Federal Court  Cour fédérale

Date: 20220531

Docket: IMM-4999-21

Citation: 2022 FC 783

Ottawa, Ontario, May 31, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

RAHEEL REHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the application for judicial review of the 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 Pakistan. He claims that he witnessed an attack by the Taliban on a Mosque in November 2013 and went to the police to identify the attackers. A week later, the same attackers confronted him and threatened to kill him. In January 2014, the attackers beat the Applicant and broke his arm. The Applicant believes there is a link between the attackers and the police as each time he went to the police his attackers knew about it. The Applicant claims that in June 2014 the police came to his home and took him to a police station where they tortured him and told him to forget about the attackers. In July 2014, the attackers shot the Applicant in the shoulder while he was on his way home. He then went into hiding before fleeing to Brazil. From there he made his way to the United States [US] where, in 2017, he made an unsuccessful refugee claim. He came to Canada on February 25, 2019 and initiated a claim for refugee protection.

[3] The Applicant claims he fears that the Taliban, with the assistance of the police, will find and kill him if he returns to Pakistan. He also claims to fear persecution from the state because of his support of the Pashtun Tahafuz Movement [PTM] and the Awami National Party [ANP] as he claims Pakistan's security forces are killing and arresting PTM members.

RPD decision

[4] On January 6, 2021, the RPD denied the Applicant's claim. The RPD found that there were significant omissions and contradictions in the Applicant's evidence, which he failed to reasonably explain. The RPD also found that the Applicant's testimony was "shifting, evasive

and at times convoluted". Because of the Applicant's general lack of credibility, the RPD did not accept his claimed fear of the Taliban and Pakistani police.

[5] The RPD set out its negative credibility findings in detail. These included that:

- if the Taliban actually intended to harm the Applicant then it was implausible that they did not seek out the Applicant at his home, given his evidence that he had provided his address to the police and his allegation that the police collaborated with the Taliban who learned of each of his reports to the police. The RPD found that it was likely that the Taliban would have easily been able to locate the Applicant's home;

- it was implausible that if the Taliban wanted to kill the Applicant they would take no action between January 2014 when he was beaten and had his arm broken and July 2014 when he was shot. The RPD accepted medical evidence corroborating those injuries but did not accept that the Taliban was responsible for the injuries;

- the Applicant's evidence in his narrative and in his testimony was inconsistent about whether threats his parents allegedly received after the Applicant left Pakistan came from the Taliban or the police, and how and where these threats were received. The RPD did not accept the Applicant's explanation for this inconsistency as reasonable;

- the Applicant had attempted to embellish his claim, as he provided affidavit evidence from his parents which stated the Applicant was assaulted in Karachi, when the Applicant himself testified he was not threatened in that city;

- the Applicant testified that the Taliban had told his parents that they knew the Applicant was in Karachi. When asked by the RPD why this was not mentioned in his narrative, the Applicant stated that he had mentioned that his father told him about a threatening letter that the Taliban delivered on September 24, 2014. The RPD found the Applicant's evidence on this point to be shifting and evasive and that if the Taliban had informed the Applicant's parents that they knew he was in Karachi it was reasonable to expect he would have included this highly relevant information in his narrative. The RPD found that it was likely that the Applicant fabricated the allegation;

- the Applicant failed to mention in his narrative that during the January 2014 incident where he claimed that Taliban members had beaten him and broken his arm, they also tried to kidnap him. The RPD dismissed as not reasonable the Applicant's explanation that he simply forgot to mention this, given that he was represented by counsel and submitted an updated narrative 10 days before the hearing. The RPD found that the Applicant's testimony that the Taliban attempted to kidnap him was likely an attempt to bolster his claim;

- the Applicant was inconsistent in his testimony about where he was when his parents received the threatening letter on September 24, 2014. At the hearing, he testified he left Hyderabad in late August 2014 and returned to his parent's home where he remained in hiding until he left Pakistan in October 2014. When the RPD pointed out that this would mean he was at home when the Taliban delivered the letter, the Applicant changed his testimony to state that he was in Hyderabad at the time. The RPD found the Applicant's shifting testimony was an apparent

effort to address a deficiency in his story and further undermined his credibility. On a balance of probabilities, the RPD found that the Taliban did not issue a threatening letter in September 2014 and that the copy of the letter in evidence was not genuine; and

- although the RPD considered the Applicant's testimony, given when he was questioned by his own counsel, that he had omitted information and was confused about dates because of psychological issues, the RPD noted the Applicant had not provided any medical evidence of psychological issues or how these might affect his ability to testify. Accordingly, this testimony did not overcome the RPD's credibility concerns.

