

Federal Court



Cour fédérale

Date: 20230811

Docket: IMM-985-22

Citation: 2023 FC 1101

Ottawa, Ontario, August 11, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

MUHAMMAD USMAN AKBAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] by Muhammad Usman Akbar [Applicant].

The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated January 10, 2022, dismissing an appeal from the Refugee

Protection Division [RPD], dated August 18, 2021. The RPD and the RAD dismissed the Applicant's claim for protection made under sections 96 and 97(1) of the IRPA.

[2] The Applicant is a citizen of Pakistan. He was raised as a Sunni Muslim, but he converted to Shi'ism in 2018. As a consequence of his conversion, the Applicant claims to face persecution at the hands of his brother, Paman, his brother's in-laws, and Sunni extremist groups [together, the "agents of harm"]. Paman is married to the daughter of a local leader of the Sunni extremist group, Lashkar-e-Jhangvi [LeJ]. Paman's in-laws are also connected to the Sunni extremist groups Sipah-e-Sahaba Pakistan [SSP] and Alh-e-Sunnat-wal-Jamaat [ASWJ].

[3] The determinative issue before the RPD and the RAD was credibility. On judicial review, the Applicant argues the decision is unreasonable, including both (1) the RAD's credibility assessment; and (2) the RAD's analysis of the documentary evidence.

[4] For the reasons that follow, the RAD's decision is reasonable and this application for judicial review is dismissed.

II. Factual Background

[5] The Applicant claims to fear persecution at the hands of his brother, Paman, and the extremist groups LeJ, SSP, and ASWJ. The Applicant's family are Sunni Muslims. Paman is married to the daughter of the LeJ commander in the Applicant's district. Paman is a devout Sunni Muslim, and is hostile to Shia Muslims. The Applicant claims the agents of harm wish to persecute him based on his conversion from the Sunni to Shia faith.

[6] The Applicant claims that while participating in a business training, he befriended a Shia, who introduced him to the Shia faith. The Applicant then began to attend Shia gatherings. One day, as the Applicant was leaving the imambargah, Paman's brother-in-law, Hafiz, saw him leaving. Hafiz informed Paman, and when the Applicant returned home, Paman confronted him saying he was dishonouring the family, and ordered the Applicant to leave the home. The Applicant subsequently left Pakistan and travelled to Dubai on a work permit on February 27, 2017.

[7] On April 5, 2018, the Applicant returned to Pakistan when he learned that his mother had died. While in Pakistan, he stayed at the family house with Paman and their father for 12-15 days.

[8] On April 15, 2018, the Applicant converted to the Shia faith.

[9] On April 17, 2018, as he was leaving the imambargah with his friend, the Applicant recounts in his Basis of Claim [BOC] narrative (his account at the RPD hearing differs, as discussed below) that his brother and Hafiz Talal Qudrat [HTQ] (another individual named Hafiz), an SSP commander, happened to be passing by and saw the Applicant. The Applicant wrote that when he returned home, Paman and HTQ were waiting for him. The Applicant told them about his conversion. Paman began beating him, and HTQ threatened to kill him. Paman threw him out of the house.

[10] The Applicant states that he then went into hiding.

[11] The Applicant's father called him, and informed him that the "goons" from LeJ, SSP, and ASWJ had visited the family's home and asked for the Applicant. The goons beat and threatened the Applicant's father, believing he had helped the Applicant escape. The father informed the Applicant that he had heard over the loudspeaker that HTQ had issued a fatwa against him, accusing him of being a converted Shia infidel. In his testimony, the Applicant indicated this occurred on April 19, 2018.

[12] On April 20, 2018, the Applicant returned to Dubai. In his testimony, he indicated that around that time, his father left the family home and moved to Multan. He later returned to live with Paman, upon agreement that he would not "keep any contact with [the Applicant]" and would not speak about the Applicant.

