

Federal Court



Cour fédérale

**Date: 20220401**

**Docket: IMM-945-21**

**Citation: 2022 FC 458**

**Ottawa, Ontario, April 1, 2022**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**PRABAKARAN JAYARAMAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is the application for judicial review of the January 22, 2021 decision of the Refugee Appeal Board [RAD] of the Immigration and Refugee Board of Canada dismissing the Applicant's appeal of the decision of the Refugee Protection Division [RPD] which found that the Applicant is not a Convention refugee or a person in need of protection under s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act* cite [IRPA].

## **Background**

[2] The Applicant is a citizen of India. He claims that he fears persecution by the Indian authorities, society in general and religious leaders because he of his sexual orientation.

[3] The Applicant claims that in 2010 he took on managerial responsibilities for a restaurant owned by his father. In February 2016, he hired a new cook named Govindan. Gradually, the Applicant and Govindan became very close friends. In June 2016, Govindan disclosed to the Applicant that he was a member of the Dalit community, considered to be an untouchable caste. A week later, the Applicant and Govindan were on a trip to purchase rice for the restaurant. They stayed together in a hotel room together and Govindan disclosed to the Applicant that he was gay. The Applicant and Govindan were then sexually intimate. The Applicant claims that this relationship with Govindan continued upon their returned to his village.

[4] The Applicant claims that, unbeknownst to him, a kitchen helper hired by his father was instructed to spy on the Applicant and Govindan. In July 2017, the restaurant was closed for three days for minor repairs to the kitchen. The Applicant and Govindan were in the staff room when the kitchen helper appeared unannounced and took photographs of them kissing. When the kitchen helper shared these pictures with the Applicant's father, he became angry and beat the Applicant. Accompanied by the Applicant's cousins, his father then went to Govindan's accommodations and beat him as well. The Applicant claims that his father made a complaint with the police alleging that Govindan had victimized the Applicant and turned him into a gay man. The police arrested Govindan. His caste as well as the photographs became public causing

the villagers to become furious. The police then arrested the Applicant and beat him. The Applicant says that his uncle spoke to a senior police officer who agreed to secure the Applicant's release on a cash bond and conditions. The Applicant went into hiding and then left India using a smuggler. The Applicant arrived in Canada on September 5, 2017, and claimed refugee protection on or about March 9, 2018.

[5] The RPD heard the Applicant's claim and found that he was not a credible or reliable witness. It found that many parts of his testimony were vague and confusing, and that he embellished or manufactured evidence to advance his claim. The RPD referred to paragraph 7.6 of the Immigration and Refugee Board Guideline 9: *Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* [SOGIE Guidelines], and found that the Applicant's testimony and evidence was vague. In particular, the Applicant demonstrated a lack of knowledge about basic details of his partner, Govindan, including his last name. This undermined the Applicant's overall credibility. The RPD also addressed other credibility concerns. It also found that the Applicant had submitted very little documentary evidence to support his claim, and that the documents he did submit did not overcome the RPD's many significant credibility concerns.

#### **Decision under review**

[6] The RAD found that the RPD properly applied the SOGIE Guidelines in evaluating the evidence.

[7] The RAD found no error in the RPD's drawing of a negative inference from the fact that the Applicant did not know Govindan's last name and also found that this was implausible. The RAD also found that there was an unexplained inconsistency between the Applicant's explanation that his father wanted to protect him, by portraying him as a victim, and his father filing a police report claiming that the Applicant had been changed into a gay man. The RAD drew a negative inference from this as well as the Applicant's vague and evasive testimony regarding his efforts to obtain copies of the police complaint and the warrant issued against him.

[8] The RAD found the RPD had erred in its finding that the Applicant's allegation that he witnessed men having sex with each other in college dormitory was inconsistent with the evidence that homosexuals are at risk of death or serious harm in India. The RAD found that this was a peripheral inconsistency that was not determinative of the claim.

[9] The RAD also found that the RPD erred in drawing an adverse inference from the Applicant's apparent willingness to engage in risky sexual behaviour at the restaurant, and stated that the RAD would not draw the same inference. However, this was not determinative of the claim, as the Applicant lacked general credibility and had not established that he had a relationship with Govindan.

[10] The RAD found that the RPD was correct to disregard the Applicant's documentary evidence. The RAD concluded that the RPD did not err by finding that the Applicant generally lacked credibility and that the documents he presented are insufficient to support a positive disposition of the claim.

[11] The RAD did not contest the credibility of the documentary evidence pertaining to the treatment of homosexual people in India. However, as the Applicant had failed to establish that he has such a profile, found that it was not necessary to analyze that risk.

[12] The RAD upheld the RPD's decision as correct, finding that the Applicant generally lacked credibility, which rebutted the presumption of truthfulness. Therefore, the Applicant failed to credibly establish that he would face a serious possibility of persecution or to demonstrate, on a balance of probabilities, that he would personally be subjected to a risk to his life, or to a risk of cruel and unusual treatment or punishment, if he had to return to India.

### **Issues and standard of review**

[13] The sole issue in this matter is whether the RAD's decision was reasonable. More specifically:

- i. Did the RAD err in its application of the SOGIE Guidelines;
- ii. Were the RAD's credibility findings reasonable; and
- iii. Did the RAD err in its treatment of the Applicant's documentary evidence?

[14] The parties submit, and I agree, that in assessing the merits of the RAD's decision, there is a presumption that the reviewing court should apply the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16, 23, 25). Applying that standard, the reviewing 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).

## Analysis

### **i. Did the RAD err in its application of the SOGIE Guidelines?**

[15] The Applicant submits that the RAD failed to appreciate its assertion that the RPD “relied incorrectly on his story, seminal events, and allegations” and that the RPD had failed to “delve and explore his [the Applicant’s] psychological and emotional journey from the time of being a young boy, through his teens and into his adulthood”. The Applicant submits that the RAD’s reasons did not reflect a holistic and sensitive approach to the Applicant’s unique experiences with his sexual orientation and its findings are flawed because the RAD departed from the SOGIE Guidelines with respect to corroborating evidence.

[16] The Respondent submits that the RAD reasonably considered the Applicant’s circumstances and expressly considered the SOGIE Guidelines. The RAD found that the Applicant did not provide specific examples of how the RPD ignored the Guidelines in its analysis and its credibility findings were based on inconsistencies in the Applicant’s allegations that could not be reasonably explained.

[17] I note that the RPD states at the beginning of its reasons that in reaching its decision it considered the SOGIE Guidelines. The RPD states that the Guidelines underscore the specific challenges that may be faced by claimants before the RPD in respect to sexual orientation and gender identity and expressions. Further, that the Guidelines establish principles for guiding decision-makers at the RPD when dealing with cases that involve SOGIE issues. The RPD states that the Guideline was used in the matter before it to ensure that the proceedings included the

necessary sensitivity and awareness of the claimant's circumstances in respect to the SOGIE issues that may affect findings of fact and findings of mixed fact and law.

[18] The RAD notes that in his submissions on appeal the Applicant asserted that the RPD paid lip-service to the SOGIE Guidelines and failed to apply them in a *bone fide* manner. The RAD acknowledges the Applicant's assertion that the RPD should have explored the Applicant's psychology as a 31-year-old Tamil Hindu and should have acknowledged his submission about the difficulty of testifying about his closeted attraction to men instead of focusing on the "storey, seminal events, allegations, third party actions". The RAD notes that the Applicant had asserted that ss 3.1, 3.2, 3.3, 3.6, 6.1, 7.4.1 , 7.6.1 and 7.7.1 of the SOGIE Guidelines, which describe some of the difficulties many claimants with diverse SOGIES may face, were not applied by the RPD.

[19] The RAD pointed out that the Applicant did not quote the RPD's reasons or provide specific examples of the alleged failure to apply the SOGIE Guidelines. And, while the Applicant referred to many sections of the SOGIE Guidelines, he did not demonstrate how the RPD's adverse credibility findings failed to show an appreciation of the context in which the claim arose. The RAD states that it listened to the recording of the RPD hearing and found no instances of the difficulties faced by individuals with diverse SOGIE. The Applicant was fluid in his testimony and did not seem intimidated or psychologically challenged. Nor were any cultural barriers that would have influenced the Applicant's testimony noticed by the RAD. The RAD found that the issue in the case was solely the credibility of the Applicant's allegations.

[20] In my view, and contrary to the Applicant's submission, it is clear from the RAD's reasons that it appreciated that the Applicant argued that the RPD "relied incorrectly on his story, seminal events, and allegations". However, as the RAD found, in asserting a failure to apply the SOGIE Guidelines, the Applicant was required to do more than simply list its provisions. The Applicant had to identify a specific error in the RPD's credibility or other findings to demonstrate how the RPD failed to apply the SOGIE Guidelines to his circumstances (*Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030 [*Obalade*] at para 18; *Yu v. Canada (Citizenship and Immigration)*, 2021 FC 625 at para 22). The RAD listened to the RPD hearing recording and did not identify any instances suggesting that the Applicant was having difficulty in recounting his story.

[21] Further, the SOGIE Guidelines do not require the RPD or the RAD to explore the Applicants "psychological and emotional journey". Rather, those decision-makers are to conduct their credibility assessments keeping in mind the particular challenges SOGIE individuals may face in presenting their case and the principles set out in the Guidelines.

[22] The Applicant submits that the RAD departed from the SOGIE Guidelines which recognize that corroborating evidence may not be available in cases involving SOGIE. However, neither the RAD nor the RPD dismissed the Applicant's claim due to a lack of corroborating evidence as to his sexual orientation. The RAD dismissed the appeal because it agreed with the RPD that Applicant generally lacked credibility.



[23] Further, the SOGIE Guidelines address the assessment of credibility with respect to SOGIE individuals:

#### **7.4 Inconsistencies**

7.4.1 Cases involving SOGIESC individuals are no different from other cases before the IRB in that members may draw a negative inference from material inconsistencies, contradictions or omissions that have no reasonable explanation. When assessing the reasonableness of an explanation given for an identified credibility problem, members should consider the personal, cultural, social, economic, and legal realities of SOGIESC individuals as well as their mental well-being, language barriers, and the impact of trauma. For instance, it may be difficult for an individual who has concealed their SOGIESC to disclose and discuss it with government authorities at a port of entry, which may give rise to an inconsistency between information from the port-of-entry interview and testimony at a hearing. As another example, SOGIESC identities may be fluid and an individual may self-identify as a gay man at the port of entry and as a trans individual later in a Basis of Claim Form (BOC). Inconsistencies in terminology may also be reasonably explained. For example, letters of support reflect the perspectives of individuals who write them. The letter writer may not use the same terms or describe the person's identity in the same way as the person themselves.

#### **7.5 Implausibility findings**

7.5.1 Implausibility findings must not be based on stereotypes. For example, it may be plausible that a SOGIESC individual has engaged in heterosexual encounters. It may also be plausible that a SOGIESC individual has engaged in activity that might put them at risk in their country of reference.

#### **7.6 Vagueness**

7.6.1 Testimony about same-sex relationships that is vague and lacking in detail may support a negative credibility inference; however, members should examine whether there are cultural, psychological or other barriers that may explain the manner in which the testimony is delivered. When making a vagueness finding in a case involving a SOGIESC individual, a member must, as in other cases, provide specific reasons to support a finding that the testimony is not comprehensive or fulsome.

[24] It was open to the RAD and the RPD to consider inconsistencies, implausibilities and vagueness in assessing the credibility of the Applicant's testimony and he has not demonstrated that, in doing so, the RAD inappropriately applied the SOGIE Guidelines. As the Respondent notes, this Court has held that the SOGIE Guidelines cannot act as a "cure-all" to repair adverse credibility findings (*Okunowo v Canada (Citizenship and Immigrations)*, 2020 FC 175 at para 66; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 179 at para 19). The fact that the RAD found inconsistencies and implausibilities in the Applicant's evidence does not mean that the SOGIE Guidelines was not applied or improperly applied.

