

Federal Court



Cour fédérale

Date: 20221121

Docket: IMM-4796-21

Citation: 2022 FC 1591

Ottawa, Ontario, November 21, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SUBESTEN SHYAM MEHRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Subesten Shyam Mehra (“Mr. Mehra”) made a claim for refugee protection in Canada. His claim is based on his fear of persecution by the Indian authorities. This fear is based on his view that his former in-laws will use their influence within the Indian police and army to harm him. Mr. Mehra further fears persecution due to his Christian faith.

[2] The Refugee Protection Division [RPD] refused Mr. Mehra's refugee claim. The RPD found Mr. Mehra not credible on his central allegations: that he had been married and separated from his former spouse, that his father-in-law had threatened him, and that he is a Christian. Mr. Mehra appealed this refusal to the Refugee Appeal Division [RAD]. The RAD did not make these same credibility findings. Instead, the RAD based its decision on Mr. Mehra's failure to establish that his former in-laws had the means or motivation to harm him in Jalandhar, the city listed as his address in India on his passport, and that while Christians face persecution in some places in India, there is not sufficient evidence that this persecution takes place in Jalandhar.

[3] Mr. Mehra challenges the RAD's refusal in this judicial review. He makes two overarching arguments. First, the RAD breached procedural fairness by raising a new issue of which Mr. Mehra had no notice and to which he was therefore not able to respond. Second, the RAD's evaluation of the corroborative evidence and Mr. Mehra's testimony on certain aspects of the claim was unreasonable.

[4] I find the breach of procedural fairness to be the determinative issue. I agree with Mr. Mehra that it was unfair for the RAD to raise a new issue, namely Mr. Mehra's risk in Jalandhar. The RPD did not raise this issue in its decision, nor even ask Mr. Mehra questions about it at the hearing. I agree with Mr. Mehra that RAD ought to have been given him notice of this concern and an opportunity to address it. This is a sufficient basis for setting aside the RAD's decision.

[5] Based on the reasons below, I grant the judicial review.

II. Background

[6] Mr. Mehra has never lived in India but it is the only country in which he is a citizen. He was born in Pakistan as his mother was visiting Pakistan from Bahrain at the time of his birth. He grew up in Bahrain. He does not hold citizenship in Bahrain or in Pakistan. Mr. Mehra claims to be a practicing Christian.

[7] Mr. Mehra married his now ex-wife, a citizen of India who practiced the Hindu faith, in 2013. Since then, he occasionally visited India with his ex-wife. He claims that on these initial trips to India, he was detained at the airport for several hours and harassed due to his Pakistani birthplace but that ultimately his in-laws intervened with the authorities so that he would be able to travel to India without problems.

[8] Mr. Mehra separated from his ex-wife in March 2019. Mr. Mehra claims that in September 2019 his ex-wife began spreading rumours at his workplace in Bahrain that he was gay and as a result he lost his job and his immigration status in Bahrain was in jeopardy. Mr. Mehra also alleges that in September 2019, he received a call from his former father-in-law who threatened his life if he returned to India and warned him that he would have to convert to Hinduism if he went to live there.

[9] In the same month that his former father-in-law threatened him, Mr. Mehra came to Canada. He made a refugee claim soon after.

III. Issues and Standard of Review

[10] As noted above, the only determinative issue on judicial review is the claim that the RAD breached procedural fairness by raising a new issue without notice to Mr. Mehra. Both parties agree that the reasonableness standard of review does not apply to my evaluation of this issue (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77). The question I need to ask is whether the RAD's procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[11] The procedural fairness owed is high given the interests at stake in refugee determinations (*Bouchra v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1063 at paras 34-35; *Dalirani v Canada (Minister of Citizenship and Immigration)*, 2020 FC 258 at para 31).

IV. Analysis

[12] The key dispute between the parties is whether the RAD raised a "new question" on appeal of which Mr. Mehra ought to have been given notice. This Court has defined a "new question" in the context of a RAD appeal as being "a question which constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from" (*Kwakwa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 600 at para 25).

[13] Much of Mr. Mehra's argument centres on the significant differences between the RPD's and RAD's reasoning process. The RPD made negative credibility findings on all the central aspects of Mr. Mehra's claim including whether he was married, whether he had separated from his ex-wife, whether he was threatened by his father-in-law, and whether he is a practising Christian. The RAD did not make these same findings and instead found that Mr. Mehra's former in-laws did not have the will or means to harm him in Jalandhar and that Christians do not suffer persecution in Jalandhar. Mr. Mehra argues that he could not have been expected to address such a fundamentally different basis for a rejection than he received from the RPD.

[14] The Respondent argues that, though the RAD did not base its decision on the same reasoning as the RPD, there were no new issues that Mr. Mehra should not have expected based on the RPD decision and his appeal. The Respondent grounds this argument in Mr. Mehra's challenge to the RPD's treatment of a corroborative letter. The Respondent argues that at issue with this letter is the RPD's determination that the letter did not provide sufficient support for Mr. Mehra's contention that his former in-laws were in the police and army. Given that Mr. Mehra challenged the RPD's treatment of this letter on appeal, Mr. Mehra cannot now complain that the RAD did not give him notice that it would consider whether his former in-laws have the means and will to find him.

[15] The problem with the Respondent's view is that the RAD does not stop at whether Mr. Mehra's former in-laws were in the police or army. The RAD's analysis focuses on the former in-laws' reach to a particular city, Jalandhar, in India. The RAD considers the size of Jalandhar and its distance to Mr. Mehra's former in-laws' home area. The RPD did not raise Jalandhar as a

potential internal flight alternative [IFA], nor consider it as RAD considers it - as essentially Mr. Mehra's home base. Mr. Mehra never lived in India but the RAD reasons Jalandhar is relevant because it is listed as Mr. Mehra's address in his Indian passport. Mr. Mehra had no opportunity to provide any submissions on the relevance of Jalandhar and his risk there.

[16] The RAD's analysis of Mr. Mehra's claim based on his Christian faith also focuses on the city of Jalandhar. The RAD, unlike the RPD, appears to accept that Mr. Mehra is a practising Christian. The RAD, unlike the RPD, accepts that in some regions in India Christians experience persecution. And then the RAD finds "no evidence of incidents of persecution of Christians specific to Jalandhar city." As I already explained, Mr. Mehra had no opportunity to respond to this specific new finding in relation Jalandhar.

[17] It is open to the RAD to make findings based on issues not considered by the RPD but procedural fairness requires in these circumstances that it ensure that the parties have an opportunity to provide submissions (*Husian v Canada (Minister of Citizenship and Immigration)*, 2015 FC 684 at para 10). The RAD failed to do so and therefore the appeal requires redetermination.

[18] No party raised a question for certification and I agree none arises.

JUDGMENT IN IMM-4796-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The RAD decision, dated June 21, 2021, is set aside;
3. The matter is sent back to be redetermined by a different member of the RAD; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4796-21

STYLE OF CAUSE: SUBESTEN SHYAM MEHRA V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 6, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: NOVEMBER 21, 2022

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