

Federal Court



Cour fédérale

Date: 20200131

Docket: IMM-4169-19

Citation: 2020 FC 179

Vancouver, British Columbia, January 31, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SUGREEV SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sugreev Singh, seeks judicial review of the decision of the Refugee Appeal Division (RAD), which upheld the dismissal of his refugee claim. The RAD found that the Refugee Protection Division had not erred in dismissing the Applicant's claim.

[2] The Applicant is a Sikh man who is a citizen of India. He claimed refugee status because he says he is homosexual, and that he faced mistreatment, persecution and physical attacks in India because of his sexual orientation. He says he failed grade 10 because of the constant mistreatment and attacks by his classmates. The Applicant left India for Singapore in 2011, but

when he returned to India in 2016 his brother discovered that he is homosexual, and his brother told his mother this.

[3] The Applicant says he fled India fearing violence and persecution due to his sexual orientation at the hands of his father, and the wider society, and because the police or other state authorities would not protect him. He arrived in Canada on a temporary work visa, but he stayed past the expiry of his visa and 16 months later he applied for refugee status.

[4] The RPD rejected his claim on the basis that it found his testimony to be lacking in credibility. The panel noted the omissions in his evidence, discrepancies between the narrative in his Basis of Claim form (BOC) and his oral testimony, his difficulty answering questions during the hearing, and the absence of other evidence to corroborate his claim. On this basis, the RPD found that the Applicant had “not established that he is a gay man or homosexual on a balance of probabilities”.

[5] The RAD dismissed the Applicant’s appeal, finding that the RPD had not erred in its assessment of the Applicant’s credibility. The RAD noted the inconsistencies between the Applicant’s BOC form and his testimony, and it rejected his explanation that he did not know what to include in his BOC form considering that he was represented by counsel at the time and had confirmed that the contents of the form had been translated for him.

[6] The RAD found that these discrepancies related to the core of the Applicant’s claim. His BOC claim only mentioned in a cursory manner the person with whom he had a relationship. Yet in his testimony he indicated that his was a long-term relationship, and that it had been his only

such relationship. The RAD found that these inconsistencies undermined the Applicant's credibility, as did his evidence that he had done nothing to explore the gay community or to seek out other relationships after his arrival in Canada.

[7] The RAD acknowledged the *Sexual Orientation and Gender Identity and Expression Guidelines* (SOGIE Guidelines), which highlight that in many cases a person may have difficulty obtaining evidence to corroborate their sexual orientation. However, it found the serious credibility concerns with the Applicant's evidence, combined with the absence of any evidence to corroborate his one long-term relationship, as well as his difficulty explaining why he did not try to obtain such evidence, led to the conclusion that he had not established his sexual orientation.

[8] On the basis of this conclusion, the RAD concluded that the RPD had not erred in its assessment of the country condition evidence, or its failure to conduct a separate analysis under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because these were not necessary in light of the conclusion regarding the essential basis for the Applicant's refugee claim. He had not established his sexual orientation, and had not claimed any other basis for fearing persecution or mistreatment in India.

[9] The Applicant submits that this decision is unreasonable. The core of his complaint is that the RAD's assessment of his credibility was faulty because it failed to give due weight to his sworn testimony, and unreasonably demanded corroborative evidence. Further, the Applicant argues that the RAD erred in failing to analyze the country condition documents, or to assess his fear of harm pursuant to section 97 of IRPA, or to examine the issue of state protection.

[10] The parties made submissions on the standard of review in light of the recent Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and I agree with them that the standard of review that applies in this case is reasonableness.

[11] When reviewing for reasonableness, the Court asks “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker’s reasoning on a critical point (*Vavilov* at para 103).

[12] There are many dimensions to review under the reasonableness standard as articulated in *Vavilov* and applied in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*]. The most important guideposts for this case are that the review must begin with the reasons for the decision, and assess whether the decision-maker (here the RAD) properly applied the law to the facts of the case, and whether its chain of reasoning is internally coherent and rational.

[13] Put another way, the relevant law and the key facts of the case establish the space within which the decision must be made (*Vavilov*, at paras 85, 99; *Canada Post*, at para 31). If a review indicates that the decision-maker went outside of that box, by applying the wrong law, or by making significant errors in regard to the facts, then the decision may be found to be

unreasonable. This would include, for example, not dealing with a fact that contradicts the core conclusion reached, or relying on a fact known or discovered by the decision-maker where the person affected by the decision was not given an opportunity to respond to that new fact. It would also include giving undue emphasis to minor or peripheral facts while ignoring or downplaying the facts which the law indicates are central to the decision.

[14] In addition, the process of analysis must show that the decision is justified, meaning that a reviewing court can follow the internal logic of the decision and understand how the decision-maker came to its conclusion (*Vavilov*, at paras 81, 85). One way of describing this was set out by Justice Rennie in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11 (cited with approval in *Vavilov* at para 97), when he stated that a reasonable decision is one where a reviewing court can “connect the dots on the page [so that] the lines, and the direction they are headed, may be readily drawn.” If there are no dots, or their direction is not clear, then the decision may well be found to be unreasonable.

[15] In this case, there is no basis to interfere with the RAD’s decision. It is justified and justifiable, in light of the legal and factual matrix that set the space within which the RAD’s discretion had to be exercised. The decision displays an internal logic and coherence and its analysis is both clear and compelling.

[16] The core of the Applicant’s argument against the decision is that the RAD should have accepted the sworn testimony of the Applicant, and because it had no sound basis for questioning his credibility, it also had no grounds to criticize him for failing to produce corroborating evidence. I am not persuaded.

[17] The RAD noted the discrepancies between his testimony and the prior written narrative of the Applicant set out in his BOC, a document he had prepared with the assistance of counsel and that he confirmed had been translated for him. One of the hallmarks of credibility is consistency, and countless decisions have affirmed that prior inconsistent statements, in particular inconsistencies going to the core of the individual's evidence, can be a basis for finding that the person lacked credibility: see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 41-46, and *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 16-20.

[18] This is what the RAD did here, and its findings are amply supported in the evidence. Its analysis is clear and specific.

[19] On the issue of the lack of corroboration, it is important to underline that the RAD took account of the SOGIE Guidelines, and its findings were not based on the lack of corroboration, but rather on the Applicant's inadequate answers and explanation for his failure to obtain such evidence. This is not unreasonable.

[20] In regard to the other arguments advanced by the Applicant, it is not necessary to discuss them in detail, because the finding that the Applicant had not established that he is homosexual was fatal to his refugee claim. Once that conclusion was reached, the RAD did not need to explore the country condition documents or the issue of state protection in regard to his refugee claim under section 96 of *IRPA*. In relation to the section 97 claim, in the circumstances of this case it was not necessary for the RAD to undertake a detailed separate analysis. The applicant did not claim, and the evidence did not otherwise support, a separate basis for a finding of any

risk to the Applicant (see *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at para 50; *Matsika v Canada (Citizenship and Immigration)*, 2019 FC 602 at para 23).

[21] For these reasons, I am dismissing the application for judicial review.

[22] There is no question of general importance for certification.

JUDGMENT in IMM-4169-19

THIS COURT'S JUDGMENT is that:

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

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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