Date: 20230815

Docket: IMM-1771-22

Citation: 2023 FC 1106

Ottawa, Ontario, August 15, 2023

PRESENT: The Honourable Madam Justice Turley

 BETWEEN:

HARPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

I.   <u>**Overview**</u>

[1]   The Applicant, a citizen of India, seeks judicial review of a Refugee Appeal Division

[RAD] decision concluding that he was neither a Convention refugee nor a person in need of

protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2]   For the reasons that follow, I dismiss the application. Based on multiple credibility issues with the Applicant's evidence and testimony, including his delay in claiming refugee protection, the RAD dismissed the Applicant's claim for refugee protection under both sections 96 and 97 of the *IRPA*. In my view, the RAD's decision is reasonable and falls within a range of possible, acceptable outcomes in the circumstances.

II.   **Background**

A.   *The Applicant's refugee claim*

[3]   The Applicant claimed refugee protection based on his fear of the police and the Bharatiya Janata Party [BJP Party] due to his political opinion and imputed association with Sikh pro-Khalistan militant groups.

[4]   The Applicant alleged that in September 2017, he was summoned by the police and questioned about his connections with Khalistani groups and terrorists while in England. He further alleged that he was assaulted by four BJP Party members in November 2017. The Applicant claimed that his attempts to lodge a complaint with the police were dismissed and that he was subsequently informed of an ongoing investigation against him.

[5]   In December 2017, police allegedly took the Applicant to a station and he was advised that their investigation revealed connections with Sikh militant groups in England and India. The Applicant was beaten and then released after the payment of a bribe and on the condition that he

not leave the area. The Applicant moved to New Delhi and made arrangements with an agent to leave the country.

[6]   The Applicant arrived in Canada on a visitor's visa on July 22, 2018. He applied for refugee protection in June 2019 while he still had a valid visa. The Applicant alleges that authorities continue to search for and inquire about him.

B.   *The RAD decision*

[7]   While the RAD did not agree with all the Refugee Protection Division's (RPD) credibility findings, it determined that there were sufficient credibility concerns that supported dismissing the Applicant's claims under sections 96 and 97 of the *IRPA*.

[8]   The RAD agreed with the RPD that, given the abuse the Applicant claims to have experienced in India, it was reasonable to expect he would seek refugee protection at the earliest opportunity after arriving in Canada. The RAD relied on the Applicant's education, prior immigration experience and access to an immigration lawyer in support of its conclusion that it would have been reasonable for him to make efforts to seek protection earlier. The RAD concluded that the Applicant's delay in claiming refugee protection was inconsistent with the subjective fear of persecution he alleged and also undermined his allegations and overall credibility.

[9]   The RAD accepted the RPD's conclusion that the Applicant's failure to mention his participation in protests in India was a significant omission affecting the Applicant's credibility.

Given the Applicant's refugee claim was based on his political profile, the RAD determined that it was reasonable to expect that he would refer to the protests in his narrative.

[10]   The RAD drew a negative credibility inference based on the Applicant's failure to provide documentation related to his deportation from England. It dismissed the Applicant's argument that it was unreasonable for the RPD to require corroborating evidence about his deportation, finding that information about his detention and deportation was "extremely relevant in the context of an asylum application where credibility is key": RAD's Reasons for Decision, at para 29.

[11]   The RAD accepted the RPD's significant concerns about the credibility of the Applicant's medical documentation. The RAD noted the lack of official letterhead, lack of a date of issue or any security features and the fact that the documents were written in the same specific, unique style as the rest of the Applicant's supporting documentation (except the father's affidavit). Considering that fraudulent documents are easily obtained in India and that the Applicant admitted to using fraudulent documents to obtain his visitor's visa, the RAD found that, on the balance of probabilities, the medical documents were fraudulent.

[12]   Based on the accumulation of issues with the Applicant's evidence and testimony, in combination with the delay in making a claim, the RAD concluded that the Applicant's allegations were not credible. In addition, the significant credibility issues led the RAD to make a general finding of lack of credibility extending to the remainder of the Applicant's corroborating documents.