[13] The Applicant travelled to the United States [US] on September 21, 2019, where his then girlfriend lived. The relationship broke down. He states that he did not make an asylum claim in the US because he wished not to be near his girlfriend, and he was worried that he would be sent back to Pakistan. He entered Canada on December 13, 2019.

[14] The Applicant also testified before the RPD that in 2020, his father was again threatened by the agents of harm who inquired about the Applicant.

[15] On August 10, 2021, the RPD heard the Applicant's claim, and rendered its decision dismissing his claim on August 18, 2021. The RAD dismissed his appeal on January 10, 2022.

III. Decision Under Review

A. *RPD Decision*

[16] The determinative issue before the RPD was credibility. The RPD made adverse credibility findings based on the Applicant's return to Pakistan; discrepancies regarding the incident on April 17, 2018; and the Applicant's testimony regarding his brother and father.

[17] The RPD found that the Applicant's return to Pakistan and living in the same house as Paman was inconsistent with his stated fear of persecution at his hands. That he would return to Pakistan after his mother's death on April 5, 2018, and stay in a house with Paman for 12-15 days, goes against his stated fear. The initial reason for the return may have been justified, but it is reasonably expected that if he feared Paman so much, he would have taken precautions to avoid him and stay elsewhere than the same place where he resided. The RPD found that he was not fearful of, or at any risk from Paman or any extremist group in April 2018. This undermined the Applicant's credibility.

[18] The RPD found the discrepancies regarding the Applicant's evidence about the April 17, 2018, incident also undermined his credibility. There were inconsistencies about who saw the Applicant leave the imambargah; how the witnesses arrived at the Applicant's home; and when the Applicant told his family about his conversion. In his BOC narrative, the Applicant stated Paman and HTQ saw him leave the imambargah, and were waiting for him at home. When testifying, he stated that HTQ *alone* saw him leave the imambargah, and that HTQ followed him home, where they encountered Paman, who then learned about his conversion. Upon questioning, he changed his testimony to state that HTQ went straight to his house (rather than follow him). The Applicant again changed his testimony to indicate that HTQ was with Paman, and Paman's father-in-law when they saw him leave the imambargah. The Applicant also testified that he told his father and Paman about his conversion on April 15, 2018, because as he was telling his father, Paman overheard the conversation. In his BOC narrative and elsewhere in

his testimony, however, he indicated he told Paman during the April 17 incident. When asked to explain the discrepancies, he simply said he made a mistake, and reverted to the version of events in his BOC. The RPD found that the incident on April 17, 2018, did not occur as alleged, and this undermined the Applicant's credibility.

[19] The RPD found the Applicant's testimony relating to his father and Paman's relationship to be internally inconsistent. The Applicant testified that on April 19, 2018, the agents of harm showed up at his home in Pakistan looking for him, and they hit and threatened to kill his father. He testified that his father was afraid of Paman, but he and Paman agreed they could keep living together if the father did not maintain contact with the Applicant. The Applicant and his father still speak every 2-4 weeks. The Applicant also testified that Paman knows he is in Canada, because his father told him. That is inconsistent with the evidence that the father fears Paman, and the father is not to contact the Applicant – by knowing the Applicant's whereabouts, it is clear that the father is in contact with the Applicant. The RPD found the family connections and risks were not as alleged.

[20] The RPD found that the Applicant's documentary evidence did not overcome the credibility concerns, and the documentary evidence did not establish that the Applicant's Shia faith will place him at risk in Pakistan. The RPD rejected the Applicant's claim.

B. *RAD Decision*

[21] The determinative issue before the RAD was also credibility.

[22] The RAD upheld the RPD's determination that the April 17, 2018, incident did not occur as alleged by the Applicant, and that this rebuts the presumption of truthfulness. The RAD noted

the inconsistencies between the Applicant's BOC and his testimony regarding who witnessed him leave the imambargah, how the witness got to the Applicant's home, and when his brother learned of his conversion. The inconsistencies relate to the risk the Applicant allegedly faced, and how the agents of harm learned of his conversion. The Applicant did not satisfactorily explain the inconsistencies which rebutted the presumption of truthfulness.

[23] The RAD upheld the RPD's determination that the Applicant's testimony on the risk faced by his father from the agents of harm was inconsistent. The RAD noted the alleged incident on April 19 where the agents of harm threatened and beat the father. The RAD did not uphold the RPD's finding that the Applicant's testimony indicating that his father subsequently returned home to live with Paman is internally inconsistent. The RAD found that in light of family dynamics, it was plausible that the father may have felt a lack of choice or inability to remain away from the family home. However, the RAD upheld the RPD's finding that it was inconsistent for the Applicant to testify that his father was threatened to refrain from contacting the Applicant, yet on numerous occasions the father told Paman and his in-laws that the Applicant now lives in Canada, implicitly indicating the father and Applicant keep in touch.

[24] The RAD upheld the RPD's determination regarding the Applicant's return to Pakistan after his mother's death. Staying with Paman and their father for 12-15 days was inconsistent with a fear of persecution at the hands of Paman and the extremist groups which Paman's father-in-law commands.

[25] The RAD found that the Applicant's documentary evidence did not overcome the credibility concerns. The father's affidavit documents the April 17, 2018 incident, which the RAD already found did not occur as alleged. It also suggests more than one of the brother's in-

laws were present, which is inconsistent with the Applicant's testimony. The affidavit from Arslan Tariq does not indicate how the affiant learned of the information to which he attests. With regard to the four other affidavits from MS, AA, MA, and MSBR, it seems the information attested to come directly from the Applicant, and thus they were given little weight. The affidavit from Sami-Ur-Rehman states he heard that a fatwa was issued against the Applicant over the loudspeaker. The RAD gave that evidence some probative weight, but the affidavit did not indicate that the affiant was present when the Applicant was beaten and harassed. Taken together, the documentary evidence did not overcome the credibility concerns.

[26] The RAD concluded that the Applicant did not establish he was attacked, beaten, or harassed by the agents of harm for his conversion to Shi'ism. The National Documentation Package [NDP] also does not establish that the Applicant would face a serious possibility of persecution, or risk to life or of cruel and unusual treatment or punishment as a Shia Muslim in Pakistan. The RAD dismissed the Applicant's appeal.

IV. Issues and Standard of Review

[27] The issues raised by the Applicant are as follows:

1. Did the RAD err in its assessment of the Applicant's credibility?
2. Did the RAD err in its assessment of the documentary evidence?

[28] The parties agree the applicable standard of review in reviewing both issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17).

V. Analysis

A. *Did the RAD err in its assessment of the Applicant's credibility?*

(1) Applicant's submissions

[29] The Applicant argues that the RAD's assessment of his credibility is unreasonable because, (1) the RAD erred by engaging in a microscopic analysis of his testimony; and (2) the RAD erred in finding the presumption of truthfulness had been rebutted.

[30] The Applicant submits that the inconsistencies between his BOC narrative and his testimony regarding the April 17 incident were minor. The main issue is whether he was identified as a Shia convert and assaulted for his conversion. The Applicant also submits that those who saw him leave the imambargah would have been second-hand information, as he "would have no personal knowledge" of whom saw him leave. He also submits that the discrepancy in his testimony regarding whether his father is at risk because of their communication is a minor inconsistency. He submits that there is no evidence that Paman is aware of the regular contact between himself and his father and that his contact with his father every 2-4 weeks is not significant.

[31] The Applicant also submits that the RAD disregarded the presumption of truthfulness claimants are entitled to pursuant to *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) [*Maldonado*] at page 305. The Applicant submits that the RAD did not grant him a presumption of truthfulness in finding that by staying with Paman and his father

when he returned for their mother's funeral on April 5, 2018, it was inconsistent with a fear of persecution. The RAD was not conscious of the fact that this was pre-conversion, as the Applicant only officially converted on April 15 and thus he was at less of a risk at that time. This was also the case in assessing the Applicant's testimony relating to the April 17 incident.