[25] When appearing before me the Applicant asserted that his main concern revolves around the RAD's failure to appreciate cultural factors when assessing his evidence. For example, when considering the Applicant's testimony that he did not ask and did not know Govindan's surname, the RAD should have considered this in its proper cultural context. However, the submissions before the RAD did not suggest that there was a relevant cultural context and that it should be taken into consideration. The Applicant was also questioned extensively at the RPD hearing by his own counsel. However, he was not asked about any cultural connection to explain his lack of knowledge Govindan's last name, nor did counsel suggest that there were any cultural sensitivities at play.

[26] I also note that the RAD's reasons in fact show attention to several elements of the SOGIE Guidelines. For example, the RAD found that the RPD had erred in drawing a negative inference based on risky behaviour with respect to gay men in the Indian context. This aligns with the guidance in s 7.5 of the SOGIE Guidelines, which states: "It may also be plausible that a

SOGIESC individual has engaged in activity that might put them at risk in their country of reference”. The RAD’s finding that the RPD erred demonstrates that the RAD was attuned to this guidance.

[27] For all of these reasons, I am not persuaded that the RAD ignored or misapprehended the SOGIE Guideline in its decision.

**ii. Were the RAD’s credibility findings reasonable?**

[28] The Applicant submits that the RAD’s analysis was overly microscopic and that the RAD impugned his credibility by fixating on issues that were peripheral, irrelevant and tangential to his claim and made unreasonable credibility findings. In particular, that the RAD erred by fixating on the fact that the Applicant did not know the last name of his partner Govindan, by finding that the Applicant’s allegations about his father’s police complaint were implausible, and by misinterpreting the Applicant’s testimony regarding his efforts in obtaining a copy of the police report. The Applicant also submits that the RAD unreasonably disregarded the Applicant’s documentary evidence.

[29] The Respondent submits that the RAD did not make implausibility findings. It noted clear inconsistencies in the Applicant’s evidence that were not reasonably explained and that went to the crux of his claim. Further, those credibility findings were reasonable. The RAD also reasonably found that the Applicant’s documentary evidence was insufficient to support the claim.

*i. Govindan's last name*

[30] The RAD found that the RPD did not err in drawing a negative inference from the fact that the Applicant did not know Govindan's the last name. The RAD pointed out that the Applicant had known Govindan for a year and a half before the Applicant fled to Canada; he described him as the love of his life and a good friend; he personally hired him, provided him and with accommodation and, in their professional relationship, he was Govindan's manager and worked alongside him for 16 months. The Applicant described their personal relationship as committed and sincere and that they were very close. The RAD found that the Applicant's lack of knowledge of Govindan's surname warranted a negative credibility inference on the balance of probabilities. Further, that it was also implausible as the claim is outside the realm of what could reasonably be expected. On that point, the RAD noted that the Applicant knew the last name of the kitchen helper hired two weeks before the incident by his father, but not the last name of his lover. The RAD agreed with the negative inference drawn by the RPD on this point.

[31] The Applicant submits that the RAD focused too heavily on the fact that the Applicant did not know the last name of his same-sex partner and ignored that the most important element of his claim was his sexual orientation. The Applicant submits that the RAD's credibility finding was unreasonable as it was a peripheral, minor omission in the Applicant's testimony and that the Applicant had reasonably explained that Govindan had never mentioned his last name as he wanted to conceal the name of his father's family.

[32] In my view, for the reasons it stated, the RAD reasonably found that the Applicant's not knowing Govindan's last name, in these circumstances, warranted a negative credibility inference and a finding that it was implausible because it is outside the realm of what could reasonably be expected. This was not a peripheral point. The whole of the Applicant's claim is centered on his relationship with Govindan; that relationship is central to the Applicant's claimed sexual orientation. Further, the affidavit filed by the Applicant in support of his appeal to the RAD does not support the explanation offered above, that is, that Govindan wanted to conceal the name of his father's family. Rather, the Applicant deposed that he did not want to invade Govindan's family privacy by inquiring about his father's name, his surname.

