

Federal Court



Cour fédérale

Date: 20230619

Docket: IMM-1204-21

Citation: 2023 FC 862

Ottawa, Ontario, June 19, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**JASPREET SINGH
SANDEEP KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a Refugee Appeal Division [RAD] decision, dated December 31, 2020 [Decision] upholding the Refugee Protection Division [RPD] decision finding that the Applicants are not Convention refugees under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 nor persons in need of protection under s. 97.

[1] For the reasons that follow, this application for judicial review is dismissed.

II. **Background**

[2] The Principal Applicant (PA) and his wife are citizens of India who lived in the state of Punjab. They allege persecution from the Punjab Police and the Indian anti-terrorist authorities because of the principal Applicant's involvement with the Shiromani Akali Daal (Amritsar) [SADA] political party and his support for the creation of Khalistan, a sovereign state for Sikhs.

[3] The PA alleges that since becoming a member of SADA in 2011, he has helped the party hold meetings and rallies in his district, including organizing a highway blockade in October 2015, which resulted in the Punjab Police arresting, beating and detaining him. He also claims to have started an online campaign group with more than 20,000 members, where he regularly posts about his support for Khalistan.

[4] The PA alleges he was arrested by the Punjab Police and National Intelligence Agency officers in July 2018, and accused of being involved in the murders of Punjab Hindu leaders because of his social media activities and his connections with the terrorist group Khalistan Liberation Front [KLF]. He claims to have been interrogated and tortured for two days while in detention. After his release, he filed complaints with the civilian District Commissioner and the Commissioner of Police but they did nothing to stop the Punjab Police from continuing to call him into the station to harass him.

[5] The Applicants allege that the Punjab Police raided their home and the home of the principal Applicant's in-laws in July 2018. After the raids, the PA allegedly went into hiding until the Applicants could secure Canadian visitor visas.

[6] They eventually departed to Canada in September 2018 and filed refugee claims on January 6, 2019, approximately three and a half months after arriving in Canada.

[7] On November 7, 2019, the RPD rejected the Applicants' claim, citing the following reasons:

- i. The principal Applicant was a Khalistan sympathiser but was never a SADA member because he did not have a membership card and the party letter he filed was fabricated;
- ii. The hospital discharge card provided by the principal Applicant did not corroborate that the police injured him in 2018;
- iii. It was implausible that police released the principal Applicant after accusing him of involvement in murders;
- iv. According to information in the National Documentation Package, the principal Applicant would have been arrested at the airport in India if Punjab Police had indeed identified him as being linked to KLF;
- v. The principal Applicant sported cut hair on his 2011 passport photo and on his January 2019 refugee claim ID, but wore a turban to the RPD hearing in November 2019. The RPD concluded "he probably did so to appear to be a baptised religious Sikh."

- vi. The Applicants filed their refugee claim three and a half months after arriving in Canada. The RPD concluded this delay in filing for refugee protection “negated their subjective fear of persecution.”

[8] On February 11, 2020, the Applicants appealed the RPD decision to the RAD.

III. **Decision under Review**

[9] On December 31, 2020, the RAD dismissed the Applicants’ appeal [Decision] and upheld the RPD’s decision. The RAD found some of the RPD findings were incorrect or partially inapplicable, but upheld the RPD’s overall conclusion that the Applicants are not Convention refugees nor persons in need of protection.

[10] The RAD based its decision on credibility concerns with evidence that went to the core of the Applicants’ allegations – namely, the lack of a membership card, the fraudulent SADA letter and the inauthentic hospital discharge card.

IV. **Issues and Standard of Review**

[11] First, the Applicants argue the RAD failed to consider the RPD’s bias. Second, the Applicants contend that the Decision is not coherent, intelligible or justified, because although the RAD disagreed with a number of the reasons provided by the RPD in support of its conclusion, the RAD still upheld the determination that the PA was not a member of SADA.

[12] Allegations of procedural unfairness are reviewed on a standard akin to correctness, by asking whether the process leading to the decision was fair in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55; *Ahmed v Canada (Citizenship and Immigration)*, 2023 FC 72 at para 5.

[13] The RAD's Decision is reviewable on a reasonableness standard. A reasonable decision is 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: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15 and 85.

