

Federal Court



Cour fédérale

**Date: 20230630**

**Docket: IMM-6953-22**

**Citation: 2023 FC 917**

**Ottawa, Ontario, June 30, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**KULWINDER KAUR BEHLEEM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Context

[1] The Applicant, Kulwinder Kaur Behleem, is a citizen of India. She claims to fear for her life and the lives of her family in India, at the hands of her ex-boyfriend, whose father is a police officer and whose brother is a gangster and involved in the drug trade. Ms. Behleem came to Canada in 2017 on a study permit. Following the expiration of her study permit in 2020, she lodged a claim for refugee protection.

[2] Ms. Behleem seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated June 29, 2022, dismissing her appeal and confirming the decision of the Refugee Protection Division [RPD] to reject her claim for refugee protection, finding that she is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27*.

[3] The determinative issue for the RPD was credibility. During the RPD hearing, Ms. Behleem was represented by counsel. Ms. Behleem's submissions to the RAD were prepared by a licenced paralegal, but she represented herself at the hearing before the RAD. The RAD stated that it was mindful that Ms. Behleem was self-represented and gave consideration to the credibility issues with that in mind. The RAD concluded, nevertheless, that there were too many contradictions and omissions on central and material elements to the claim, such that Ms. Behleem's credibility was undermined. The RAD found that there was insufficient credible evidence that Ms. Behleem is a Convention refugee and that her claim, as a whole, is not credible.

[4] Ms. Behleem's application for leave and judicial review of the RAD's decision was prepared by counsel. Several days prior to the hearing of this matter, counsel of record for Ms. Behleem, Me Eyouck, wrote to the Court seeking to be removed as solicitor of record. Me Eyouck, however, provided no evidence or indication that he had informed his client that he wished to cease representing her or that he would not be present for the hearing. The Respondent objected to the request at this late stage. Me Eyouck was informed that he must continue to

protect his client's interests and prepare for the hearing, and that his motion to withdraw would be heard orally at the commencement of the hearing.

[5] At the commencement of the hearing, Me Eyouck presented himself prepared to argue his motion, but by his own admission, was wholly unprepared to argue the judicial review.

Ms. Behleem presented herself at the Courthouse for the hearing. Me Eyouck had not been aware that Ms. Behleem would attend and he had not sent any communication to Ms. Behleem to inform her that the mode of hearing had changed to videoconference. The change of mode of hearing was done on request because of Me Eyouck's exceptionally tardy motion to withdraw. I thank the registry officer, Mr. de Sousa, for quickly making arrangements so that Ms. Behleem was comfortably able to attend the hearing from the Courthouse.

[6] After some discussion, Ms. Behleem ultimately decided to represent herself. Me Eyouck was therefore released from his obligation to make submissions on Ms. Behleem's behalf, however, I issued a stern warning regarding his 11<sup>th</sup> hour request and his obligations vis-à-vis his client.

[7] The underlying documentation in the present file is in English, as is the RAD's decision. Me Eyouck, however, had prepared the Applicant's Record in French. Consequently, the Respondent had prepared the responding submissions in French. The difficulty is that Ms. Behleem does not understand French. The hearing that was due to be held in French, was therefore held in English. Counsel for the Respondent, Me Haganji is to be commended for

pivoting on short notice and making his submissions in English, despite having prepared in French.

II. Issue and Standard of Review

[8] The issue in the present judicial review is whether the RAD's decision is reasonable.

[9] At the outset of the hearing, I explained to Ms. Behleem in detail the standard of review, reasonableness, which applies to the present case. I further explained to Ms. Behleem that she bore the burden of demonstrating that the RAD's decision is unreasonable. It is nevertheless worthwhile to set out the standard below.

[10] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85).

[11] It is Ms. Behleem who bears 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).

[12] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision maker's place. Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence.

[13] A reviewing court should not interfere with factual findings, absent exceptional circumstances, and 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).

### III. Analysis

[14] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, Ms. Behleem has failed to persuade me that the RAD's decision is unreasonable. I have taken into account the arguments raised in the written submissions prepared by Me Eyouck along with the oral arguments advanced by Ms. Behleem.

[15] The main focus of Ms. Behleem's position in the written submissions is that the RAD erred in its analysis of her credibility on the basis that there is a presumption of truth and that the RAD failed to account for all the evidence, albeit without specifying what evidence the RAD failed to take into account.

[16] In her oral submissions, Ms. Behleem reiterated her allegation that it would be dangerous for her to return to India because her ex-boyfriend is possessive, obsessive, and poses a danger to

her. His brother is in a “gangster group” and “his father has big links in the police”. She stated that her family in India keeps a low profile because they “noticed a guard in front of the house”. She explained that she did not provide much evidence to the RPD and RAD because her family cannot help. Her family “do not do too much, because [he] keeps an eye on [them]”.

[17] The Respondent submits that this is a purely factual matter, and based on the facts before it, the RAD came to a reasonable conclusion on credibility. Ms. Behleem, in the Respondent’s view, simply does not meet her onus of demonstrating that the RAD’s decision is unreasonable.

[18] I have carefully reviewed the record, including all the evidence submitted by Ms. Behleem – both documentary and testimonial, and I have not noted any evidence that the RAD failed to account for that would render the decision unreasonable.

[19] Furthermore, the determinative issue for the RAD was credibility. 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).

[20] 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” (*Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 at para 26; *Fageir* at para 29; *Tran* at para 35; *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[21] In the present case, the RAD conducted a detailed, thorough and thoughtful analysis of the evidence, highlighting numerous inconsistencies and drawing reasonable conclusions. I do not find that the RAD erred in determining that there was insufficient credible evidence to conclude that many of the events described by Ms. Behleem actually occurred. The present case is not a case where the credibility determinations were made without regard to the evidence or were perverse or capricious. Consequently, I decline to intervene.

#### IV. Conclusion

[22] While I acknowledge that Ms. Behleem has been affected by the situation and is distressed at the thought of returning to India, unfortunately, for the reasons set out above, she has failed to meet her burden of demonstrating that the RAD’s decision is unreasonable. I therefore dismiss this application for judicial review.

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

**JUDGMENT in IMM-6953-22**

**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-6953-22

**STYLE OF CAUSE:** KULWINDER KAUR BEHLEEM v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 29, 2023

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** JUNE 30, 2023

**APPEARANCES:**

Kulwinder Kaur Behleem

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Boris Haganji

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT