that the harm feared is simply speculative.

[56] The RAD agrees with the RPD's assessment that the Minor Respondent was also in imminent harm. Therefore, the RAD finds that the severity of the physical, psychological, and sexual violence experienced by the Principal Respondent, and her consistent testimony about the recurring episodes of violence toward herself and her son is an indication that they were both in imminent harm.

(iii) Country conditions for women seeking divorce and custody

[57] The Appellant is concerned that the Principal Respondent removed the Minor Respondent from Iran without her husband's consent.⁴⁰ The Appellant further submits that the Principal Respondent took advantage of the Canadian refugee process to deny her husband's rights and access to the Minor Respondent.⁴¹ At the hearing, the Appellant also suggested that the Principal Respondent took the Minor Respondent to Canada, so she could get a divorce.⁴²

[58] The RAD disagrees with the Appellant. The RAD finds that the Iran's patriarchal laws governing a woman's right to divorce and custody is a significant mitigating factor. The documentary evidence indicates an Iranian woman only has a right to a divorce if her husband agrees to grant it.⁴³

[59] The documentary evidence further indicates that after the age of seven, the father is automatically granted custody of the child unless he is found by a court to be unfit to care for the child.⁴⁴ After the age of seven, fathers maintain legal guardianship over the child and must agree on many aspects of the child's life.⁴⁵ The Minor Respondent was ten years old at the time he left Iran, therefore, the RAD finds that the father would automatically be given custody of the child.

[60] In her BOC, the Principal Respondent indicated that her husband threatened to behead both her and the Minor Respondent before he agreed to a divorce or permitted them to leave the family home.⁴⁶

[61] The Appellant did not challenge the truthfulness of the Principal Respondent's testimony regarding her husband's threats. The Appellant did not make any submissions on the legal barriers that the Principal Respondent would face as a woman seeking a custody and divorce order to protect herself and her child from her abuser. The RAD finds that it is unreasonable to expect the Principal Respondent to remain in Iran and risk both her own life and her child's life in hopes of obtaining a valid custody and divorce order in a court system that is designed to favour the father.

[62] The RAD finds that the documentary evidence and the severity of these threats mitigate the Principal Respondent's decision to travel with her child to Canada without her husband's consent.

Principal Respondent is not excluded

[63] The RAD finds that the Appellant has not met their onus in proving that there were serious reasons for considering that the Principal Respondent committed a serious non-political crime, by bringing the Minor Respondent to Canada permanently without the father's consent.

[64] The RAD considers the gender and cultural context of the Principal Respondent's decision to remove the child from Iran without the father's consent. The RAD finds that the overall country conditions in Iran made it nearly impossible for the Principal Respondent to obtain a legal divorce and custody of the Minor Respondent. As well, the RAD finds that the Principal Respondent had legitimate concerns for the well-being of the Minor Respondent if he were left in the care of his father. The RAD also considers that the Principal Respondent feared that her husband would kill her if she asked for a divorce or tried to obtain custody of the Minor Respondent.

[65] The RAD finds that the Principal Respondent's circumstances demonstrate that she was facing imminent harm because of severe and frequent episodes of domestic violence, and therefore, she demonstrated a full defence for committing child abduction; and would not receive a conviction.

[66] Consequently, the RAD finds that the Principal Respondent has not committed a serious non-political offence, even though she did not have consent from the father to remove the Minor

Respondent permanently from Iran. The RAD therefore finds that the Principal Respondent is not excluded under Article 1F(b) of the *United Nations Convention*.

Inclusion Analysis

The Respondents are credible in their allegations

[67] The Appellant's submissions focus solely on errors in the RPD's 1F(b) analysis. On appeal, the Appellant did not challenge the RPD's inclusion analysis. The RAD agrees with the RPD's analysis and finds that the Respondents are credible in their allegations, on a balance of probabilities. The Principal Respondent provided spontaneous, detailed evidence regarding her relationship with her husband, which was consistent with her BOC. The Principal Respondent provided photographs of previous injuries, text messages from her husband, court documents, police report, and supporting letters from family members.⁴⁷ All of these documents are consistent with the Principal Respondent's testimony. The Principal Respondent's sister and uncle also provided live witness testimony consistent with the Principal Respondent's abuse allegations.⁴⁸

[68] The Principal Respondent testified at length about the Minor Respondent's relationship with his father and provided spontaneous details about incidents of abuse.⁴⁹ The RAD finds that the descriptions of abuse are consistent with the BOC and with the Principal Respondent's testimony.

Principal Respondent's husband's testimony is not credible nor reliable

[69] At the RPD hearing, the Appellant and counsel for the Respondents agreed to have the Principal Respondent's husband give evidence over teleconference. The RAD finds it very unusual and very concerning that the agent of persecution was invited to testify in a refugee claim where both domestic violence and child abuse are both being alleged.

[70] Nonetheless, after conducting its independent assessment, the RAD finds that the husband was not a credible witness. When confronted with descriptions of the police and medical reports regarding the instances of domestic abuse; the husband testified that they were all fabricated and stated the following:

If I were such a terrible person, then she could make proper documents by going to a forensic doctor and getting legal documents that she could bring herself to Canada, not these falsified pictures and fake evidence that she has with her just to trick you guys into getting a refugee status.

