

Federal Court



Cour fédérale

**Date: 20220725**

**Docket: IMM-6153-21**

**Citation: 2022 FC 1097**

**Ottawa, Ontario, July 25, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**WAQAR UN NISA MALIK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Waqar Un Nisa Malik is a citizen of Pakistan. She is a Shia Muslim. In her basis of claim form she stated that she was an active volunteer in her local Imambargah in the city of Rawalpindi. In August 2018, she was engaged as a food bank coordinator with the Imambargah. Approximately three weeks later, she submitted an application for a temporary resident visa in

order to visit her son in Canada. The visa was issued and on November 8, 2018, she travelled to Canada with a return ticket for February 7, 2019.

[2] The Applicant's husband and two other children remained in Pakistan. The Applicant claims that on February 2, 2019, several days prior to her return flight to Pakistan, the Sipah-e-Sahaba Pakistan [SSP] contacted her husband and made extortion demands and left threatening messages. According to the Applicant, the threats arose because, after she had come to Canada, her imam had publicly praised her work as a food bank coordinator over a loudspeaker which was heard in the neighbourhood. Prior to coming to Canada, the Applicant had no problems with the SSP.

[3] The Applicant claims that she would be killed or persecuted by the members of the SSP should she return to Pakistan.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada found, and the Refugee Appeal Division [RAD] confirmed on appeal, that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issue for both the RPD and the RAD was credibility. The Applicant seeks judicial review of the RAD's decision dated August 17, 2021.

[5] The Applicant pleads that the RAD committed a number of reviewable errors in the context of its analysis of the Applicant's credibility, notably (i) applying a microscopic analysis in relation to the inconsistencies regarding the Applicant's university education; (ii) concluding

that the Applicant's testimony was vague; (iii) speculating on the coincidence of the timing as to when the SSP threatened the Applicant; (iv) dismissing relevant corroborative evidence; and (v) finding the SSP lacked the motivation to locate and persecute the Applicant. The Respondent disagrees, and submits that the points raised amount to a mere disagreement with the RAD's assessment of the evidence.

[6] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the RAD's decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

## II. Standard of Review

[7] The parties agree that the applicable standard of review is one of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). It is the Applicant who bear the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

III. Analysis

[8] The points raised by the Applicant all relate to the RAD's analysis of the Applicant's credibility. In oral argument, the Applicant submitted that this is a credible claim and that the negative inferences drawn by the RPD and the RAD are not in fact justified in light of the evidence adduced by the Applicant.

[9] The Respondent submits, and I agree, that credibility findings demand a high level of judicial deference and should only be overturned in the clearest of cases.

[10] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases" (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12 [*Liang*]). Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[11] Bearing the above in mind, I now turn to the specific credibility issues raised by the Applicant in this judicial review.

A. *The Applicant's Educational Background*

[12] The Applicant alleges that the RAD undertook a microscopic analysis regarding the Applicant's level of university education. The Respondent replies that there was a marked inconsistency in the Applicant's evidence and that she failed to provide a satisfactory explanation.

[13] In her General Application Form and the Schedule A to the form, the Applicant had declared that her highest level of education was a "Bachelor's Degree" and listed a Bachelor of Arts [BA] as the type of diploma issued. In her application for a visitor's visa, she also listed two years in the field of study in "Bachelor of Arts". During the RPD hearing, the Applicant testified that she had completed a BA in 2015. Upon further questioning, however, she had initially answered that she did not remember or know what she had studied before ultimately answering. The RPD found that the Applicant was misrepresenting that she had a university degree, and suggested that she likely did so to bolster her profile as an educated woman who might be the target of extremists.

[14] In an affidavit submitted on appeal, the Applicant admitted that she did not complete a BA and stated that (i) the line of questioning from the RPD member confused her, and (ii) there was an error with the interpreter when completing the Schedule A form. The Applicant attached a school transcript to her affidavit. The RAD found that the Applicant had misstated her

educational background several times in her immigration forms and her testimony. The RAD commented that it was not necessary to infer why the Applicant did so, as the RPD had done, but rather that it was sufficient that she did so and had not provided a satisfactory explanation.