[6] The RPD concluded, in light of the contradictions and omissions in the Applicant's evidence that were not reasonably explained, that his credibility was undermined to such an extent that the RPD was unable to believe any of his allegations regarding his alleged fear of the Taliban and the Pakistani police. Accordingly, it found that he does not have a well-founded fear of persecution nor does he face a s 97 risk from those actors.

[7] As to the Applicant's alleged fear of persecution and risk of harm on political grounds, although the Applicant stated in his claim that he feared persecution as a result of his involvement with the PTM, when questioned by the RPD he identified only a fear of the Taliban. Only later, when questioned by his own counsel, did he state that he also feared the police and military due to his membership in the PTM. The RPD found if the Applicant had a genuine

subjective fear of persecution due to his involvement with the PTM, it was reasonable to expect him to have stated this when directly asked by the RPD why he fears returning to Pakistan.

[8] The RPD also found there was insufficient credible evidence that the Applicant would face political persecution upon return to Pakistan. The Applicant testified that he believed that the Pakistani authorities were aware of his PTM and ANP involvement in Canada, including because of his Facebook posts about the PTM. He testified that he did not have a copy of the posts and that he had deleted the account in December 2019 because of fear of retaliation against his family in Pakistan. The RPD found his belief to be speculative. And, given the RPD's general finding of a lack of credibility and its finding that the Applicant's political activities are not core to his beliefs, the RPD found that it was more likely than not that the Applicant became involved with the ANP and PTM to bolster his refugee claim.

[9] Finally, the RPD assessed whether there was a well-founded fear of persecution based on the Applicant's Pashtun ethnicity, but held there was a viable internal flight alternative [IFA] in Hyderabad.

[10] The RDP concluded that the Applicant does not have a well-founded fear of persecution in Pakistan and, on a balance of probabilities, that his removal to Pakistan would not subject him to s a 97 risk. Therefore, the Applicant is not a Convention refugee or a person in need of protection pursuant to s 96 and s 97, respectively, of the IRPA.

[11] The Applicant appealed the RPD's decision to the RAD.

Decision under review

[12] On July 12, 2021, the RAD dismissed the appeal.

[13] At the appeal the Applicant sought to submit new evidence, including a psychological report dated March 15, 2021, two new affidavits from his parents dated October 13, 2020, blog posts dated January 11, 2021 and, various news articles. The RAD noted the Applicant had not made any submissions as to how the new evidence meets the requirements of s 110(4) of the IRPA, including an explanation as to why the evidence could not have been provided to the RPD. The RAD refused to accept any of the new evidence on that basis.

[14] Additionally, with respect to the new affidavits, the RAD pointed out that it was only when the RPD raised a credibility concern that the Applicant claimed an interpretation error and, before the RAD, he had provided no evidence to establish that the prior affidavits were improperly interpreted. As to the blog post, the RAD also declined to accept this new evidence as it had concerns about its credibility. It found that the news articles all pre-dated the RPD decision and the Applicant offered no explanation as to why he had not submitted them to the RPD.

[15] The RAD noted that further new evidence was submitted subsequent to the perfection of the Applicant's appeal, specifically: a First Information Report filed against the Applicant and dated March 2021 [FIR]; a "National Hit List" dated June 8, 2021; and, the Applicant's statutory declaration, dated June 16, 2021. The RAD noted that admission of this new evidence was governed by Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules], and

that the *Singh* and *Raza* factors must still be considered (referring to *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] and *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]). Again, however, the Applicant had offered no explanation as to how the proposed new evidence met the criteria. Nor had the Applicant explained how the Applicant came into possession of the documentation.

