

Federal Court



Cour fédérale

**Date: 20220216**

**Docket: IMM-1975-20**

**Citation: 2022 FC 204**

**Ottawa, Ontario, February 16, 2022**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**BALKAR SINGH  
JEET KAUR  
PRINCE KUMAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**(delivered from the bench on February 16, 2022 in Ottawa (Ontario))**

[1] Mr. Singh, his wife Ms. Kaur, and their son Mr. Kumar, apply for judicial review of a decision of the Refugee Appeal Division [RAD] finding that they are not Convention refugees. They allege that the Haryana state police in their home country of India tortured Mr. Singh and Ms. Kaur, because of perceived links with the pro-Khalistan movement. The Refugee Protection Division [RPD] denied their claim. It found Mr. Singh not to be a credible witness and listed ten

grounds for this finding. The RAD decided that seven of the RPD's credibility findings were incorrect. Nevertheless, it found that three other negative credibility findings were correct and sufficient to dismiss the claim.

[2] On judicial review, the applicants focus on one of these findings only. Mr. Singh was brought to the hospital when he was released from police custody. The medical report states that Mr. Singh was then unconscious. In his testimony, when asked about his injuries, Mr. Singh did not mention anything related to his head, nor that he became unconscious. When asked whether he had been able to speak to the doctor, Mr. Singh replied that he could not, as he was very troubled, in particular because he learned what the police had done to his wife.

[3] The RPD was not satisfied by Mr. Singh's explanation for the apparent contradiction. On its part, the RAD acknowledged that the RPD might have misunderstood one of Mr. Singh's answers. Yet, the RAD found that Mr. Singh's description of his injuries was inconsistent with his being unconscious upon arriving to the hospital.

[4] The applicants argue that this finding is unreasonable. Moreover, they argue that the RAD should have returned the matter to the RPD.

[5] I disagree with the applicants. Assessing credibility is at the core of the RAD's mission. The Court intervenes only if the RAD's findings cannot be supported by the evidence. There is nothing irrational or unreasonable in the RAD's finding that there is a contradiction between Mr. Singh's evidence and the medical report. It is not for me to substitute my own view of the matter.

Moreover, the record before me does not contain a transcript of the RPD hearing. Without a transcript, it is difficult to assess whether the RAD misunderstood Mr. Singh's testimony. Yet, the applicants bear the burden of showing that the decision challenged is unreasonable. In this case, they fail to discharge this burden.

[6] The applicants argue that the fact that the RPD's findings in this regard were based on a factual mistake undercuts the RAD's ultimate conclusion. However, I note that the RAD's basis for finding a contradiction is separate from the RPD's factual error. While the applicants invite me to balance negative and positive factors regarding Mr. Singh's credibility and to reach a different assessment from the RAD's, they also recognize that a single negative credibility finding pertaining to a central issue is sufficient to lead to the dismissal of the claim: *Garay Moscol v Canada (Citizenship and Immigration)*, 2008 FC 657 at paragraph 21. This is what the RAD did in this case.

[7] The applicants also argue that the RAD should have returned the matter to the RPD, pursuant to subsection 111(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. However, according to subsection 111(2)(b), this power may only be exercised where the RAD is of the opinion that it cannot make a decision without hearing witnesses. Here, the RAD was evidently of the view that it was able to make a decision after listening to the recording of the RPD hearing and reviewing the documentary evidence. The RAD may reach its own assessment of credibility without returning the matter to the RPD. There is nothing in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, or *Ogbonna v Canada*

*(Citizenship and Immigration)*, 2020 FC 180, that requires the RAD to remit the matter to the RPD when it finds that the latter made an error of fact, even one pertaining to credibility.

[8] For these reasons, the application for judicial review will be dismissed.

**JUDGMENT in IMM-1975-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1975-20

**STYLE OF CAUSE:** BALKAR SINGH, JEET KAUR, PRINCE KUMAR v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 16, 2022

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** FEBRUARY 16, 2022

**APPEARANCES:**

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