[13]   The RAD further rejected the Applicant's argument that there was independent and credible documentary evidence supporting his section 97 claim. It held that the news articles about police brutality in India were insufficient to overcome the lack of credibility of the Applicant's evidence and allegations.

III.   **Issues and Standard of Review**

[14]   At the hearing, I raised a preliminary matter concerning the naming of the Applicant as "Unknown Harpreet Singh" in the style of cause. Counsel for the parties had no explanation, other than to say claimants had been named in this manner in other proceedings and that it may have something to do with passport issues.

[15]   The RPD Reasons and Decision do not use the word "unknown" before the Applicant's name, while the RAD Reasons and Decision lists the Applicant as "Unknown Harpreet Singh" without any explanation. I note that the RPD concluded that the Applicant's identity had been established on a balance of probabilities by his passport and oral testimony. In that regard, his Indian passport lists his name as "Harpreet Singh". In the circumstances, the title of the proceedings is amended to name "Harpreet Singh" as the Applicant.

[16]   The Applicant challenges the RAD's credibility determination and argues that it erred in: (i) failing to make a finding regarding the Applicant's father's affidavit; (ii) finding that the Applicant's delay in making a refugee claim was inconsistent with his subjective fear of persecution and undermined his credibility; (iii) finding that the failure to refer to the protests he attended in India was a significant omission; (iv) drawing a negative inference from the

Applicant's failure to provide documentation; and (v) finding that the Applicant's supporting documents were fraudulent.

[17]   The Applicant further asserts that the RAD erred in failing to undertake a section 97 assessment based on a lack of credibility.

[18]   There is no dispute that the applicable standard of review is reasonableness. In accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], 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" at para 85. A decision-maker's reasons are not to be assessed against a standard of perfection: at para 91. Their reasons are to be read holistically and contextually in order to understand "the basis on which a decision was made": at para 97. A decision must exhibit "the hallmarks of reasonableness – justification, transparency and intelligibility": at para 99.

IV.   **Analysis**

A.   *Multiple credibility issues*

[19]   Significant deference is owed to the RAD with respect to the assessment of credibility: *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375, at para 23; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178, at para 23 [*Sary*]; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, at para 22; *Lawal v Canada (Citizenship and*

Immigration), 2010 FC 558, at para 11. As explained by Justice Denis Gascon, "credibility issues

are one of the RAD's core competencies": *Sary*, at para 23.

[20]   In this case, the RAD reasonably concluded that multiple issues with the Applicant's

evidence and testimony, combined with his delay in seeking refugee status, undermined the

credibility of his claim.

(1)   General lack of credibility extended to the Applicants' supporting documents

[21]   I do not agree with the Applicant's submission that the RAD failed to make a credibility

finding regarding his father's affidavit. Rather, the RAD found that, based on the significant

credibility issues, a general lack of credibility extended to the remainder of the Applicant's

documentary evidence submitted to corroborate his allegations: RAD Reasons for Decision, at

para 43. The father's affidavit was one of the documents submitted in support of the Applicant's

claim.

[22]   The RAD's approach is consistent with this Court's jurisprudence. It is well-established

that a lack of credibility can be extended to all documentary evidence submitted to corroborate a

claimant's version of the events: *Romero Gomez v Canada (Citizenship and Immigration)*, 2021

FC 1266, at para 25; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 24;

Hohol v Canada (Citizenship and Immigration), 2017 FC 870, at para 19; *Lawal v Canada

(Citizenship and Immigration)*, 2010 FC 558, at para 22.

(2)   The delay is claiming refugee protection undermined the Applicant's credibility

[23]   While delay in making a refugee claim is not determinative, it is a factor that may be considered in assessing credibility: *Guecha Rincon v Canada (Citizenship and Immigration)*, 2020 FC 173, at para 19(a) [*Guecha Rincon*]; *Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312, at para 18. In this case, delay was but one factor that negatively impacted the Applicant's credibility. In addition to concluding that the Applicant's delay in claiming refugee protection was inconsistent with the subjective fear of persecution he alleged, the RAD also determined that it undermined his overall credibility.