[16] Regarding the FIR, the RAD also had concerns about the timing of this evidence, which concerns it set out, and about how the Applicant was able to obtain it. The RAD found the FIR not to be credible and refused to accept it.

[17] As to the document which the Applicant described as a national hit list showing his name and that a death threat had been issued against him, the RAD found that the document would have reasonably have been available for the Applicant to provide to the RPD and that he had offered no explanation to the RAD as to why he had not done so.

[18] The RAD then conducted its analysis, noting that its role was to look at all of the evidence and to decide if the RPD had made the correct decision. The RAD stated that it had reviewed the written transcript of the RPD hearing and considered all of the evidence in order to conduct an independent assessment of the Applicant's claim in light of his arguments on appeal.

[19] The RAD found that the determinative issue was credibility. It individually reviewed each of the credibility findings of the RPD that were challenged by the Applicant. With respect to each such finding, the RAD set out the Applicant's appeal submission, that is, why the

Applicant asserted that the RPD finding was flawed. In most instances, the RAD then provided its reasoning and analysis of the Applicant's position, referencing the Applicant's evidence, or lack thereof, and RPD's findings. The RAD's analysis is lengthy and it is sufficient to state in this summary that, having conducted its review, the RAD found the RPD correctly found that the Applicant's testimony was inconsistent, shifting and evasive and that the RPD was correct to find that the numerous credibility concerns, when viewed cumulatively, were such that the Applicant's credibility was fatally undermined.

[20] The RAD noted that on appeal the Applicant made no specific argument as to how or why the RPD erred in finding that his forward-looking risk on political grounds in Pakistan was not credibly established. Rather, that the RAD had been directed to the Applicant's new blog post, which the RAD had not accepted as new evidence. Absent any argument from the Applicant, and following its own independent review, the RAD found no error with the RPD's reasoning outlined in paragraph 47 through 58 of its reasons. The RAD adopted those reasons as its own in finding that there existed insufficient credible evidence that the Applicant's removal to Pakistan would subject him to a serious possibility of persecution or a s 97 risk due to his political opinions or activities. Further, that the objective evidence, which the RAD set out, would not put the Applicant at more than a mere possibility of risk given his profile as a party member, not a leader.

[21] The RAD noted that aside from the assertion that the Applicant would face risk from the Taliban in the IFA, which the RAD had found not to be credible, the Applicant had not made any submission as to why or how the RPD erred in finding that a viable IFA existed in the

Applicant's circumstances. Nevertheless, the RAD had reviewed the RPD's decision and stated that its own independent assessment reached the same conclusion that the Applicant could live safely in Hyderabad as set out in the RPD's reasons, at paragraphs 60 to 67, which the RAD adopted as its own. Similarly, the RAD found, as did the RPD, that the Applicant could safely and reasonably relocate to Hyderabad. The RAD stated that its own review found no error which would justify its intervention in the RPD's finding in that regard.

[22] The RAD concluded that the RPD was correct to find that the Applicant was not credible given the cumulative credibility concerns, that the Applicant had not credibly established his allegations and that he had not established that he faces a forward-looking risk of persecution or probability of harm if he were to return to Pakistan. The RAD dismissed the appeal and confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

Issues and standard of review

[23] The Applicant frames the issues as follows:

1. Did the RAD fail to conduct an independent assessment of the evidence, improperly likening its role to that of a judicial review body?

2. Did the RAD err by ignoring or misapprehending the evidence such that the credibility findings were unreasonable?

3. Did the RAD breach the Applicant's right to procedural fairness by making adverse credibility findings about new evidence without providing the opportunity to respond?

[24] In my view, the issues can appropriately be reframed as follows:

1. Did the RAD breach the duty of procedural fairness?

2. Is the RAD's decision reasonable?

[25] With respect to issues of procedural fairness, these are to be reviewed on a correctness standard, pursuant to which no deference is owed to the decision maker (see: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[26] When a court reviews the merits of an administrative decision, the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised or apply in this matter (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23, 25). On judicial review, 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).