[33] In *Obalade*, Justice Walker reviewed a similar negative credibility finding against an applicant who claimed to be bisexual and held:

[22] The RAD's negative credibility inference rested primarily on Mr. Obalade's vague testimony and lack of knowledge of basic details regarding WA. Mr. Obalade submits that the RAD's assessment of his relationship with WA is a reflection of its personal view of how expressive someone should be about an intimate partner and relationship. However, the RAD did not centre its analysis on what an intimate relationship should look like but on Mr. Obalade's failure to provide basic details and characteristics of a four-year partner. This was not a case of the panel requiring an expression of feelings or a description of intimacy.

[34] As in *Obalade*, it was reasonable for the RAD to find that the Applicant's "failure to provide basic details and characteristics" of his romantic partner – his surname – had a negative impact on his credibility which was not reasonably explained.

ii. *Failure to provide the police report*

[35] The Applicant submits that the RAD misinterpreted his testimony concerning his efforts to obtain a copy of the police report and that he was not attempting to be vague or evasive. Rather, he was presenting a hypothetical scenario of the risk his uncle might have been exposed to had he sought a copy of the complaint. Further, any inconsistency was minor and should not have founded an adverse credibility finding.

[36] A review of the transcript reveals that the Applicant initially testified that he had tried to get a copy of the complaint through his father, but that his father had not answered the phone. When asked if his uncle could get a copy, the Applicant said that maybe he could, but his uncle had told him that there was an arrest warrant issued against the Applicant and the Applicant was worried that the police would detain his uncle to try to glean from him the Applicant's whereabouts.

[37] In response to questions by his own counsel, the Applicant first testified that he had not contacted his uncle to ask about the warrant or the complaint. He then testified that he had asked his uncle but that they were both afraid of the consequences of his uncle asking for the documents. His counsel made repeated efforts to have the Applicant explain this contradiction in his evidence. The Applicant testified that he had some information about the charges against him. His uncle had told him that there were two charges pending against him, having been told this by a police officer who is very close to his uncle and is stationed in their village. When asked why his uncle could not get copies of the warrant or other documents from this police

officer friend, the Applicant testified that the police officer was a low ranking officer and all of the documentation is kept with senior officers. The Applicant did not indicate how he know this to be the case.

[38] It is clear from the transcript that the Applicant never did explain why he gave inconsistent testimony about whether he asked his uncle to obtain a copy of the complaint his father filed with the police. Further, that his testimony was evolving and evasive. I also do not accept counsel's submission made before me that that the Applicant simply did not understand the question or that cultural factors prevented him from providing a clear answer. This is not demonstrated by the record.

[39] The RAD may reasonably draw negative inferences as to an applicant's credibility due to inconsistencies or contradictions in their testimony (*Olajide v Canada (Citizenship and Immigration)*, 2021 FC 197 [*Olajide*] at paras 11-13, 17-18; *Noel v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 20). Here, the RAD reasonably drew a negative inference as to the Applicant's credibility based his testimony.

*iii. Behaviour of the Applicant's father*

[40] The RAD found that the RPD did not err in finding the Applicant's testimony about his father's filing a complaint to the police not to be credible. The RAD found that there was an inconsistency between the Applicant's evidence that his father wanted to protect him, by portraying him as a victim of Govindan, and his evidence about his father filing a report to the police admitting that the Applicant had been "chang[ed] into a gay man". That is, that there was

an inconsistency between the desire of the family to avert shame and social reprobation while at the same time the Applicant's father reported to the authorities that his son was having sex with a man. Based on the Applicant's incoherent testimony about his father's behaviour, the RAD drew a negative credibility inference.