If I were a bad parent and a bad husband, if I beat my wife, then I would never go on and get a passport for travelling overseas with my wife so that we could have a good vacation. I would never support my family in any -- in any aspect. But I have done that. I am not a bad person.⁵⁰

[71] The RAD finds that the Principal Respondent's husband is neither a credible nor a reliable witness. Throughout the hearing, he continued to give volatile responses like the one shown above. At one point, the husband openly referred to the Principal Respondent with insults and sexist epithets.⁵¹ Rather than answering the question, the RAD finds that his responses repeatedly demonstrated that he was more concerned with challenging the questions posed to him and demanding proof from counsel and the Minister for the allegations of domestic violence and child abuse. During the testimony, counsel commented on the husband's use of answering "questions with questions."⁵² The RAD does not find the husband is credible in his denial of the domestic violence allegations, on a balance of probabilities.

[72] The RAD finds that the Principal Respondent's husband's evasive responses toward the domestic violence allegations and his voluntary verbal abuse toward the Principal Respondent during the hearing make the Principal Respondent's allegations of domestic abuse, and her fear of him more credible, on a balance of probabilities.

[73] In summary, after carefully reviewing all the evidence in this claim, the RAD finds that the RPD was correct to find that the Principal Respondent is not excluded, and there is a serious possibility of persecution if the Respondents were to return to Iran, because of both domestic and child abuse.

[74] The RAD agrees with the RPD's analysis and finds that there is no state protection for the Respondents in Iran, and that the presumption of state protection is rebutted on a balance of probabilities. The RAD also agrees with the RPD and finds that there is no internal flight alternative in Iran, as there is a serious possibility of persecution throughout Iran.

[75] Therefore, the RPD decision is correct, and it is upheld.

CONCLUSION


[76] The RAD dismisses the appeal and confirms the decision of the RPD that the Respondents are Convention refugees.

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(signed)

M. Lee

M. Lee


IRB Representative
Représentant de la CISE

July 26, 2021

Date

¹ *United Nations Convention relating to the Status of Refugees*, Geneva, 1951.

² *Canada (Citizenship and Immigration) v. Huruglica*, [2016] 4 FCR 157, 2016 FCA 93, at para. 78.

³ Exhibit M-2, Appellant's Record, Written Statement, at p. 4.

⁴ *Ibid.*

⁵ *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), as amended, at s. 171 (a.3).

⁶ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 9, para. 9.

⁷ *Ibid.*

⁸ *Ibid.*, at pp. 9-10, para. 10.

⁹ *Ibid.*, at p. 10, para. 11.

¹⁰ Exhibit P-1, Respondents' Record, Respondents' Memorandum, at p. 132, para. 9.

¹¹ *Ibid.*, at p. 133, para. 12.

¹² *Ibid.*, para. 15.

¹³ *Benitez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 461 (CanLII), [2007] 1 FCR 107, at para. 220.

¹⁴ *Immigration and Refugee Board of Canada. Designated Representative's Guide.*

¹⁵ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 17, para. 24.

¹⁶ *Ibid.*, at pp. 17-18, para. 25.

¹⁷ *Ibid.*, at p. 18, para. 26.

¹⁸ Exhibit P-1, Respondents' Record, Respondents' Memorandum, at p. 136, para. 27.

¹⁹ *Ibid.*, para. 28.

²⁰ *Ibid.*

²¹ *Jayasekara v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 (CanLII), [2009] 4 FCR 164. [Jayasekara]

²² *Zrig v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 (CanLII), [2003] 3 F.C. 761.

²³ *Jayasekara, supra*, endnote 21.

²⁴ *Criminal Code* (R.S.C., 1985, c. C-46), at subs. 283(1). [*Criminal Code*]

²⁵ *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68 (CanLII), at para. 62.

²⁶ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 27, para. 43.

²⁷ *Criminal Code, supra*, endnote 24, at s. 285.

²⁸ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 19, para. 28.

²⁹ Ibid., at p. 20, para. 30.

³⁰ Ibid., at p. 21, para. 32.

³¹ Ibid., citing *R. v. Lavallee*, 1990 CanLII 95 (SCC), [1990] 1 SCR 852. [*Lavallee*]

³² Ibid.

³³ *Lavallee*, *supra*, endnote 31, at pp 872-873.

³⁴ Transcript of December 17, 2019, RPD Hearing, at p. 52, lines 25-27.

³⁵ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 19, para. 28.

³⁶ Exhibit RPD-1, RPD Record, Exhibit 2.1, Basis of Claim (BOC) narrative, at p. 30, para. 9.

³⁷ *Lavallee*, *supra*, endnote 31, at p. 883.

³⁸ Ibid.

³⁹ Ibid., at pp. 880-881.

⁴⁰ Exhibit M-2, Appellant's Record, Appellant's Memorandum, at p. 17, para. 24.

⁴¹ Ibid., at p. 29, para. 46.

⁴² Transcript of December 17, 2019, RPD Hearing, at p. 38.

⁴³ Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Iran (March 29, 2019), item 2.1.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Exhibit RPD-1, RPD Record, Exhibit 2.1, Basis of Claim (BOC) Narrative, at p. 32, para. 13.

⁴⁷ Exhibit RPD-1, RPD Record, Exhibit 7, at pp. 239-245; Exhibit 8, at pp. 282-300; see also Exhibit 9, at pp. 349-353.

⁴⁸ Transcript of December 17, 2019, RPD Hearing, at pp. 74-75.

⁴⁹ Ibid., at p. 24.

⁵⁰ Transcript of November 7, 2020, RPD Hearing, at p. 21, lines 10-16.

⁵¹ Ibid., at p. 59, lines 7-13, 22-27.

⁵² Ibid., at p. 57, lines 47-48.