Procedural Fairness

Applicant's position

[27] The Applicant submits that the RAD erred in refusing to admit the January 11, 2021 blog post and March 3, 2021 FIR as new evidence on the basis that they were deemed not to be credible because of the RAD's concerns with the Applicant's motive and timing of the blog post and how the Applicant became aware of and received the FIR. The Applicant submits that the RAD made credibility findings in light of these concerns but did not afford him with the opportunity to respond or provide clarification, contrary to the requirements of procedural fairness. The Applicant refers to *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 [*Khan*] in support of this position.

Respondent's position

[28] The Respondent submits that there is no requirement for the RAD to seek clarification from the Applicant with regard to credibility concerns with the new evidence, citing *Sanmugalingam v Canada (Citizenship and Immigration*) 2016 FC 200 [*Sanmugalingam*] at para 55, 60, 71 and *Vicente v Canada (Citizenship and Immigration)*, 2021 FC 537, at paras 12-18.

Analysis

[29] In my view, the RAD did not err in finding the two pieces of new evidence that are at issue in this judicial review did not to meet the admissibility criteria, nor did it breach procedural fairness.

[30] I note that the question of whether new evidence is admissible is reviewable on the standard of reasonableness (*Ajebi v Canada (Citizenship and Immigration)*, 2016 FC 14 at para 15; *Singh* at paras 22-30; *Khachatourian v Canada (Citizenship and Immigrations)*, 2015 FC 182 at para 37; *Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 5; *Warsame v Canada (Citizenship and Immigration)*, 2019 FC 920 at para 26 [*Warsame*]). The role of the Court is not to determine whether the new evidence should have been accepted, but to determine whether the RAD's finding that the new evidence did not meet the admissibility criteria was reasonable (*Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at para 38; *Hamid v Canada (Citizenship and Immigration)*, 2021 FC 100 at para18; *Warsamie* at para 30).

[31] In this matter, the Applicant does not challenge the RAD's finding that the new evidence was not admissible because it did not meet the statutory requirements. However, I will address this issue as the RAD's findings in that regard would alone have been dispositive.

[32] The RAD noted that the admissibility of new evidence on appeal is restricted to the circumstances set out in s 110(4) of the IRPA, being that:

> (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 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.

[33] However, the Applicant had provided no submissions as to how this new evidence met these requirements.

[34] Additionally, with respect to the blog post, the RAD noted that when testifying before the RPD the Applicant stated that he had been posting about atrocities committed by the Pakistani army and the Taliban on Facebook since 2014. However, in December 2019 he had blocked his social media ID because he feared for the safety of his parents at the hands of his alleged persecutors in Pakistan. He claimed that he had not saved a copy of his posts. The RAD noted that the evidence it was being asked to accept on appeal was the Applicant's purposeful blog post, made days after the RPD denied his refugee claim, and despite his expressed fear for his parents in Pakistan. The RAD found this timing suspect and that it was incredulous that the Applicant would reactivate the very account that he testified would put his parent's safety at risk.

[35] As to the FIR, the RAD stated that its admission was governed by RAD Rule 29:

> **29 (1)** A person who is the subject of an appeal who does not provide a document or written submissions with the appellant's record, respondent's record or reply record must not use the document or provide the written submissions in the appeal unless allowed to do so by the Division.
>
> **(2)** If a person who is the subject of an appeal wants to use a document or provide written submissions that were not previously provided, the person must make an application to the Division in accordance with rule 37.
>
> **(3)** The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being presented in response to evidence presented by the Minister.
>
> **(4)** In deciding whether to allow an application, the Division must consider any relevant factors, including
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> **(a)** the document's relevance and probative value;
>
> **(b)** any new evidence the document brings to the appeal; and

> **(c)** whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.

[36] The RAD found that, contrary to the requirement of Rule 29(3), the Applicant had not provided any explanation as to how this evidence meets the above criteria. Nor had any explanation of how the Applicant came to be in possession of the FIR been offered.