[41] The Applicant submits that the RAD failed to appreciate that the Applicant's testimony was consistent with his allegations and unique circumstances. Nor was it implausible that the Applicant's father wanted to shift the blame from his son to Govindan and to hold Govindan criminally responsible for the relationship. Further, the Applicant reasonably explained that his father made the complaint out of anger, not anticipating that the pictures would be leaked to the public.

[42] The Applicant's BOC narrative states that his father wanted to spin the incident to depict the Applicant as Govindan's victim but that this later spiralled out of control.

[43] A review of the RPD hearing transcript indicates that when asked by the RPD why his father would make a report to the police against Govindan, the Applicant stated that his father was very angry that Govindan "had spoiled his son" and that his father had made the complaint in anger. His family had expected that the police would arrest Govindan, but not that they would take action against the Applicant. However, the photographer had made the photographs public, escalating the situation. When asked why his father would make a complaint when the sexual relationship would then be known to the police and possibly the public, the Applicant stated that he did not know.



[44] When he was questioned by his own counsel, it was put to the Applicant that his father must have known that by going to the police he would be making public a behaviour that would be viewed as shameful and he was asked why his father would not have instead dealt with the situation privately. The Applicant's response was that his father's intention in filing the complaint was to protect the Applicant and to put a stop to the relationship. When asked why his father would seek to do this in such a public way, the Applicants stated that "[m]aybe he made a quick decisions and when he approached a politician they decided together to lodge a complaint". There was no further evidence about the involvement of a politician.

[45] The RPD found that the Applicant's testimony was that his father was ashamed of him and, if that was so, then it would be reasonable to assume that his father would not want others to know or think that his son is gay. The RPD noted that in his BOC narrative and testimony the Applicant claimed that his family lost their reputation and suffered shame because the public believed the claimant was gay. The RPD found on a balance of probabilities that it would be unlikely that the Applicant's father would file a complaint with the police that would indicate to the public that the Applicant is gay or would result in the general public perceiving him to be gay. The RPD therefore attached a negative inference to the truthfulness of the Applicant's allegation.

[46] Contrary to the RAD's finding, the RPD did not find that the Applicant gave inconsistent testimony. I also have some difficulty with idea that that the Applicant is being faulted for being unable to explain the actions of his father. Nor is there any inconsistency within the Applicant's own evidence concerning his father's behaviour. The RAD stated that it drew a negative

credibility inference based on the Applicant's "incoherent testimony". In my view, the Applicant's testimony was not incoherent in a literal sense. Rather, the RAD simply did not accept the Applicant's explanation as likely given the surrounding circumstances, that is, publically reporting the Applicant's same sex relationship when the negative impact of this action were apparent. As the RAD stated, the Applicant's evidence was that he lived in a village where people are very religious, conservative and held hostile attitudes towards homosexuals.

[47] Ultimately, and keeping in mind that the police report was not provided by the Applicant and the RPD's finding that, on a balance of probabilities, it would be unlikely that the father report the incident to the police, the RAD's negative credibility inference was reasonable.

[48] Further, even if this was an implausibility finding, the RAD was entitled to make conclusions concerning the Applicant's credibility based on implausibilities, common sense and rationality and can reject evidence if it is inconsistent with the probabilities affecting the case as a whole or where the inconsistencies are found in the evidence (see *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26). Implausibility findings can be warranted when the allegation does not make sense in light of the evidence or when it is "outside the realm of what could reasonably be expected" (*Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at para 7; *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 9-11; *Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at paras 11-14).

[49] It was open to the RAD to find that the Applicant's claim that his father would make a public complaint to the police, when his evidence was that he lived in a village where people are very religious, conservative and hold hostile attitudes towards homosexuals, to be implausible as it is inconsistent with and does not make sense in light of the evidence or, as being outside the realm of what could reasonably be expected.

[50] The Applicant submits that it is not implausible that his father deliberately took the risk of reporting the relationship to the police (and, I note, hiring a stranger to spy on his son also giving rise to the risk of public exposure) and over-estimated the degree to which he could control the narrative. However, this leaves unanswered why the Applicant's father would choose to take a public route when the Applicant's same sex relationship had not been publically exposed. Nor does the Applicant point to anything in the record to support his submission that his father's actions were reasonable "for an Indian parent to take in light of the cultural factors and the historical notion of parents seeking to blame others for their perception that their child's sexual orientation has been caused by someone else, rather than naturally developed".

