

Federal Court



Cour fédérale

Date: 20240223

Docket: IMM-13011-22

Citation: 2024 FC 300

Ottawa, Ontario, February 23, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

**JAGIT SINGH, HARPREET KAUR,
GURLEEN KAUR and JASKARAN SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated November 21, 2022, finding that the Applicants are not Convention Refugees pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA] nor persons in need of protection pursuant to section 97 of the IRPA. The RAD upheld the Refugee

Protection Division's [RPD] conclusion rejecting the Applicants' refugee claims due to credibility concerns, including inconsistencies and lack of corroboration.

[2] Having considered the record before this Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to discharge their burden to demonstrate that the RAD's decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100). For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The Applicants, Jagjit Singh [the Principal Applicant or PA], his wife, Harpreet Kaur, their daughter, Gurleen Kaur, and their son, Jaskaran Singh [together, the Applicants], are citizens of India. The PA claims that he fears being persecuted by his debt creditors, the Punjab state police and the leader of the Shiv Sena political party, if they return to India.

[4] The PA owned and operated a textile manufacturing business in Punjab state from 2008 to 2018. In October 2017, the leader of the Shiv Sena political party demanded the payment of a substantial amount of money and threatened the PA should he refuse to pay. In January 2018, unknown individuals set fire to a shipment of textiles in the PA's business. The PA believes that the leader of the Shiv Sena political party was responsible for the fire, because the PA had not paid the requested amount.

[5] The PA filed a claim with his insurance company, but the insurer concluded that the fire was the product of the PA's negligence, and therefore did not cover his losses.

[6] The PA resorted to taking out a loan from a private lender. He was unable to repay the loan and in March 2018, the lender allegedly had the Punjab police detain the PA and threaten him to repay the loan, or they would falsely accuse him of being a pro-Khalistan militant.

[7] The PA also defaulted on the loan on his house and the bank began collection proceedings.

[8] The PA decided that it was not safe for him and his family to remain in India, and moved to Canada in September 2018. His wife and children joined him in October 2018, and claimed refugee protection upon their arrival at the airport. The PA claimed refugee protection shortly thereafter.

III. Decision under review

[9] In its decision, the RPD rejected the Applicants' refugee claims due to credibility concerns, including inconsistencies and lack of corroboration. The Applicants appealed this decision before the RAD, submitted new evidence in their appeal, and requested an oral hearing. The main issue before the RAD was whether the RPD erred in its credibility analysis.

[10] The Applicants submitted the following new evidence before the RAD:

- A sale of a land deed to the Principal Applicant from 2009;
- Electricity bills and receipts of payments from 2015 to 2018;
- Bank records from 2016 to 2018 in the name of Jaskaran Textile Industries;

- A business registration certificate for Jaskaran Textile Industries from 2017;
- Photographs of the Principal Applicant's business and of the fire; and
- An affidavit from a neighbour dated February 25, 2022.

[11] The RAD found that the new evidence presented on appeal was inadmissible, pursuant to subsection 110(4) of the IRPA. The newly submitted documents, apart from the affidavit, are dated or existed prior to the date of the RPD decision, and the affidavit does not present evidence on new incidents that took place since the RPD decision was rendered. Moreover, the Applicants had six weeks between the hearing before the RPD and the date that the decision was issued to present additional documentation, and failed to do so. The RAD also held that, even if the new evidence was accepted, it was not relevant. Consequently, since no new evidence was accepted at this stage, an oral hearing was not permissible, pursuant to subsection 110(6) of the IRPA.

[12] On the RPD's credibility findings, the RAD conducted its own independent analysis of the evidence and concluded that the Applicants did not establish the central facts of their claims on a balance of probabilities. The RAD highlighted the inconsistencies in the evidence regarding the involvement of the police in the pertinent events, the fire that allegedly took place at the PA's business, and the claim that the Punjab state police actively protected the leader of the Shiv Sena political party, when in fact, the same police force later arrested that leader. These inconsistencies weakened the credibility of the Applicants' claims, prompting the RAD to reasonably require corroborating evidence to establish the central elements of the claims. The Applicants did not provide such corroborating evidence, leading the RAD to conclude that the Applicants did not meet their onus of establishing the central elements of their claims, on a balance of probabilities.

IV. Issues and Standard of review

[13] The questions before this Court are the following:

- A. Is the RAD’s decision to refuse to admit the new evidence submitted by the Applicants reasonable?
- B. Is the RAD’s conclusion that the Applicants have not established the central elements of their claims reasonable?

[14] The standard of review in this case is that of reasonableness (*Vavilov* at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39–44). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *The RAD’s decision to refuse to admit the new evidence is reasonable*

[15] In order to successfully admit new evidence before the RAD, the evidence has to satisfy one of the criteria listed at subsection 110(4) of the IRPA, which states the following :

Evidence that may be presented	Éléments de preuve admissibles
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was	(4) Dans le cadre de l’appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de

not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[16] If the new evidence meets one of the criteria above, the evidence must then also meet the conditions of admissibility identified in the jurisprudence, being credibility, relevance, newness and materiality (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13).

[17] The Applicants argue that the new evidence should have been admitted, as it supports core allegations in their claims, such as the existence of their textile business. According to the Applicants, the RAD erred by adopting a strict approach to the application of subsection 110(4) of the IRPA, when in fact, they should have adopted a flexible approach on the admission of this new evidence (*Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 [*Khan*] at paras 31–32). Moreover, the Applicants also submit that the RAD did not sufficiently evaluate the harsh consequences of rejecting the new evidence (*Asri v Canada (Citizenship and Immigration)*, 2020 FC 303 at paras 60–61).

[18] With respect, I disagree with the Applicants' arguments.

