

Federal Court



Cour fédérale

Date: 20231019

Docket: IMM-11022-22

Citation: 2023 FC 1388

Ottawa, Ontario, October 19, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

**KALEEM ULLAH BAIG
TASNEEM KOUSAR
SARAH KALEEM**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicants, Kaleem Ullah Baig [Principal Applicant], Tasneem Kousar [Associate Applicant], and their daughter Sarah Kaleem [Minor Applicant] seek judicial review of a decision by the Refugee Appeal Division [RAD] refusing their claim for refugee protection

under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants argue that the RAD failed to meaningfully engage with key evidence and arguments in rendering its decision. In particular, they allege that the RAD failed to conduct an independent analysis of their refugee claims, instead expressing agreement with the Refugee Protection Division [RPD]'s decision without any explanation. They further assert that the RAD's credibility findings were unreasonable.

[3] For the reasons that follow, I am dismissing the application. A review of the RAD's reasons demonstrates that it did conduct its own assessment of the issues raised by the Applicants, and that it explains why it did not accept their arguments. Further, the RAD did consider and assess all the key arguments raised by the Applicants. The Applicants simply do not agree with the RAD's conclusions.

[4] Finally, I find no reviewable error in the RAD's adverse credibility findings based on inconsistencies and contradictions in the evidence. The RAD reasonably concluded that the supporting documentation tendered was insufficient to overcome its credibility concerns. Ultimately, the Applicants take issue with the RAD's weighing and assessing of the evidence and it is not the role of the Court to reweigh and reassess the evidence on judicial review.

II. Background

A. *The Applicants' refugee claim*

[5] The Applicants, citizens of Pakistan, sought refugee protection based on their fear of harm by the Pakistan People's Party [PPP], the police, and the Principal Applicant's business suppliers. The Associate Applicant and the Minor Applicant both adopted the Principal Applicant's narrative and did not rely on any independent allegations to support their refugee claims.

[6] The Principal Applicant owned a chain of supermarkets in Pakistan. He claims that his troubles began when he came to the attention of the PPP after he opened his fourth store in 2010.

[7] In support of the Applicants' claim, the Principal Applicant alleges that a number of incidents occurred spanning almost ten years, between 2010 and 2019, that led the Applicants to flee Pakistan. These incidents involved violent attacks on the Principal Applicant and his family, death threats, a failed abduction of the Minor Applicant, refusals by the police to investigate and demands for bribes, PPP officials demanding extortion payments, and economic damage to his business.

[8] According to the Principal Applicant, in 2011, after a number of these incidents, he began paying a monthly fee to continue operating his supermarkets. That same year, PPP members seized a portion of his inventory, causing the Principal Applicant to incur a large debt. Between 2011 and 2012, the opening of ten new superstores with ties to the PPP further adversely affected

the Principal Applicant's supermarkets. In 2014, the PPP negotiated a better deal with new suppliers that the Principal Applicant had found. This caused further economic damage to his business.

[9] In November 2017, the Principal Applicant closed one of his supermarkets. He claims that he was forced to sell the other three supermarkets at 40% below fair market value. In addition, he states that he remains indebted to his suppliers.

[10] The Associate Applicant and the Minor Applicant arrived in Canada in July 2019 and the Principal Applicant arrived in September 2019. They made their refugee claims shortly after their arrival.

B. *The RPD decision*

[11] The RPD hearing was held over two days: November 30, 2021 and March 28, 2022. The Principal Applicant was appointed as the Minor Applicant's Designated Representative pursuant to subsection 167(2) of the *IRPA*.

[12] The determinative issue for the RPD was credibility. More specifically, the RPD found that the Applicant lacked credibility concerning "the central events relating to his claim, specifically, the receipt of funds and the nature of the sale of his business, or that his sale was to any political member": RPD Reasons and Decision dated May 16, 2022 [RPD Reasons]. In addition, there was inconsistent evidence about arrest warrants and police reports supporting the Principal Applicant's forward-looking risk.

[13] Based on these findings, the RPD concluded that the Principal Applicant had not established his refugee claim under sections 96 or 97 of the *IRPA*. Because the claims of the Associate Applicant and the Minor Applicant were based entirely on the Principal Applicant's claim, the RPD determined that their claims must also fail.