[51] In any event, even if this finding by the RAD were not reasonable, this would not render the RAD's credibility assessment as a whole to be unreasonable. The RAD's findings concerning the police report, the lack of knowledge of Govindan's surname and that the Applicant's testimony was vague and evasive would be sufficient to support the RAD's conclusion that the RPD did not err in finding that Applicant generally lacked credibility.

**iii. Did the RAD err in its treatment of the Applicant's documentary evidence?**

[52] The Applicant submits that the RAD unreasonably disregarded his documentary evidence that corroborated his sexual orientation. He submits that the RAD unreasonably assigned little weight to a letter submitted by The 519, and finding that it did not corroborate his sexual orientation. Further, that the RAD improperly categorized his uncle's affidavit as a letter, failed to assess its probative value and erroneously assigned it little weight. Further, the RAD failed to assess the evidence in its entirety.

[53] The Respondent submits that the RAD did consider The 519 letter but found it to be insufficient to establish the Applicant's sexual orientation. As to the Uncle's affidavit, given the underlying credibility issues, the RAD reasonably found that it was not dispositive of the claim. The Respondent submits that the Applicant's credibility arguments amount to a request for this Court to reweigh the evidence.

[54] The RAD noted that the RPD found that the Applicant was not a credible or reliable witness and had concluded that his general lack of credibility was sufficient to dispose of the claim. The RAD noted that a finding of a lack of general credibility may extend to all relevant evidence, in which case independent and credible documentary evidence would be required for a positive disposition of the claim. The RAD found that the RPD did not err finding that the Applicant generally lacked credibility and that the documents he presented were insufficient to support a positive disposition of his claim.

[55] As stated in *Lawani*, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim and be generalized to all of the documentary evidence presented to corroborate a version of the facts (at para 24). The RPD found that his was such a circumstance. The RAD agreed that a finding of a lack of general credibility may extend to all relevant evidence, in which case independent and credible documentary evidence would be required for a positive disposition of the claim.

[56] The RAD considered the submitted photographs and found that they appeared to have been taken during a gay pride parade and accepted that the Applicant attended the event. However, the RAD noted that anyone can do so and therefore it did not attribute any probative value to the photographs in corroborating the Applicant's sexual orientation. The Applicant does not challenge the RAD's finding with respect to the photographs.

[57] The RAD also considered The 519 membership card, training record, attendance sheet and The 519 letter confirming that the Applicant has been a member of that organization since September 2017 and has participated in weekly meetings. The RAD found that there was no evidence that the Applicant would have been unable to be involved in The 519 if he was not homosexual and that these documents were insufficient to render credible the Applicant's claimed sexual identity.

[58] The 519 letter confirms that the Applicant is an active member of The 519's Community Centre Among Friends LGBT Refugee Support Groups, described as a peer-driven support group of LGBT Refugee Claimants only. The Applicant refers to *Ojje v Canada (Citizenship and*

*Immigration*), 2018 FC 342 [*Ojie*], which concerned the judicial review of a negative application for humanitarian and compassionate [H&C] relief. There the H&C officer accepted that the applicant was a member of The 519 community centre but found that the letter did not inform whether the applicant was gay or bisexual, as membership in the organization did not necessarily indicate homosexuality or bisexuality. Justice Elliot found that it appeared that the Officer misconstrued the letter. She found that it did more than state the applicant was involved with The 519, the author stated that the applicant belonged to a group that is only open to LGBT refugee claimants. Justice Elliot found that this was the same as saying that the applicant identifies as bisexual and that before the officer dismissed the letter, they should have taken the time to carefully read and understand its contents (paras 45-46).

