

Federal Court



Cour fédérale

Date: 20230310

Docket: IMM-5196-22

Citation: 2023 FC 332

Vancouver, British Columbia, March 10, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

AMRITPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks to set aside a decision made by the Refugee Appeal Division (the “RAD”) dated May 11, 2022, under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”).

[2] The applicant submitted that the RAD's decision was unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, I conclude that the applicant has shown no basis for the Court to intervene on this judicial review application. The application will therefore be dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of India. He entered Canada in 2018 as an international student. In February 2020, he requested *IRPA* protection, claiming that he feared for his life due to a dispute between his father and his uncle about land ownership in India. He also claimed to fear persecution by the Indian government for having attended two protests while in Canada in support of farmers' protests in India.

[5] By decision dated November 1, 2021, the Refugee Protection Division ("RPD") rejected the applicant's claim, concluding that he was not a Convention refugee under *IRPA* section 96 and not a person in need of protection under subsection 97(1). The determinative issue was credibility. A key concern for the RPD was inconsistencies between the applicant's Basis of Claim ("BOC") and his testimony before the RPD.

[6] The applicant appealed to the Refugee Appeal Division (the "RAD"). He argued that the inconsistencies between his BOC form and his testimony occurred because of the additional information he received from his father after submitting his BOC.

[7] The RAD found significant credibility issues with the applicant's evidence and that the contradictions were not reasonably explained by the applicant receiving new information from his father. The RAD did not accept the applicant's additional arguments and dismissed his appeal.

[8] The applicant now challenges the RAD's decision by way of judicial review in this Court.

II. Standard of Review

[9] The parties agreed that reasonableness is the applicable standard of review.

[10] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

III. Analysis

[11] The applicant submitted that the RAD's decision should be set aside for several reasons, which I will address in turn.

A. Allegedly Unreasonable Negative Credibility Findings

[12] The applicant's principal arguments focused on the RAD's analysis of credibility, which was the determinative issue for both the RAD and the RPD.

[13] The RAD determined that an "accumulation of significant inconsistencies" in the applicant's evidence resulted in a negative conclusion about his credibility.

[14] The RAD agreed with the RPD that the applicant's testimony at the RPD was inconsistent with his BOC narrative. The applicant's BOC indicated that he had been attacked while he was in India, but he testified that his father and family were attacked after he came to Canada. Similarly, applicant's BOC advised that his home was attacked while he was in India, but in his testimony to the RPD he advised that his house has never been attacked by anyone, including his uncles and their sons.

[15] The RAD found significant credibility issues with the applicant's evidence and that he did not deny that he provided inconsistent evidence on significant issues.

[16] The RAD found that the applicant did not provide explanations for the contradictions or inconsistencies before the RPD. The RAD also concluded that the applicant's explanation on appeal, that he received additional details from his father after submitting his BOC, did not explain the significant discrepancies at issue. The RAD noted that it made "little sense" that the applicant only came to realize, after coming to Canada and getting additional information from his father, that the attacks and threats he reported in his BOC did not occur in India while he was there as he alleged.

[17] In this proceeding, the applicant made extensive reference to the transcript of his testimony at the RPD hearing. He argued that the threats were real and his explanation was reasonable. He referred to his young age, and nervousness and anxiety during testimony.

[18] There is no basis for this Court to interfere with the RAD's conclusions on these issues. The Federal Court of Appeal in *Maldonado* stated that "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness": *Maldonado v Canada (Minister of Employment & Immigration)* (1979), [1980] 2 FCR 302 (CA), at p. 305. The *Maldonado* presumption may be rebutted, including when the evidence is inconsistent with an applicant's testimony or if the RPD is unsatisfied with the applicant's explanation for those inconsistencies: see *Warrich v Canada (Citizenship and Immigration)*, 2022 FC 76, at paras 32-33; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 21. An accumulation of contradictions, inconsistencies and omissions on crucial elements of a refugee claim also may adversely affect an applicant's credibility: *Lawani*, at para 22.

[19] In an affidavit filed with the RAD, the applicant acknowledged that there were inconsistencies between the information he provided in his BOC and his testimony at the RPD hearing. As the respondent persuasively demonstrated at the hearing, the RAD's conclusions were open to it on the record based on inconsistencies in the applicant's evidence. For example, the applicant's BOC stated that his uncles and their sons "attacked my house and family. We managed to survive and decided to file a police complaint against them..." The BOC also stated that later, situation got worse and the applicant's parents decided to send him "away from our village to save my life as they were threatening to kill me and my brother". The applicant advised in his BOC that in his home country, people kill each other over land disputes and that "when I was there, I was their prime target". However, when testifying at the RPD, he characterized the dispute between his father and uncle quite differently – as "small little commotions", "small little arguments", "differences", "misunderstandings and small fights" and "small little fights amongst the brothers". When asked if he was impacted at all by these fights before he left for Canada, the applicant testified that his father sheltered him all the time and would never let him know much about what was happening. The applicant also testified that his father called him after he was in Canada to say that he (the father) had been attacked and injured and that at that time, the attackers threatened to kill the applicant. The applicant testified that no property was attacked while he was in India.

[20] It was equally open to the RAD to conclude that these matters were not peripheral to the applicant's claim for *IRPA* protection. Further, whether he was in India or Canada when the alleged attacks occurred was something within the applicant's own experience about which he could personally testify.

[21] The RAD expressly found that the applicant's age did not reasonably explain why he reported the events occurred in India in his BOC but not in his testimony. The RAD also acknowledged the applicant's explanation that the inconsistencies were a result of his confusion and anxiety during the RPD hearing, but noted that there was no medical evidence suggest that he had any mental health issues that may have affected his testimony. On this judicial review application, the Court cannot reweigh the evidence or come to its own conclusion on these issues: *Vavilov*, at paras 83, 125.

[22] The applicant submitted that there were documents that corroborated the attacks and RPD took a microscopic approach to their review. However, the RPD decision is not under review in this proceeding. The RAD found that the applicant did not make any arguments on appeal concerning the RPD's findings and therefore saw no reason to intervene with the unchallenged conclusions. There is no basis for this Court to interfere with the RAD's conclusion.

[23] On this application, there is no merit in the applicant's challenges to the reasonableness of the RAD's credibility findings. Those findings were sufficient to rebut the presumption that his evidence was truthful.

B. Alleged Lack of Independent Assessment of the Attack in Canada

[24] The applicant claimed that he was attacked after arriving at his home in Canada by a group of about 20 individuals carrying baseball bats and hockey sticks. He alleged that this attack was connected to the attacks on his home and family in India.

[25] The RPD found no definitive connection between the two attacks. The RAD concluded that there was insufficient evidence linking the attack in Canada to the alleged threat faced by the applicant in India. According to the RAD, the applicant's testimony that the attack was connected with his family's ongoing property dispute in India was "simply speculative". A connection between the two had not been proven on a balance of probabilities. The RAD noted that the applicant testified that he had no idea why he was being attacked and assumed it was orchestrated by his uncle and cousins.

[26] In his written submissions to the Court, the applicant argued that the RAD failed to make an independent assessment of the attack on the applicant in Canada and instead relied on the RPD's decision that applicant speculated that the attack was orchestrated by his uncle. The applicant did not raise this argument at the Court's hearing.

[27] I see no basis in the RAD's reasons to suggest that it did not conduct an independent assessment of this issue. The mere fact that the RAD agrees with the RPD's findings does not mean that it did not conduct an independent analysis of the file: *C.D. v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1582, at para 21, citing *Ademi v Canada (Citizenship and Immigration)*, 2021 FC 366, at para 28.

[28] In this instance, the RAD's reasons summarized the RPD's findings, the applicant's arguments and its own findings under three separate headings. The RAD's analysis under the heading "My findings" made no reference to the RPD's conclusions and only suggests that the RAD came to its own findings. The applicant's position on this issue cannot be sustained.

C. Risk Assessment on the Applicant's Return to India

[29] The applicant's claim for protection included evidence that he attended two protests while in Canada in support of farmers' protests in India. On that basis, he claimed that he would face a serious possibility of persecution if he returns to India.

[30] The RAD recognized the applicant's concerns that his name or photograph may have been given to the government of India by those who wish to target his family, which he claimed may have resulted in him being placed on the government's wanted list. However, the RAD concluded that those concerns were speculative as he did not provide any evidence to demonstrate that his attendance at the protests has been noted by his uncle or cousins or that the information was given to the government. The RAD found that he did not face a serious possibility of persecution on this basis. The RAD further noted documentary evidence suggesting that there were hundreds of thousands of farmers who had protested in India, mostly peacefully. While the government arrested some high-profile individuals involved in the protests, including media and protest organizers, the applicant did not provide any evidence that he had an increased profile that would put him at risk of attracting the government's attention on that basis.

[31] In this Court, the applicant argued that the RAD failed to properly assess the risk to his life due to his participation in the protest as a visible Sikh man. He argued that the governing political party equated all Sikh participants in the protests with Khalistani militants and that the simple act of being a turban-wearing Sikh man who participated in a protest in Canada was enough for him to be targeted by the government.

[32] In my view, there is no basis for the Court to intervene. The applicant did not allege an error of law in RAD's analysis. The RAD concluded that there was no evidence that the applicant's identity was either given to the government or that he would be of risk of attracting the government's attention. In reaching its conclusion, the RAD considered the applicant's profile, the nature of the protests in India and who had been targeted. As noted already, the Court is not permitted to reassess the evidence or come to its own determination on the merits of this issue. The applicant's submissions did not demonstrate that RAD fundamentally misapprehended or ignored any material evidence before it: *Vavilov*, at paras 83, 125-126.

IV. Conclusion

[33] For these reasons, the application is dismissed.

[34] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT IN IMM-5196-22

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5196-22

STYLE OF CAUSE: AMRITPAL SINGH v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 9, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: MARCH 10, 2023

APPEARANCES:

Manjit Walia FOR THE APPLICANT

Amanda Lord FOR THE RESPONDENT

SOLICITORS OF RECORD:

Manjit Walia FOR THE APPLICANT
Barrister & Solicitor
Surrey, British Columbia

Amanda Lord FOR THE RESPONDENT
Attorney General of Canada
Vancouver, British Columbia