C. *The RAD decision*

[14] The RAD dismissed the Applicants' appeal and confirmed the RPD's decision, finding that "credibility issues arose in the Appellant's evidence, which were not reasonably explained, and there is insufficient supporting evidence to establish the claim on a balance of probabilities": RAD Reasons and Decision dated October 20, 2022 at para 56 [RAD Reasons].

[15] After reviewing the transcripts of the RPD hearing, the RAD concluded that the Applicants' procedural fairness arguments were without merit. More specifically, the RAD determined that the RPD was not required to question the Associate Applicant and the Minor Applicant because their refugee claims relied exclusively on the Principal Applicant's narrative. Having found that the Principal Applicant's claim lacks credibility, the RAD held that their claims must also fail.

[16] The RAD further rejected the Applicants' arguments that the RPD failed to apply *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* [Child Guidelines] and consider the best interests of the Minor Applicant. In reviewing the transcripts of the RPD hearing, the RAD noted that the RPD member had an exchange with the Principal Applicant, as the Minor Applicant's Designated Representative, about whether the Minor

Applicant would remain in the room during the hearing given the sensitive issues involved in the appeal. The Principal Applicant decided that it was better for the Minor Applicant to leave: RAD Reasons at para 21.

[17] The RAD did not accept the Applicants' argument that the RPD lacked jurisdiction to consider whether the Principal Applicant had sold his business under duress as claimed. While the RAD agreed that "a contract signed by force or under duress is void", it held that the evidence in this case did not demonstrate, on a balance of probabilities, that the contract was signed by force or under duress: RAD Reasons at para 32.

[18] The RAD further agreed with the RPD's finding that there was insufficient evidence that the agent of persecution, the PPP, was the purchaser of the Principal Applicant's business. The RAD explained that the Applicants provided no evidence that the alleged purchaser "FKK" was affiliated with the PPP. The RAD rejected their argument that the RPD or the RAD were required "to conduct Google searches to determine whether he is affiliated with the PPP". The RAD further noted that FKK's name does not even appear on the contract: RAD Reasons at para 38.

[19] Finally, the RAD determined that the Applicants' supporting evidence (letters from an accountant, a neighbour, and the Principal Applicant's son) did not outweigh the credibility concerns with the Applicants' claim: RAD Reasons at paras 47-55. After reviewing each in turn, the RAD concluded that there was a lack of independent and credible evidence supporting their claim: RAD Reasons at para 56.

III. Issues and Standard of Review

[20] The Applicants raise two main issues: (i) whether the RAD erred in failing to engage with key evidence and arguments and meaningfully grapple with central issues; and (ii) whether the RAD's credibility determination was unreasonable.

[21] 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": *Vavilov* at para 85. A reviewing court must not assess an administrative decision-maker's reasons against a standard of perfection: *Vavilov* at para 91. Rather, their reasons are to be read holistically and contextually in order to understand "the basis on which a decision was made": *Vavilov* at para 97. In order to withstand scrutiny, a decision must exhibit the requisite attributes of justification, transparency, and intelligibility: *Vavilov* at para 99.

IV. Analysis

A. The RAD engaged with the Applicants' key evidence and arguments

- (1) The RAD conducted an independent assessment

[22] I do not accept the Applicants' argument that the RAD failed to independently assess their claim and that the RAD's reasons are simply a "regurgitation" of the RPD's assessment: Applicants' Further Memorandum of Law and Argument at para 45. Rather, a review of the

RAD's reasons demonstrates that it did undertake a thorough and independent assessment of the issues raised by the Applicants. In fact, in considering each issue, the RAD's reasons follow the same structured analysis: the RAD first summarizes the RPD's finding, and then the Applicants' position, before explaining why it does not accept the Applicants' arguments.