[24]   I do not accept the Applicant's argument that his fear was based on new developments after he fled India and, as such, the RAD should only have "started the delay clock" at that time. As Justice John Norris held, the length of the delay in making a refugee claim "must be determined with regard to the time of inception of the claimant's fear as determined from the claimant's personal narrative" [emphasis added]: *Guecha Rincon*, at para 19(c); *Chen v Canada (Citizenship and Immigration)*, 2019 FC 334, at para 24.

[25]   Here, based on the Applicant's narrative, his fear of persecution crystallized in March 2018, before he left India:

> Realizing that the police & BJP would not leave me alone and my life was at risk, I contacted the agent on or about March 25, 2018 and asked him to send me to a foreign country. [emphasis added]
>
> Applicant's Basis of Claim Form, Certified Tribunal Record, at p 98.

[26]   I also do not agree that the RAD based its assessment of the Applicant's delay on what a

reasonable claimant would do. To the contrary, the RAD considered the Applicant's individual

circumstances, including his education, experience in immigration matters and his access to an

immigration lawyer, in concluding that it would have been reasonable for him to seek protection

at an earlier date.

[27]   Finally, in my view, the RAD did not err in finding that the Applicant's status as a visitor

in Canada was an insufficient explanation for the delay. In certain circumstances, a claimant's

conduct may be enough to deny their refugee claim: *Licao v Canada (Citizenship and

Immigration)*, 2014 FC 89, at paras 54-55 [*Licao*].

[28]   While acknowledging that the Applicant had a valid visa at the time he applied for

refugee protection, the RAD did not accept it as a reasonable explanation for the delay given the

fear he alleged, his prior history with deportation and his access to legal counsel:

> I find that it is nevertheless reasonable to expect him to make
> efforts to seek protection as soon as possible if he was afraid as
> alleged. This is especially so given his previous experience with
> being deported back to India, and especially given that he retained
> assistance to seek a visa extension during this period of delay
> rather than making a claim for protection.
>
> RAD Reasons for Decision, at para 17.

      (3)   Failure to refer to protests attended in India was a significant omission

[29]   The RAD found that the failure to mention the six to seven protests the Applicant

attended in India after he returned from England was a significant omission from his narrative.

Before this Court, the Applicant argues that the RAD erred in failing to "come to grips" with the Applicant's evidence that the protests were religious, not political. However, in his submissions before the RAD, the Applicant did not argue that the RPD erred in finding the protests were political in nature. Rather, the Applicant simply stated that the "alleged inference drawn by the member in paragraph [37] to impugn the credibility of the appellant on that omission is unreasonable": Appellant's Memorandum, Certified Tribunal Record, at para 10, p 59.

[30]   The jurisprudence is clear that the Applicant's failure to make this argument before the RAD precludes him from advancing it for the first time in this application for judicial review: *Malik v Canada (Citizenship and Immigration)*, 2023 FC 429, at para 26; *Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109, at para 21; *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580, at para 14. The RAD cannot be faulted for failing to consider an argument that was never made.

(4)   Negative credibility inference based on failure to provide documentation

[31]   In my view, the RAD did not err in drawing an adverse credibility inference based on the Applicant's failure to provide documents the RPD had requested related to his deportation from England. The inference was based not only on his failure to obtain the documents, but also on the fact that the Applicant gave inconsistent answers when asked questions about these documents.

[32]   The RAD properly dismissed the Applicant's argument that it was unreasonable for the RPD to request corroborating evidence. As articulated by the RAD, in the circumstances, the documents were relevant to assessing credibility:

> Rather, without the documentation from the U.K. government related to his deportation, the RPD is simply left with the knowledge that the PA was in immigration detention in England from October to November 2014, after which he was deported from the U.K. This information – and the context around this detention and deportation – is extremely relevant in the context of an asylum application where credibility is key.
>
> RAD Reasons for Decision, at para 29

(5)   Fraudulent medical documentation

[33]   I do not agree with the Applicant that the RAD's conclusion respecting the fraudulent nature of the medical documents extended to his other supporting documents. While the RAD could have been clearer, a reading of the relevant paragraphs of the RAD's Reasons demonstrate that its finding was restricted to the medical documentation: RAD Reasons for Decision, at paras 34-41.