V. Analysis

A. *The RAD did not fail to consider the RPD's bias.*

[14] The Applicants submit that the RPD's negative credibility finding with regard to the PA wearing a turban during his RPD hearing may have resulted in a reasonable apprehension of bias against him, thus constituting a breach of procedural fairness. Furthermore, the Applicants rely on *Hilo v Canada (Employment and Immigration)*, [1991] FCJ No 228 to argue that by not considering the RPD's finding about the PA's turban-wearing practice, the RAD did not provide "clear and unmistakable terms" for its overall negative credibility finding and Decision.

[15] The Respondent submits that the Applicants did not raise the issue of the RPD's bias on appeal before the RAD and thus that this Court should not entertain this new issue for the first time on judicial review.

[16] I agree with the Respondent that the Applicants failed to raise the issue of bias at the earliest opportunity, as the Courts have established should be done for alleged procedural violations: *Calixte v Canada (Citizenship and Immigration)*, 2021 FC 55 at para 17 citing *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 and *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59 at para 67.

[17] In any event, I find that the RAD did not breach procedural fairness. The Applicants were given an opportunity, which they took, to make submissions before the RAD about turban-wearing practices. They filed articles that stated that many Sikhs suspected of or involved with militant groups are clean cut and do not wear turbans. They focused their submissions on appeal on the PA's scalp condition that prevented him from wearing a turban in hot climates like India, and did not raise any issues of bias.

[18] The RAD reasonably expressed no opinion about the RPD's conclusion regarding the principal Applicant's turban-wearing practices, because the RAD based its overall credibility finding and Decision on other evidence. As held by Justice Gleeson in *Cruz v Canada (Citizenship and Immigration)*, 2020 FC 22 at paragraph 32 "the RAD decision is not unreasonable merely because it did not canvas each issue canvassed by the RPD. To the contrary, the RAD is deemed to have taken notice of the RPD's decision in its entirety": see also: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 78.

[19] In this case, the RAD methodically addressed all the reasons provided by the RPD and found that the following were determinative and went to the core of the Applicants'

allegations: (i) the Applicants' inability to produce a membership card; (ii) the fraudulent SADA letter; and (iii) the inauthentic hospital discharge card.

[20] The RAD made negative credibility findings based on this evidence and deemed it to be sufficient to dispose of the Applicants' refugee claim. I will next address the reasonableness and sufficiency of these negative credibility findings.

B. *The RAD reasonably determined that the principal Applicant is not a member of SADA*

[21] The Applicants argue that the RAD unreasonably concluded that the PA is not a member of SADA. First, they submit the RAD erred by requiring the PA to provide a membership card, which is not mandatory to prove his involvement with SADA and unnecessary since his testimony that he has been a member since 2011 was not impugned by the RPD or the RAD.

[22] Second, the Applicants submit that the SADA letter provided was not the original letter, but a re-issue, hence the different orientation of the stamps, and that the importance the RAD attached to these constituted a microscopic analysis, which this Court has held to be a reviewable error.

[23] Third, the Applicants argue that the RAD found the RPD's findings about the hospital discharge card to be confusing, yet unjustifiably reached the same conclusion as the RPD, that the card was inauthentic.

(1) The Applicants' inability to produce a SADA membership card

[24] The RAD reasonably upheld the RPD's negative credibility finding regarding the PA's inability to produce a SADA membership card, relying on the 2009 Response to Information Request referenced by the RPD, which clearly stated that "all party members at all levels receive membership cards."

[25] The PA's evolving explanations about his inability to produce a membership card are speculative and inconsistent. He testified before the RPD that "there is no card"; argued on appeal to the RAD that SADA may have changed their practices in 2011 when he joined and stopped issuing cards; and submits to this Court that he probably never received a membership card due to an administrative error. In light of this context, it was reasonable for the RAD to find that while these explanations are possible, they are less than probable, and that the PA's inability to produce a membership card diminishes his credibility.

(2) The fraudulent SADA letter

[26] The RAD found that the orientation of the various stamps and seals and the placement of the signatures on the "original" SADA letter were not identical to that of the photocopy submitted to the RPD. Contrary to the Applicants' argument, this is not a microscopic detail as this Court has previously held that genuine stamps and seals are security features that lend authenticity to the documents on which they appear: *Kabba v Canada (Minister of Citizenship and Immigration)*, 2023 FC 117 at para 22 citing *Dai v Canada (Minister of Citizenship and*

Immigration), 2015 FC 723 at para 27 and *Mugisha v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 511 at para 13.