[23] In my view, this case is distinguishable from *Bai v Canada (Citizenship and Immigration)*, 2023 FC 304 [*Bai*] and *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 [*Ajaj*], relied upon by the Applicants. In those cases, the Court found that the RAD had failed to conduct an independent assessment of the applicants' claims because the RAD's language exhibited a high degree of deference to and reliance on the RPD's assessment: *Bai* at para 33; *Ajaj* at para 42. In contrast, the RAD in this case did not review the RPD's decision on the reasonableness standard, but rather clearly understood that its role was to "decide if the RPD made the correct decision": RAD Reasons at para 14. Indeed, the RAD's reasons reflect that it did just that.

[24] As Justice Norris emphasized in *Canada (Citizenship and Immigration) v Davoodabadi*, 2019 FC 350 [*Davoodabadi*], the RAD's reasons do not need to be perfect or exhaustive, but they must say enough to allow the parties to determine whether to seek judicial review: *Davoodabadi* at para 26. I do not agree with the Applicants' assertion that the RAD "left the Applicants totally in the dark" as to why their arguments lack merit: Applicants' Further Memorandum of Law and Argument at para 46. On each issue advanced, the RAD clearly explained why it did not accept the Applicants' argument: RAD Reasons at paras 20, 23-25, 31-33, 38-39, 42, 45-46, 53-55.

[25] Furthermore, simply because the RAD expressed agreement with the RPD's reasoning does not mean it failed to undertake its own assessment or analysis: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 332 at para 27; *Ademi v Canada (Citizenship and Immigration)*, 2021 FC 366 at para 28. As Justice Gascon aptly stated: "In exercising its appeal function, the RAD was entitled to echo the RPD analysis and to agree with it": *Kayitankore v Canada (Citizenship and Immigration)*, 2016 FC 1030 at para 23.

[26] I find that the RAD's decision is based on an internally coherent and rational chain of analysis that meaningfully accounts for the central issues raised by the Applicants: *Vavilov* at paras 85, 102, 126-127.

(2) The RAD addressed the Applicant's procedural fairness arguments

[27] Contrary to the Applicants' submissions, I conclude that the RAD did meaningfully engage with their procedural fairness arguments. The RAD specifically rejected their argument that the RPD should have questioned the Minor Applicant about her allegations as the victim of the attempted kidnapping. The RAD found that her claim was based on the Principal Applicant's allegations:

[20] I fail to see how the RPD was legally obligated to ask the Minor Appellant questions when it found the Principal Appellant not credible. The Principal Appellant acted as the Minor Appellant's designated representative and was responsible to act in her best interests. The RPD confirmed with the Principal Appellant that he was to "protect the interests of the minor claimant and to help the minor claimant put forth their claim". The Minor Appellant relies on the Principal Appellant's narrative and the Appellants submit that the Minor Appellant faces a risk of abduction due to the Principal Appellant's troubles with the PPP. However, the RPD found the Principal Appellant's troubles with

the PPP not credible. I also note that the Appellants' counsel did not ask the Minor Appellant questions at the hearing. [Emphasis added]

[28] Similarly, the RAD did not accept the Applicants' argument that the RPD failed to independently assess the claims of the Associate and the Minor Applicants. As noted by the RAD, their Basis of Claim forms specifically indicate that they rely on the Principal Applicant's narrative. Given that their claims are linked to that of the Principal Applicant's, the RPD and the RAD reasonably determined that the Associate Applicant's and the Minor Applicant's claims must also fail because the Principal Applicant's claim lacked credibility: *Nam v Canada (Citizenship and Immigration)*, 2010 FC 783 at paras 27-29; *Song v Canada (Citizenship and Immigration)*, 2008 FC 467 at para 20.

[29] I further do not agree that the RAD erred in finding that the RPD properly applied the Child Guidelines and considered the Minor Applicant's best interests. The RAD reviewed the transcripts of the RPD hearing and noted an exchange that the RPD member had with the Principal Applicant, as the Minor Applicant's Designated Representative. The RPD member raised whether the Minor Applicant would remain in the room during the hearing given "the very sensitive issues" at play. The RPD member indicated that they did not anticipate having any questions for the Minor Applicant and the Principal Applicant decided that it was "better for her to leave now": RAD Reasons at para 21. This exchange demonstrates that the RPD was alert and sensitive to ensuring the proceeding was conducted with the best interests of the child in mind. I therefore find no error in the manner in which the RAD assessed the RPD's application of the Child Guidelines.