[19] In my view, the new evidence submitted by the Applicants was reasonably rejected as inadmissible by the RAD, as it did not meet the compulsory criteria at subsection 110(4) of the IRPA and the implicit conditions elaborated by the jurisprudence. Subsection 110(4) of the IRPA provides that the new evidence must fall under one of the three following categories: (i) evidence

that arose after the rejection of the refugee claim; (ii) evidence that was not reasonably available at the time of the rejection; or (iii) evidence that was reasonably available but that the person could not reasonably have been expected in the circumstances to have presented at the time of the rejection (*Khan* at para 29; *Singh* at para 34). The Applicants' new evidence does not fall within one of these categories.

[20] The Applicants submit that the RAD committed a reviewable error by adopting a strict approach to the admission of the new evidence. This argument cannot stand. The criteria in subsection 110(4) of the IRPA are statutory requirements, and they do not leave any room for discretion on the part of the RAD (*Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 45; *Singh* at para 35).

[21] Although the new evidence was already ruled inadmissible because it did not meet the statutory criteria as per subsection 110(4) of the IRPA, the RAD still offered its analysis on the relevance. The RAD reasonably assessed that the new evidence is not relevant because, while it may prove that the PA owned a business, it does not provide any insight on the debts owed to the creditors or the threats allegedly received by the PA based on those debts.

[22] Considering that the new evidence does not meet the criteria in subsection 110(4) of the IRPA and is also not relevant, I find that the RAD's decision is reasonable and falls within a range of possible outcomes (*Vavilov* at para 304). Consequently, I do not see any grounds for judicial intervention.

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

[23] The Applicants submit that the RAD's conclusion on the insufficiency of evidence was unreasonable, because the RAD did not provide sufficiently clear reasons to justify its finding (*Shekari v Canada (Citizenship and Immigration)*, 2022 FC 70 at para 24). The Applicants posit that the RAD did not adequately assess the evidence that was provided to them and, instead, unreasonably required corroborative evidence without justifying why that was required.

[24] It is well established that refugee claimants benefit from the presumption of truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA)). This presumption is rebuttable, and a negative finding of credibility may suffice to do so (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 21).

[25] While corroborative evidence is not strictly necessary to establish a refugee claim, it may, under certain circumstances, be required. For instance, corroborative evidence may be required when there are valid reasons to doubt the claimant's credibility or where the documentary evidence would reasonably be expected and the claimant's explanations for failing to provide it are not satisfactory (*Ni v Canada (Citizenship and Immigration)*, 2022 FC 460 at paras 16, 19–22). Where the refugee claimants' credibility is questioned for valid reasons, and where corroborative evidence should "reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence," a decision maker can draw a negative credibility inference from the

lack of corroborative evidence or lack of effort to obtain such evidence (*Lawani* at para 25; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33, 35).

[26] In this case, the RAD had valid reasons to question the Applicants' refugee claims, as they contained many inconsistencies and contradictions (*Agh v Canada (Citizenship and Immigration)*, 2022 FC 3 [Agh] at paras 61–62). The RAD explained where the inconsistencies lied in sufficient detail in its decision, and I am satisfied that its adverse credibility findings were based on the inconsistencies and contradictions in light of the claims as a whole (*Subramanian v Canada (Citizenship and Immigration)*, 2023 FC 1082 at para 16).

[27] The RAD reasonably detailed its decision by expanding on the particular inconsistencies between the PA's testimony and the documentary evidence, which led them to a negative credibility finding. Due to these inconsistencies, the RAD sought corroborating evidence, particularly to establish the PA's long-standing business, his loan, the fire at his business, and the denial of insurance coverage. The Applicants provided no corroborating evidence. The RAD is entitled to rely on those inconsistencies to reach an adverse credibility finding, especially as they concern central elements of the refugee claims (*Obozuwa v Canada (Citizenship and Immigration)*, 2019 FC 1007 at para 24).

[28] More specifically, the RAD rejected the Applicants' arguments that it was impossible for them to produce corroborating evidence because they had to leave their country in haste. The evidence demonstrates that this was not the case. The Applicants had several months to prepare their departure, and the PA's family left one month after him. Instead of collecting important

documents establishing that he owned a business, that there was a fire and that insurance coverage was denied, that he incurred loans (and provide documentation to support them), the PA simply offered a blank letterhead in support of his assertion that he owned the business. While the new evidence may have corroborated that the PA did own the business, the RAD reasonably held that the new evidence still did not demonstrate the essential elements of his claims that he was persecuted because he refused to pay the Shiv Sena political party, or that he incurred a loan through a private lender (because of the insurer's refusal to compensate the losses as a result of the fire), and that as a result, the PA experienced threats to his safety.

[29] In sum, considering the reasons above, and recognizing that the credibility findings of the RAD should be given significant deference (*Agh* at para 60), I find that the RAD's decision is reasonable. The Applicants bear the onus of proving that the decision is unreasonable, but they did not demonstrate that the RAD committed errors that were sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100). Consequently, this application is dismissed.

VI. Conclusion

[30] The RAD's decision bears the hallmarks of a reasonableness. It is transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[31] The Applicant's application for judicial review is dismissed.

[32] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-13011-22

THIS COURT'S JUDGMENT is that:

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

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13011-22

STYLE OF CAUSE: JAGIT SINGH, ET AL. v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL (QUÉBEC)

DATE OF HEARING: FEBRUARY 6, 2024

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: FEBRUARY 23, 2024

APPEARANCES:

Miguel Mendez FOR THE APPLICANTS

Éloïse Eysseric FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Légale Stewart Istvanffy FOR THE APPLICANTS
Barristers & Solicitors
Montréal (Québec)

Attorney General of Canada FOR THE RESPONDENT
Montréal (Québec)