

Federal Court



Cour fédérale

Date: 20230427

Docket: IMM-6370-21

Citation: 2023 FC 620

Ottawa, Ontario, April 27, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MANDEEP SINGH AND BALDEEP KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants are a married couple: Mandeep Singh and Baldeep Kaur. They sought refugee protection in Canada because they fear persecution and extortion by Hindu extremists in India. The Refugee Protection Division [RPD] rejected their refugee claim and the Refugee Appeal Division [RAD] dismissed their appeal. They seek judicial review of the RAD's dismissal. The Applicants' claim for protection centres on the creation of a video. The Applicants allege Hindu extremists forced them at gunpoint to read a script on video saying they

have exported cows to foreign countries for human consumption. The Applicants claimed that the extremists threatened to disseminate the video and that its dissemination would put them at risk of persecution by violent cow protection groups and Hindu extremists. The RPD and the RAD accepted that this event occurred as described by the Applicants and that the video exists but did not accept that it had been disseminated.

[2] The RPD and the RAD focus their analysis on whether the video had, in fact, been disseminated. The Applicants argue that even if they do not have proof that the video had been disseminated, the RAD, having accepted that the video exists, ought to have considered whether the Applicants were at risk because of the possibility of its future dissemination.

[3] In my view, this is the determinative issue. I find the RAD did not substantively consider the Applicants' argument about the future dissemination of the video.

[4] Based on the reasons below, I grant the application for judicial review.

II. Background

[5] The Applicants were extorted by Hindu extremists beginning in late 2017. They paid the sums the extortionists demanded then and twice more in September 2018 and July 2019. In August 2019, the Applicants were unable to pay the sums demanded by the extremists. The extremists held the Applicants at gunpoint and forced them to read a script on video saying they have exported cows to foreign countries for human consumption. The Applicants fled to Canada in September 2019. The following month, in October 2019, Mr. Singh's father was visited by

five individuals from the Gau Raksha Dal (“GRD”) cow protection movement who asked about the Applicants.

[6] The RPD heard the Applicants’ refugee claim on December 31, 2020, and rejected it on January 20, 2021. The RPD accepted that the Applicants were threatened by extortionists in October 2017, September 2018, and July 2019. The RPD also accepted that in August 2019, the Applicants were coerced into making a recorded statement saying that they consumed beef and that Mr. Singh exported cows and that the extortionists threatened to disseminate the recording on social media if the Applicants moved. The RPD did not accept as credible Mr. Singh’s belief that the extortionists had distributed the coerced recording on social media. The RPD found that Mr. Singh did not take any reasonable steps to investigate if the recording was posted online, which undermined his credibility. The RPD also found that the Applicants had an internal flight alternative [IFA] in Mumbai.

[7] The Applicants appealed the RPD’s decision to the RAD. In support of their appeal, the Applicants sought to admit an affidavit sworn by Mr. Singh as new evidence. Mr. Singh’s affidavit says that his father told him that individuals came to his family home on January 27, 2021, searching for him and his wife. Mr. Singh’s father saw a GRD sticker on their vehicle and believed them to be members of the GRD. The Applicants also provided submissions by their counsel arguing that the Applicants’ new evidence is admissible, the RPD erred in its credibility findings, and the RPD erred in its IFA finding.

[8] The RAD did not admit the new evidence. The RAD also confirmed the RPD's credibility and IFA findings. On August 18, 2021, the RAD dismissed the appeal.

III. Issue and Standard of Review

[9] The determinative issue on judicial review relates to the merits of the RAD decision. The parties submit and I agree that I should review this aspect of the RAD's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as "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" (*Vavilov* at para 85). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[10] The Applicants argued before the RAD that the nature and content of the video possessed by their extortionists would place them at risk throughout the country.

[11] The RAD acknowledged that the "RPD accepted the video was made and people associated with the GRD visited [Mr. Singh's] father's home in October 2019." The RAD did not disturb this finding. The RAD, like the RPD, rejected the argument that the existence of the video put the Applicants at risk throughout the country because of its possible dissemination. The RAD found that "there is no concrete evidence that the video has been shared, and as a

result, there would be no reason for vigilantes to target the Appellants and the police to be complicit or blind to such threats or attacks.”

[12] The RAD did not consider the argument raised by the Applicants, namely that the existence of this confession video itself made it so that future dissemination could put them at risk. In other words, the RAD assessed the claim that the video was already disseminated, but failed to assess the risk posed by the possibility of the video’s future dissemination.

[13] While it is open to the RAD to reject this argument, it needed to specifically address this aspect of the Applicants’ risk. I cannot see anywhere in the RAD’s decision where this aspect of the Applicants’ alleged risk is substantively considered. Given the severe consequences at stake, the RAD had to address this aspect of the Applicants’ claim in its reasons (Vavilov at para 133).

[14] Finally, the Respondent noted that the application for judicial review improperly names the Minister of Immigration, Refugees and Citizenship Canada as the Respondent. I agree and order the style of cause amended with immediate effect to name the Minister of Citizenship and Immigration as the Respondent.

[15] Neither party raised a question for certification and I agree that none arises.

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The style of cause is amended to name the Minister of Citizenship and Immigration as the Respondent;
3. The August 18, 2021, decision of the RAD is set aside and sent back to be redetermined by a different RAD Member; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6370-21

STYLE OF CAUSE: MANDEEP SINGH ET AL.V MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 26, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: APRIL 27, 2023

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