B. *The RAD's credibility findings are reasonable*

[30] The RAD concluded that the Principal Applicant lacked credibility on numerous grounds. Before this Court, the Applicants only takes issue with the RAD's credibility findings concerning the Principal Applicant's allegations that: (i) he sold his business under duress and was never paid; and (ii) the agent of persecution was the purchaser of his business. The Applicants further challenge the RAD's conclusion that supporting documentation did not outweigh its credibility concerns.

[31] 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; *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.

[32] I am unable to conclude that the RAD made any reviewable error in finding that the Applicants failed to credibly establish their claim.

(1) The RAD's finding about the sale of the business is reasonable

[33] I find no merit to the Applicants' argument that the RAD and the RPD lacked jurisdiction to find that the Principal Applicant signed the agreement under duress: Applicants' Further Memorandum of Law and Argument at paras 69-75. As noted by the Respondent, this issue was squarely raised by the Applicants – the Principal Applicant alleged in his Basis of Claim form

that he was “forced [...] to sign a sale deed”: Respondent’s Further Memorandum of Argument at para 24.

[34] Contrary to the Applicants’ assertion, the RPD and the RAD did not require specialized knowledge in contract law to determine whether the Principal Applicant signed the agreement under duress. Rather, as determined by the RAD, this is a factual finding grounded in the evidence on the record:

[32] Contrary to the Appellants’ submissions, the finding that the contract is inconsistent with the Appellants’ allegations is not based on another area of law nor does it rely on specialized knowledge. Further, while I agree that a contract signed by force or under duress is void, I agree with the RPD that the evidence does not establish, on a balance of probabilities, that the contract was signed by force or under duress.

[35] Based on the evidence before it, the RAD found no error in the RPD’s conclusion that the documentary evidence about the sale of the business rebutted the Principal Applicant’s allegation that he sold the business under duress and had not received any payment for the sale. The evidence demonstrates that: (i) the Principal Applicant confirmed receipt of 12 million rupees; (ii) the terms of the agreement were fair; and (iii) the contract was signed over a period of five months: RAD Reasons at paras 26, 31, 33.

[36] Having found inconsistencies between the documentary evidence and the Principal Applicant’s testimony, the RAD reasonably concluded that the Principal Applicant failed to establish that he entered into the agreement by force, as claimed. Such credibility findings are within the RAD’s area of expertise.

(2) Insufficient evidence that the agent of persecution was the purchaser

[37] The RAD agreed with the RPD that there was insufficient evidence to support the Applicants' claim that FKK, the alleged purchaser, was affiliated with the PPP. The RAD rejected the Applicants' submission that the RPD or the RAD should have conducted a Google search to determine whether FKK had ties to the PPP. In any event, the RAD emphasized that FKK's name does not appear anywhere on the agreement. I can therefore find no error in the RAD's conclusion that: "In these circumstances, I agree with the RPD that the evidence establishes that the Principal Appellant sold the business to a neutral third party as named in the contract": RAD Reasons at para 38.

[38] I do not accept the Applicants' argument that the RAD failed to give weight to the documents in the National Documentation Package for Pakistan about the prevalence of money laundering and cash transactions: Applicants' Further Memorandum of Law and Argument at para 78. This Court has determined that the claimant bears the onus of establishing a link between the general documentary evidence and their individual circumstances: *Salem v Canada (Citizenship and Immigration)*, 2023 FC 195 at para 22; *Chukwunyere v Canada (Citizenship and Immigration)*, 2021 FC 210 at para 14; *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19. Here, the Applicants failed to establish the requisite nexus.

(3) Supporting evidence does not overcome credibility concerns

[39] The Applicants challenge the RAD's findings with respect to certain supporting documentation submitted to bolster their claim, namely the accountant's letters and the

neighbour's letter. The Applicants' arguments essentially amount to a disagreement with the weight accorded to the evidence. On judicial review, this Court's role is not to reweigh and reassess the evidence: *Vavilov* at para 125. I am unable to find any error in the RAD's conclusion that these supporting documents do not outweigh its credibility concerns.

[40] Furthermore, as explained below, the Applicants misconstrue the RPD's conclusion about the lack of First Information Reports [FIRs].