[34]   Furthermore, had the RAD's finding applied to the remainder of his supporting documentation, it would have been unnecessary for the RAD to then find that "the significant credibility issues in this case lead to a general finding of lack of credibility which extends to the remainder of the documentary evidence the PA submitted": RAD Reasons for Decision, at para 43.

[35]   The decision in *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 [*Mohamud*], does not assist the Applicant. In that case, the Court determined that a minor typographical error could not reasonably ground a finding that the document was fraudulent.

Justice Sébastien Grammond concluded that "the RPD cannot find a document to be inauthentic on the basis of speculation: it must do so on the evidence": *Mohamud*, at para 6.

[36]   In contrast, there was sufficient evidence in this case to question the genuineness of the medical documents, including: (i) the lack of official letterhead, lack of a date of issue or lack of any security features; (ii) the fact that the documents were written in the same specific, unique style as other supporting documentation that emanated from different sources; (iii) that fraudulent documents are easily obtained in India; and (iv) that the Applicant used fraudulent documents to obtain his visitor's visa. On this basis, I find that it was reasonably open to the RAD to conclude, on the balance of probabilities, that the medical documents were fraudulent.

B.   *No independent and credible evidence supporting the section 97 claim*

[37]   Negative credibility findings are sufficient to foreclose a section 97 analysis absent objective evidence supporting that the applicant faces a personalized risk: *Cortes v Canada (Citizenship and Immigration)*, 2016 FC 684, at para 30; *Dawoud v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1110, at paras 44-45; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 102, at para 46.

[38]   The RAD dismissed the Applicant's section 97 claim because there was no "independent and credible documentary evidence capable of supporting a positive disposition": RAD Reasons for Decision, at para 45. It concluded that the news articles about police brutality in India were insufficient to support a positive finding given the RAD's adverse credibility determination.

[39]   I find no merit to the Applicant's argument that "[1] the delay issue was not relevant for

s. 97": Applicant's Memorandum of Argument, at para 43. Delay may be relied upon to ground a

negative credibility finding applicable to section 96 and 97 claims, as well as a lack of subjective

fear of persecution under section 96: *Licao*, at para 50.

[40]   Here, the RAD found that the Applicant's delay was both inconsistent with a subjective

fear of persecution and undermined his overall credibility:

> I find that in the circumstances, the PA's delay in making a claim
> for refugee protection after coming to Canada is not in line with
> the subjective fear of persecution he alleges and undermines his
> allegations and overall credibility.
>
> RAD's Reasons for Decision, at para 17

[41]   Moreover, there is simply no reason to question whether the RAD "transported" the lack

of subjective fear into its section 97 analysis: Applicant's Memorandum of Argument, at para 46.

The RAD was clear that it relied on the Applicant's overall lack of credibility to dismiss his

section 97 claim: RAD's Reasons for Decision, at para 45.

C.   *Conclusion*

[42]   Based on the foregoing, the application for judicial review is dismissed. I find that the

RAD's analysis of the multiple credibility issues, including the Applicant's delay in seeking

refugee protection, exhibits the required attributes of transparency, justifiability and intelligibility

in accordance with *Vavilov*.

[43]   The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-1771-22

THIS COURT'S JUDGMENT is that:

1. The title of the proceedings is amended to name Harpreet Singh as the Applicant.

2. The application for judicial review is dismissed.

3. There is no question for certification.

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"Anne M. Turley"
Judge

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DOCKET: IMM-1771-22

STYLE OF CAUSE: HARPREET SINGH v THE MINISTER OF
                                       CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 26, 2023

JUDGMENT AND REASONS: TURLEY J.

DATED: AUGUST 15, 2023

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