(2) Respondent's submissions

[32] The Respondent submits that the Applicant's submissions simply ask this Court to reweigh the evidence.

[33] The Respondent submits that the RAD's credibility findings are reasonable. First, as it pertains to the alleged incident of April 17, 2018, the Respondent submits the RAD reasonably found the Applicant's testimony differed significantly from his BOC narrative, and that he failed to provide a reasonable explanation for the inconsistencies – simply repeating that he made a mistake does not reasonably explain multiple different versions of the events. This event goes to the core of the Applicant's claim. The presumption of truthfulness holds only so long as there are no valid reasons to doubt the veracity of an applicant's statement (*Maldonado* at 305).

[34] It was also reasonable for the RAD to find that the Applicant's testimony regarding whether his father was at risk from Paman and the in-laws was inconsistent.

[35] The RAD also found that the Applicant's testimony that his father was threatened not to speak to the Applicant, but then shared with Paman and the in-laws on a number of occasions

that the Applicant was in Canada, was internally inconsistent. This goes to the core of the Applicant's claim.

[36] Finally, the Respondent argues that the RAD reasonably found the Applicant's decision to stay with his father and Paman for 12-15 days when he returned home for his mother's funeral in April 2018 to be inconsistent with his subjective fear of persecution. The RAD considered cultural norms surrounding a parent's death and the pressure to conform but found the Applicant's actions were inconsistent with his fear of harm.

[37] The Respondent argues that the RAD did not engage in a microscopic analysis by making findings that were central to the Applicant's claim – it is not microscopic if the decision does not rely on issues that are irrelevant or peripheral (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 59-60 [*Paulo*]). There is also no indication that the RAD made any plausibility finding. It is well settled that contradictions and inconsistencies strongly support an adverse credibility finding (*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at paras 34-35).

(3) Analysis

[38] The RAD's credibility findings are justified and reasonable. The RAD did not engage in a "microscopic" analysis when justifying an adverse credibility finding. Rather, the RAD's adverse credibility findings are rooted in the Applicant's evidence pertaining to events that are central to his claim, particularly the main event that is said to give rise to his fear of persecution

– the April 17 incident. In *Paulo* at paragraph 60, this Court held that a thorough analysis does not mean that the decision maker erred in conducting a microscopic analysis.

[39] With regards to the April 17, 2018, event, the RAD reasonably noted that the Applicant made several statements in his testimony that were inconsistent with his BOC narrative. The Applicant's memorandum of argument submitted to the RAD did not offer the explanation that the Applicant erred with respect to who was present when he left the imambargah on April 17 because the Applicant only could have received this information from someone else. This is an argument that was not put before the RAD, and should not be considered on judicial review (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at paras 44-46). Even in light of this argument, the RAD's determination remains reasonable. It would be reasonable to expect the Applicant to accurately recall key details from the incident which he alleges gave rise to the risk he now faces, details such as who saw him leave the imambargah, and how Paman learned that he had converted to Shi'ism.

[40] It was also reasonable for the RAD to find that the Applicant's testimony was inconsistent as it pertained to the risk to the Applicant's father. At paragraphs 17-19 of the decision, the RAD stated that it did not draw an adverse credibility finding from the fact that the father returned to the family home. The RAD did consider the testimony to be inconsistent when the Applicant stated that the father was threatened and instructed not to contact the Applicant, and yet on a number of occasions shared information with Paman and his in-laws evidencing that he maintained contact with the Applicant. The Applicant testified that he and his father speak every 2-4 weeks. The Applicant's submissions that this does not establish that Paman knows of

“significant, ongoing contact” is beside the point, and is a request for this Court to reweigh the evidence. The Applicant testified that the father was not to maintain “any contact” with him. The RAD did not need to find that Paman knew of “significant, ongoing contact.” It was reasonable for the RAD to find that the Applicant’s testimony on this point was internally inconsistent.