(i) The accountant's letters

[41] The Applicants argue that the RAD failed to provide transparent and intelligible reasons for why it does not accept that the accountant would be able to recall, by memory and without access to records, details included in their second letter: Applicants' Further Memorandum of Law and Argument at para 82. I find no error in the RAD's agreement with the RPD assigning little weight to the accountant's letters. The RAD's reasons, while brief, do explain why they adopted the reasons of the RPD.

[42] The first letter was not on letterhead and did not list the accountant's credentials. The RAD simply did not accept the Applicants' explanation for the inconsistency between the level of detail in the accountant's second letter and the Principal Applicant's testimony that the accountant did not keep nor have access to any records. It was open to the RAD to reject the argument that the accountant would have been able to recall the details in his letter by memory and without access to records.

[43] Significantly, the RPD determined that even if the authenticity of the accountant's letter is accepted, the sale of business at a price below its fair market value does not make the Applicants Convention refugees or persons in need of protection: RPD Reasons at paras 59-60.

(ii) The neighbour's letter

[44] With respect to the neighbour's letter, the Applicants argue that the RAD did not address the RPD's error in law when it rejected the letter solely because it was hearsay: Applicants' Further Memorandum of Law and Argument at para 83. As the RAD held, however, the RPD did not reject the letter based on hearsay, but rather because the RPD found that the letter did not outweigh the credibility concerns: RAD Reasons at para 54; RPD Reasons at 65.

[45] The Court has held that it is reasonable for decision-makers to afford less weight to affidavits that contain information that is not based on first-hand knowledge: *Nwankwo v Canada (Citizenship and Immigration)*, 2023 FC 786 at para 34; *Nsofor v Canada (Citizenship and Immigration)*, 2023 FC 274 at para 30; *Abraham v Canada (Citizenship and Immigration)*, 2023 FC 70 at paras 17, 21-22. Here, the neighbour's letter was not a first-hand account of the alleged kidnapping incident, since the neighbour did not witness it but rather learned of it from another person.

(iii) The First Information Reports

[46] In my view, the Applicants misconstrue the RPD's conclusion that the Principal Applicant "provided inconsistent evidence concerning alleged arrest warrants and FIRs": RPD

Reasons at para 66; Applicants' Further Memorandum of Law and Argument at para 84. The Applicants essentially conflate the RPD's two distinct findings concerning FIRs.

[47] The RPD's first finding relates to the inconsistency between the Principal Applicant's testimony that the police had issued a FIR against him, and his brother's email that did not mention a FIR against the Principal Applicant: RPD Reasons at paras 35-44. The RPD's second finding related to FIRs is that the Principal Applicant did not produce any FIRs concerning the alleged assault and attempted kidnapping involving his children: RPD Reasons at para 64.

[48] The RPD's reasons make clear that the reference in its conclusion to an inconsistency in "arrest warrants and FIRs" does not relate to the absence of FIRs for the incidents of assault and attempted kidnapping, as asserted by the Applicants. Rather, it relates to the inconsistency between the evidence of the Principal Applicant and his brother regarding a FIR against the Principal Applicant: RPD Reasons at para 66.

[49] With respect to the alleged assault and kidnapping, the RAD found that the RPD had not faulted the Applicants for failing to file FIRs, but rather noted that there were no FIRs corroborating the events, after it doubted the reliability of the letters from the son and the neighbour: RAD Reasons at para 55. This was a reasonable finding, as a review of the RPD's reasons supports that the RPD did not rely on the absence of FIRs as a basis to impugn the Applicant's credibility: RPD Reasons at para 64.

V. Conclusion

[50] The RAD provided clear reasons for dismissing the Applicants' appeal on the numerous grounds advanced. While it agreed with the RPD's conclusions, I am satisfied that the RAD conducted an independent assessment of the claims and that its reasons are justified, transparent, and intelligible. The application for judicial review is therefore dismissed.

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

JUDGMENT in IMM-11022-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11022-22

STYLE OF CAUSE: KALEEM ULLAH BAIG, TASNEEM KOUSAR,
SARAH KALEEM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 25, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** TURLEY J.

DATED: OCTOBER 19, 2023

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