[27] The RAD reasonably concluded that both the “original” SADA letter and the photocopy were fabricated, based on their appearance, and impugn the principal Applicant’s credibility based on this finding.

[28] The Applicants rely on *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at 305 to argue that the RAD erred when it required them to submit documents corroborating the PA’s testimony, in the absence of any reason to doubt this testimony in the first place. I disagree. The RPD impugned the principal Applicant’s testimony, stating in its reasons “credibility was identified as a potential issue at the beginning of the hearing and it remained so at the conclusion.”

[29] Thus, the RPD and RAD reasonably required evidence to corroborate the Applicants’ version of the facts, and justifiably found credibility issues with the documents submitted, namely the lack of membership card and the fabricated SADA letter. As held by Justice Gascon in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24:

[24] ... a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, 1990 CanLII 13057 (FCA), [1990] FCJ No 604 (FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 [*Brahim*] at para 17).

[30] I find it was reasonable for the RAD to give no evidentiary weight to the corroborating documentary evidence submitted and to conclude that the Applicants provided no authentic or reliable evidence in support of their claim that the PA has been a member of SADA since 2011.

(3) The inauthentic hospital discharge card

[31] The Applicants rely on *MacDonald v Canada (Attorney General)*, 2003 FC 1263 [*MacDonald*] to argue that it was unreasonable for the RAD to base its determination of the authenticity of the hospital discharge card on whether the description of injuries matched the PA's injuries and whether treatment was listed in detail, when the RAD does not have medical expertise.

[32] I find that the Applicants' reliance on *MacDonald* in this case is misplaced. Justice Lemieux's (as he was then) comments regarding the tribunal "embarking upon forbidden territory making medical findings to discount uncontradicted credible evidence" (*MacDonald* at paragraph 24) strictly concerned the Veterans Review Appeal Board and its application of the legislative scheme provided by the *Pension Act*, RSC 1985, c P-6 and in the *Veterans Review and Appeal Board Act*, SC 1995, c 18.

[33] The Applicants further argue that the RAD applied Canadian standards in reviewing both the principal Applicant's turban-wearing practices and the hospital discharge card, relying on *RKL v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 162 at paragraph 12.

[34] It was open to the RAD to make its own credibility finding about the hospital discharge card: *Agh v Canada (Citizenship and Immigration)*, 2022 FC 3 at para 73. The RAD agreed with the RPD that the document was likely inauthentic, due to the generic and vague wording of both the injuries and the treatment, which contrasted with the specificity provided by the principal Applicant about his injuries during his testimony before the RPD. The RAD's finding is not an application of Canadian standards of review, nor is it based on a medical determination. Rather, it was an observation of inconsistency between the corroborating documentary evidence and the Applicants' testimony. It is well established that a specific example of internal inconsistency between the evidence and the testimony of an applicant can give rise to a negative credibility finding: *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4.

[35] Despite the RAD's disagreement with the RPD that the hospital discharge card should have mentioned the circumstances leading to the PA's injuries, the RAD noted that the document does not actually "confirm his resultant injuries" and concludes "that evidence was at the core of the Appellant's allegations." The RAD reasonably considered the hospital discharge card for what it said, not for what it did not mention: *Bagri v Canada (Citizenship and Immigration)*, 1999 CanLII 8138 (FC) at para 11; *Plaisimond v Canada (Minister of Citizenship and Immigration)*, 2010 FC 998 at para 82. The RAD reasonably found the document was vague and generic and therefore likely inauthentic, and it could not corroborate the PA's allegation that he was injured by police because of his activities with SADA.

C. *The RAD was not required to address the father-in-law's affidavit.*

[36] The Applicants argue that the RAD failed to consider the father-in-law's affidavit, which purports to corroborate the PA's narrative that he is a member of SADA and that he is being persecuted by the Punjab Police for his political activities. It was not unreasonable for the RAD not to have explicitly addressed the father-in-law's affidavit, which purports to confirm the PA's political identity, a claim the RAD already determined to be untrue: *Djama v Canada (Minister of Citizenship and Immigration)*, 2019 FC 86 at para 12. It was reasonably open to the RAD to implicitly consider that such a letter did not corroborate the PA's allegations.

VI. **Conclusion**

[37] For the foregoing reasons, this application for judicial review is dismissed.

[38] There is no serious question of general importance for certification.

JUDGMENT IN IMM-1204-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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