[41] Finally, the RAD did not err in failing to respect the presumption of truthfulness. The presumption holds so long as it is not rebutted. The presumption is rebutted when there is evidence on the record that is inconsistent with an applicant’s sworn testimony, or where the Board is not satisfied with an applicant’s explanation for inconsistencies in the evidence (*Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 29). There was contradictory evidence in the Applicant’s testimony and in his BOC narrative. The RAD was not bound to accept his explanation, that he simply made a mistake.

B. *Did the RAD err in its assessment of the documentary evidence?*

(1) Applicant’s submissions

[42] The Applicant submits the RAD is responsible for determining whether or not a document is credible, and should not simply dismiss it on the basis of having limited weight (*Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 at paras 50-51 [*Osikoya*]; *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20 [*Sitnikova*]). According to the Applicant, there must be a determination on credibility and probative value for there to be a determination on weight (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 29). The Applicant submits that the RAD failed to make clear findings about the

authenticity or probative value of the affidavits from the Applicant's father, MS, AA, and MA, and of the letter from MSBR. The Applicant then submits the RAD's findings regarding these documents amount to a "rolling credibility finding" (*Wang v Canada (Citizenship and Immigration)*, 2017 FC 19 at para 34 [*Wang*]).

[43] The Applicant also submits the RAD erred in its assessment of the documentary evidence regarding the risk faced by converts to Shia Islam in Pakistan. The Applicant argues the RAD disregarded documentary evidence establishing that converts to Shia Islam face a greater risk of persecution than people born into the Shia religion. The Applicant points to items from the NDP for Pakistan. He argues that item 12.16 demonstrates that converts are viewed as apostates by some Sunni extremists and are subjected to attacks and public calls for their execution; item 12.9 states abandoning Islam is viewed by Islamic jurisprudence as a capital offence; and item 12.38 states that extremists view Shia Muslims similar to how they see other non-Muslim religious groups. This last point, he argues, demonstrates that a convert from Sunni to Shia would face the same persecution as a conversion from Sunni to another religion. The Applicant argues that the RAD failed to consider this evidence, which runs contrary to its decision, rendering the decision unreasonable (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17 [*Cepeda-Gutierrez*]).

(2) Respondent's Submissions

[44] The Respondent argues that the RAD's treatment of the Applicant's supporting documents was reasonable. Once a credibility finding is made, the RAD can find that supporting evidence is insufficient to overcome the credibility concerns (*Raza v Canada (Citizenship and*

Immigration), 2021 FC 299 at para 43; *Kaiyga v Canada (Citizenship and Immigration)*, 2022 FC 541 at paras 55-57). The Respondent submits that the Applicant's case law is distinguishable. In *Osikoya*, the supporting letters provided first-hand evidence to support the events as alleged by the applicant – here, the RAD expressed concern that some of the affidavits were reiterations of the Applicant's self-reporting. In *Sitnikova*, the Court held that the Board should be explicit about authenticity findings if there is concern about whether the document is authentic or credible – that is not the case here; the RAD raised no concerns about the authenticity of the documents. In *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at paragraph 31, this Court held that decision makers can find evidence to be insufficient without needing to establish its credibility. Finally, the Respondent submits that the decision in *Wang* is distinguishable, as in this case, the RAD conducted a separate assessment of the probative value and weighed each letter before concluding the evidence was insufficient to establish the Applicant's allegations.