[15] The Applicant pleads that to zero in on irrelevant details, such as her education which had little impact on the threats to her, was an error. Other than a small error in completing the forms, the Applicant submits that she accurately represented her educational history because she was indeed in a BA program for two years although she never graduated. The Applicant submits that when asked what her level of education was she stated “I had done BA”, which was true given she had completed two years of a BA. The RAD erred, in the Applicant’s view, because this was not in fact an embellishment and the RAD’s finding in this regard unjustly resulted in her being viewed as untruthful. The Applicant further pleads that she had not represented that she was a target because of her educational background, thus this issue is truly peripheral.

[16] The Respondent highlights the numerous times this representation appears in her forms, and notes that in response to the question by the RPD “What year did you graduate?”, the Applicant answered “BA in 2015”. The Respondent submits that if the information provided by the Applicant was unclear or misleading, it was not for the RPD to clarify it. The fact that the Applicant later submitted an affidavit to clarify this is, in the Respondent’s view, telling. The Respondent pleads that the RAD was entitled to take these inconsistencies into account when assessing her overall credibility.

[17] If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99), it is not for the reviewing court to substitute the outcome it would prefer. While I do sympathize with the Applicant’s submissions that the hearing was stressful and that she may have been caught off-guard, I do not find that the RAD committed a reviewable error. I note that the RAD agreed with the Applicant that she had not alleged that she was targeted due to her educational background. Accordingly, the RAD did not focus on why the misleading statement was made. Based on the record, however, it was open to the RAD to find that the statements and the information provided by the Applicant gave rise to concerns regarding her commitment to providing truthful, accurate and non-embellished evidence. Even though the Applicant’s education was not particularly relevant to her claim, given her overall credibility was the central issue, the RAD was entitled to consider her testimony in this regard (*Feng v Canada (Citizenship and Immigration)*, 2010 FC 476 at para 13).

B. *The Applicant’s Role as a Food Bank Coordinator*

[18] The Applicant submits that the RAD erred in finding that she was embellishing the importance of her role as a food bank coordinator in order to enhance her profile. The Applicant pleads that the RPD asked a leading question, which resulted in the RPD drawing the conclusion that the Applicant had represented that she was a leader in the community when in fact she was not:

MEMBER: Would you consider yourself to be a religious leader in your community?

CLAIMANT: Yes.

MEMBER: In what way are you a leader?

CLAIMANT: I am in my imambargah. I work there. I am in charge in my imambargah. I am food bank [sic] in charge.

[19] The Applicant submits that she accurately testified that she was a leader in the sense that she was in charge of the food bank.

[20] The Respondent replies that the RAD reasonably found that there was a valid reason to doubt that the role she held for less than three months before she left Pakistan had made the Applicant a leader in her community as she alleged. The Respondent submits that the Applicant said she was such a leader in her testimony and has sought to represent herself as a leader in her community in her written submissions by linking herself to country condition evidence that the SSP targets those who are identified as leaders in their Shia communities.

[21] The RAD found that the RPD was correct in finding that the Applicant was embellishing the importance of her role as a food bank coordinator and was a leader in her community as a result. In addition to her testimony, in her submissions to the RPD, counsel for the Applicant submitted that the Applicant “said she considers herself to be a religious leader, she went daily to the imambargah and that she would be the supervisor over three or four women who would prepare the food at the food bank.”

[22] I find that this is a factual finding that was open to the RAD to make on the record before it. While the RPD did ask about the Applicant’s profile in her community, this was responsive to the record as the Applicant’s position in the Imambargah and the local Shia community had been



raised in the documentary evidence from her husband, her father, and an imam. The RAD is to be afforded a high level of deference with respect to such findings (*Liang* at para 12) and I therefore see no reason to intervene.

C. *The Alleged Threats Received by the Applicant's Husband*

[23] The Applicant submits that the RAD erred in finding that the timing of the threats from the SSP was coincidental and that she was vague and evasive about the threats. The Applicant pleads that the question the RPD member asked about the coincidental nature of the visitor visa and the refugee claim, to which the Applicant responded, "I don't know", was not clear and was rephrased in the RPD decision to refer to the coincidental timing of her pending departure, the threatening phone calls and her refugee claim.

