

Federal Court



Cour fédérale

Date: 20231013

Docket: IMM-5939-22

Citation: 2023 FC 1367

Ottawa, Ontario, October 13, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MANPREET DADRAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Manpreet Dadral, is a citizen of India. He is a singer and musician by trade who came to Canada on a temporary resident visa as part of a cultural stage group slated to perform shows in British Columbia. The Applicant arrived in Canada in September 2019 and, approximately three months later, sought refugee protection. He claims that he fears persecution by the police in Punjab, goons from the Congress Party, supporters of the Bharatiya Janata Party,

and members of other castes, based on his activism for members of the Dalit caste and his involvement in the Bajujan Samaj Party.

[2] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated May 30, 2022, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting his claim for refugee protection, finding that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RAD concluded that the Applicant did not establish his allegation of bias against the RPD member and that the RPD was correct to find that the Applicant was not credible with respect to material elements of his claim.

[3] The Applicant submits that the RAD erred by (i) rejecting the evidence in the record; (ii) failing to accept and consider the new evidence; (iii) not considering the evidence on the human rights situation in India, notably the evidence of persecution and the rise of Hindu nationalism; (iv) not addressing the risk of torture upon his return to India; (v) not recognizing the biased attitude of the RPD member; and (v) conducting a flawed analysis of the Applicant's credibility.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Analysis

[5] I turn first to the Applicant's argument that the RAD rejected all the evidence, being both the evidence before the RPD and the new evidence that the Applicant sought to admit before the RAD. As a preliminary point, I agree with the Respondent that in the Applicant's written representations a number of allegations are made that do not actually relate to the decision under review. In the Applicant's oral submissions, counsel focused on allegations that the RAD either ignored evidence or unreasonably focused on microscopic details.

[6] The Applicant has failed to satisfy me that the RAD ignored evidence or unduly treated the evidence in a microscopic fashion so as to render the decision unreasonable. First, the RAD is presumed to have considered all the evidence before it unless demonstrated otherwise (*Galamb v Canada (Citizenship and Immigration)*, 2020 FC 85 at para 58). Second, 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 (*Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 at para 125 [*Vavilov*]). Having considered the record before the RAD, including the Applicant's submissions to the RAD, and the detailed analysis contained in the RAD's decision, I find the Applicant's arguments to be an impermissible request to reweigh the evidence.

[7] As to the new evidence the Applicant sought to admit, the Applicant states that it was "obviously admissible" but does not particularize how the RAD allegedly erred in rejecting it. The RAD concluded that the documents predated the RPD's decision and rejected the Applicant's argument that he could not have been reasonably expected to file it because he had a

very strong case. The RAD also noted that the Applicant did not reference the new evidence in his appeal submissions, other than in the section on the admissibility of the evidence. I find that the RAD did not err in its treatment of the new evidence.

[8] As to the Applicant's submissions that the RAD failed to address the prohibition of return to a substantial risk of torture in violation of Article 3 of the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [Convention Against Torture]. While removal or deportation to torture would ordinarily be a breach of Article 3 of the Convention against Torture, this is not at issue in the present case. This Court has repeatedly and consistently held that such an argument is premature at this stage on the basis that the refusal of a refugee claim is not a removal (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 1692 at para 12; *Kumar v Canada (Citizenship and Immigration)*, 2022 FC 1700 at para 13; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 164 at para 11; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 15-18; *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at paras 38-39; *Davila Valdez v Canada (Citizenship and Immigration)*, 2022 FC 596 at paras 21-22). The RAD was thus not obliged to consider the Convention Against Torture.

[9] The Applicant submits that the human rights crisis in India was not addressed by the RAD and that the objective situation on the ground is widely documented. The RAD, however, is not tasked with rendering general commentary on the status of human rights in India. The issue, as identified by the RAD, is that the Applicant failed to credibly demonstrate that he personally meets the criteria to warrant granting refugee status – notably failing to credibly demonstrate that

the events he alleged actually took place. I am unable to conclude that the RAD erred as alleged by the Applicant.

[10] The Applicant submits that the credibility concerns do not align with the jurisprudence of this Court. He pleads that minor inconsistencies and peripheral problems should not affect an applicant's general credibility.

[11] 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). 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).

[12] The RAD concluded that the accumulation of contradictions, omissions and inconsistencies in the evidence about crucial elements of the Applicant's claim supported a negative credibility finding. Having considered the credibility concerns examined by the RAD,

and noting that a number of the RPD's negative credibility findings were not challenged on appeal, I have not been persuaded that this Court's intervention is warranted.

[13] Finally, the Applicant submits that the RPD member exhibited bias. He pleads that it is clear that he was not given a fair hearing and that the RPD member "takes the position that no evidence from southern Asia is worthy of trust". The Applicant alleges that the RPD member "has made numerous declarations to this effect in a number of decisions" but does not reference the decisions.

[14] I agree with the Respondent that the RAD reasonably concluded that the RPD had not exhibited bias in its decision. Based on the record before it, which included no material evidence of bias, the RAD was entitled to come to the conclusion it did.

[15] The test for determining whether there is actual bias or a reasonable apprehension of bias by a decision maker is well established. The Supreme Court of Canada in *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at pages 394 and 395 explains:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude"

. . . The grounds for this apprehension must, however, be substantial . . . [and not] related to the "very sensitive or scrupulous conscience".

[16] More recently, the Federal Court of Appeal in *Firsov v Canada (Attorney General)*, 2022 FCA 191 has confirmed that the test is:

[56] ...whether “an informed person, viewing the matter realistically and practically – and having thought the matter through – ... [would] think that it is more likely than not that the [decision-maker], whether consciously or unconsciously, would not decide fairly”: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at paras. 20-21, 26.

[17] It is the Applicant, the one alleging bias, who bears the onus of demonstrating that a reasonable person apprised of all the relevant circumstances would conclude that the RPD member would not decide the matter fairly.

[18] If the Applicant wished to allege that the RPD member had demonstrated bias through a pattern of behaviour, it was incumbent on the Applicant to provide evidence of previous decisions where the same RPD member made similar alleged errors. The Applicant has not done so. Furthermore, I disagree with the Applicant that the fact that the RPD member used similar language multiple times when analyzing the Applicant’s credibility is conclusive of bias.

III. Conclusion

[19] For the reasons set out above, I am of the view that the Applicant has failed to meet his burden of demonstrating that the RAD’s decision is unreasonable. I therefore dismiss this application for judicial review.

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

JUDGMENT in 5939-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and
2. There is no question for certification.

"Vanessa Rochester"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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