[45] The Respondent also submits that the RAD's treatment of the country conditions evidence is reasonable. While the Applicant may point to generalized evidence, that is not sufficient to demonstrate the RAD's weighing of the evidence is unreasonable (*Johal v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5967 at paras 10-11). Further, the documentary evidence that the Applicant submits does not apply to the Applicant's circumstances nor does it support the allegations of persecution. The Respondent cites *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 at paragraphs 48-50 [*Khir*], where Justice Andrew D. Little held that a failure to consider evidence *may* lead to the decision being set aside “where the non-mentioned evidence is critical, the evidence contradicts the tribunal's decision

and the review court determines by inference that its omission means the tribunal did not have regard to the material before it.” The RAD reviewed several NDP documents, and reasonably found that despite an indication of a risk for Shia Muslims, it does not establish a serious possibility of persecution by virtue of being a Shia Muslim.

(3) Analysis

[46] The RAD’s treatment of the Applicant’s documentary evidence is reasonable. The RAD is presumed to have considered all of the evidence, and it reasonably found that the corroborative evidence was insufficient to overcome the credibility concerns and that the documentary evidence did not establish a risk of persecution to Shia Muslims in Pakistan (*Florea v Canada (Minister of Employment and Immigration)*, [1993] ACF No 598 at para 1, [1993] FCJ No 598 (CA); *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 as cited in *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166).

[47] The jurisprudence that the Applicant cited is distinguishable in this case. In *Osikoya* and *Sitnikova*, the issue was an unspoken finding by the decision maker that the applicant’s supporting documents were inauthentic, partly because the documents were unsworn. That concern was translated into vague statements that the documents were entitled to “minimal weight”. That is not the case here. There is no concern regarding the authenticity of the documents. Rather, the RAD assigned the documents in question – namely, the affidavit of the father, and the affidavits of MS, AA, MA, and MSBR – little weight, because the documents did not have probative value.

[48] The RAD is entitled to make findings of fact and to weigh the evidence according to the burden of proof (*Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at para 31). The evidence in this case was entitled to little weight because the affidavits were either inconsistent with the Applicant's own evidence (affidavit from the father), or because the Applicant was the source of the information attested to, and the RAD already found him not to be credible. This determination by the RAD was not unreasonable (see *Amed v Canada (Citizenship and Immigration)*, 2020 FC 875 at para 24; *Gutierrez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 4 at para 64).

[49] Moreover, the decision in *Wang* is distinguishable, as in that case the RPD failed to deal separately with the documentary evidence, but instead relied on one negative credibility finding to justify another (*Wang* at para 34). That was not the case here. The RAD's reasons for assigning the affidavits little weight were clearly explained (see for example paragraph 31 of the reasons).

[50] Finally, the RAD's treatment of the country conditions evidence is reasonable. The Applicant points to evidence that indicates that some extremist Sunni groups view converts to Shia as apostates. The Applicant submits that by virtue of this, converts are at a greater risk of persecution than people who are born Shia, though no evidence is cited to support this latter assertion. The RAD was aware that some Shia Muslims may be at risk of persecution (see paragraph 42 of the reasons). Further, on judicial review, the Applicant points to items in the NDP that were not cited in the materials before the RAD. I do not consider the evidence cited by the Applicant on judicial review to be "contrary" to the evidence cited by the RAD, from a

source that was directly referenced to by the Applicant, such that the RAD had to specifically explain why it dismissed it (*Cepeda-Gutierrez; Khir*). The RAD's reasons, relying on evidence indicating that the Shia population in Pakistan is, in general, unlikely to be subject to treatment or discrimination by non-state actors that is "sufficiently serious by its nature and repetition to amount to a real risk of persecution and/or serious harm" (relying on item 1.16 at section 2.4.13 (though the RAD incorrectly listed the section number as 2.4.3 in footnote 23), are reasonable.

VI. Conclusion

[51] For the reasons set out above, this application for review is dismissed.

[52] The parties have not proposed any question for certification and I agree that none arises.

JUDGMENT in IMM-985-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No question is certified.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-985-22

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OF CITIZENSHIP AND IMMIGRATION

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