[24] The Respondent pleads that it was open to the RAD, based on the jurisprudence of this Court, to find the timing of the threats to be suspicious and the details about them vague. The Respondent submits that the onus is on the Applicant, the threats are central to the claim, and thus the RAD appropriately drew a negative inference as to credibility from the Applicant's inability to provide details about them.

[25] The Applicant applied for her visitor visa on September 4, 2018, shortly after starting work as a food bank coordinator, and left to visit her son on November 8, 2018. She was due to return on February 7, 2018. She alleges that on February 2, 2018, her imam praised her work, and then her husband received threatening messages from the SSP, such that she did not return to Pakistan and decided to file an inland refugee claim.

[26] I find that it was not unreasonable for the RAD, in light of the evidence, to find that the RPD was correct to have “significant concerns about the highly coincidental timing of the SSP threats”. When the timing of events amount to an extraordinary coincidence that is suspiciously convenient, the RAD can reasonably regard such evidence as dubious (*Meng v Canada (Citizenship and Immigration)*, 2015 FC 365 at para 22; *Jiang v Canada (Citizenship and Immigration)*, 2021 FC 572 at para 44). Moreover, as highlighted by the RAD, the timing of the alleged threats was simply one of a number of factors that gave rise to credibility concerns.

[27] As noted above, credibility determinations lie within the heartland of the RPD’s and RAD’s discretion and are not to be overturned unless they are perverse, capricious or made without regard to the evidence (*Fageir* at para 29; *Tran* at para 35). Having reviewed the record, including the transcript, I am not persuaded that the RAD erred in its concern around the timing of the threats or its treatment of the level of detail about the threats in the Applicant’s testimony or the record generally.

#### D. *The Assessment of the Documentary Evidence*

[28] The Applicant pleads that the RAD erred by attributing little weight and no weight to documentary evidence provided, and that the RAD improperly sought to impugn credibility on the basis of a want of further corroborative evidence. At the hearing of the present matter, the Applicant pleads that the RAD erred by attributing little weight to the letter from the Imam because it was not the Imam who made the announcement, and no weight to the affidavits from the Applicant’s father and husband because they did not have any formalities and were drafted in English.

[29] At the hearing of the present matter, the Applicant pleads that the RPD was wrong to draw a negative inference from the fact that the Applicant's son did not testify. This was not an issue before the RAD and thus, it will not be dealt with.

[30] The Respondent pleads that there were valid reasons to attribute little and no weight to the documentary evidence, notably that the statements were short and contained few details. The Respondent highlights that the Applicant confirmed that her father does not speak English, and thus the RAD was right to suspect a statement drafted in English and be concerned that the Applicant could not explain how it was obtained.

[31] I find that the Applicant's submissions on the documentary evidence constitute an impermissible request to this Court to reweigh and reassess the evidence. It is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). I note that on appeal to the RAD, the Applicant did not challenge the RPD's decision to give her father's affidavit no weight due to concerns about the authenticity of the document. As to the documents from the Applicant's husband and the Imam, the RAD considered their contents, the explanations and testimony from the Applicant, explained its concerns, and ultimately gave them little weight. I therefore decline to intervene.

E. *Lack of Continuing Interest by the SSP*

[32] As to the final issue in the present judicial review, I am not persuaded that the RAD erred in finding that there was insufficient credible evidence to establish that the SSP continue to have

an interest in the Applicant or that the Applicant had failed to establish a link between the objective documentary evidence and her personal profile.

IV. Conclusion

[33] For the foregoing reasons, I am not convinced that the RAD's decision is unreasonable.

This application for judicial review is therefore dismissed.

[34] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

**JUDGMENT in IMM-6153-21**

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

1. The Applicant's application for judicial review is dismissed; and
2. There is no question for certification.

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"Vanessa Rochester"

Judge

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

**DOCKET:** IMM-6153-21

**STYLE OF CAUSE:** WAQAR UN NISA MALIK v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 30, 2022

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** JULY 25, 2022

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