[59] Letters of this nature from The 519 and other organizations are frequently filed in support of various immigration proceedings. For example, in *Oviawe v Canada (Citizenship and Immigration)*, 2021 FC 204 [*Oviawe*], the applicant relied on letters and other documents from LGBTQ+ organizations regarding her attendance and participation. The RAD took the position that anyone is able to attend events at LGBTQ+ organizations, and that participation in such organizations is insufficient to establish a claim of bisexuality. This Court held that the RAD could reasonably come to that conclusion. Further, that this was a matter of weighing and assessing evidence, which was not the role of the reviewing court. Similarly, in *Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030, the RAD considered two support letters from LGBTQ organizations. The RAD accepted the applicant's participation in the two groups but found that the letters did not establish that he was bisexual as "Substantively, they did not and could not establish Mr. Obalade's sexual orientation" (at para 23).

[60] In this matter, I note that although the letter says that the group is for “LGBT Refugee Claimants only”, the letter does not speak to if or how the sexual identities of persons who seek to become members are assessed. Further, the Applicant was asked by the RPD if a person who is not gay, who is heterosexual, could join The 519 and he responded: “Maybe. I don’t know”. In my view, as found in *Obalade*, The 519 letter cannot, in and of itself, establish the Applicant’s sexual orientation.

[61] Rather, The 519 letter is evidence that the Applicant presented himself as homosexual after arriving in Canada. It does not directly support the Applicant’s version of events that caused him to flee India, and does not establish that he is, in fact, gay. The RAD’s reasons demonstrate that it read and understood the content of The 519 letter but found it insufficient to establish the Applicant’s sexual orientation. In my view, it was reasonable for the RAD to find that the content of this letter, even if believed, did not overcome the Applicant’s general credibility issues.

[62] Further, it is the RAD’s role to assess and evaluate the evidence before it, and a reviewing court should not interfere with its factual findings unless it has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at pars 125-126). Determining whether the a decision maker’s treatment of a letter from The 519 or similar evidence is reasonable is a case-by-case exercise requiring analysis of the content of the letter in the record, the reasons of the decision maker, and the context of the decision.

[63] As to the evidence of the Applicant's uncle, it is true that the RAD refers to his as a letter when in fact it is an affidavit. However, nothing turns on this. The RAD found that the document restates most of the allegations contained in the written narrative submitted by the Applicant and should be granted no weight due to the general lack of credibility of the Applicant.

[64] As stated in *Olajide* "it is entirely acceptable to give little or no weight to supporting documents when there are significant pre-existing credibility concerns (see also *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at para 90; *Lawani* at paragraph 24)" (at para 15).

[65] Similarly, in *Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312 [*Chinwuba*] at para 26 this Court held that "[e]vidence is not assessed in isolation from the overall claim, and when the Applicant's personal evidence is not credible, it is reasonable for the RAD to have credibility concerns with the supporting documentary evidence" (see also *Oviawe* at para 44).

[66] And, as noted above, in *Lawani* , Justice Gascon held that:

[24] Fourth, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 604 (FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 [*Brahim*] at para 17).



[67] Here the RAD accurately found that the Uncle's affidavit largely repeated, in vague terms, the evidence of the Applicant. The RAD had already found those claims not to be credible when made by the Applicant and found the Applicant to generally lack credibility. The presumption of truthfulness had been rebutted (*Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (CA)). The RAD reasonably extended its findings regarding the Applicant's general lack of credibility to its assessment of the documents supporting his claim. Accordingly, in my view, the RAD did not err in affording the Uncle's affidavit no weight.

### **Conclusion**

[68] In conclusion, the RAD's finding that the RPD correctly assessed the Applicant as generally lacking credibility and that this was sufficient to rebut the presumption of truthfulness was reasonable.

**JUDGMENT IN IMM-945-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

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

**DOCKET:** IMM-945-21

**STYLE OF CAUSE:** PRABAKARAN JAYARAMAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** MARCH 24, 2022

**JUDGMENT AND REASONS:** STRICKLAND J.

**DATED:** APRIL 1, 2022

**APPEARANCES:**

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