[37] The RAD also noted that the Applicant had submitted that the FIR was issued against him for writing blogs on social media. The RAD stated that it had concerns about the document. There was no explanation of how the Applicant came to be aware that a FIR had been filed against him in Pakistan or how he was able to obtain a copy of it. Additionally, the RAD was concerned about the timing of this evidence, which suddenly arose many years after the Applicant left Pakistan. The Applicant's testimony before the RPD was that be believed that Pakistani authorities were aware of his posts made from 2014 to the deletion of his account in 2019, yet there was no evidence that a first information report had been filed against him during those years.

[38] The RAD found it incredulous that the Applicant: would reactivate his social media profile only days following the denial of his refugee claim; would post negative commentary to that account which he had previously testified would put his parents at risk; that he would somehow become aware of the FIR filed against him on March 3, 2021 from another party and in relation to the Applicant's new social media posts; and, that he would be able to retrieve and

forward the FIR to the RAD as new evidence. The RAD found the FIR not to be credible and refused to accept it.

[39] As noted above, the Applicant has not challenged the RAD's finding that the statutory admissibility criteria had not been met. Indeed, when appearing before me the Applicant conceded that former counsel had not offered any explanation of how the documents met the requirements of s 110(4) of the IRPA. Where the criteria in s 110(4) are not met, the RAD has no discretion to admit the evidence (*Singh* at paras 34-35; *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at para 17; *Ifogah v Canada (Citizenship and Immigration)*, 2020 FC 1139 at paras 44-46). Accordingly, the RAD's finding that the new evidence was not admissible in the absence of any such explanation was determinative.

[40] The RAD's credibility findings with respect to the blog posts and FIR were made in addition to this determinative finding that the new evidence was not admissible based on the statutory criteria (*Sanmugalingam* at para 59).

[41] In that regard, as to the Applicant's procedural fairness argument, in my view the Applicant conflates the RAD's procedural fairness obligations when assessing the admissibility of new evidence based on *its* credibility with the RAD's obligations that arise when admitted new evidence gives rise to issues concerning *the credibility of the applicant.*

[42] As stated by Justice Ahmed in *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 61:

> [16] In my view, the RAD reasonably rejected the new evidence. In *Singh*, the Court considered the scope of subsection 110(4) of the *IRPA*, and found the three conditions of admissibility set out in the provision are "inescapable and would leave no room for discretion on the part of the RAD," (*Singh* at para 35). The Court also found that the implicit criteria identified in *Raza*—credibility, relevance, newness, and materiality—subject to some adaptations, are also applicable in the context of subsection 110(4) (*Singh* at paras 38-49). **Regarding the assessment of credibility on the admissibility of new evidence, the following excerpt is highly instructive (*Singh* at para 44):**
>
> > […] **It is difficult to see, in particular, how the RAD could admit documentary evidence that was not credible.** Indeed, paragraph 171(a.3) expressly provides that the RAD "may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances." It is true that paragraph 110(6)(a) also introduces the notion of credibility for the purposes of determining whether a hearing should be held. In that regard, however, it is not the credibility of the evidence itself that must be weighed, but whether otherwise credible evidence "raises a serious issue" with respect to the general credibility of the person who is the subject of the appeal. […]
>
> [17] In view of the jurisprudence, the Applicants have advanced a misconstrued conception of the application of subsections 110(4) and 110(6) of the *IRPA*. The RAD is not required to hold an oral hearing to assess the credibility of new evidence—it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A "credibility finding" on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants.
>
> (emphasis in bold added)

[43] In *Abdulai v Canada (Citizenship and Immigration)*, 2022 FC 173 [*Abdulai*], Justice Favel held:

> [57] None of the new evidence submitted by the Applicant called into question the overall credibility of the Applicant (*Singh* at para 44). The Applicant does not submit that the RAD made new credibility findings about the Applicant, which warranted an oral hearing. Rather, he essentially submits that the RAD should have convened an oral hearing so that the Applicant could address any concerns the RAD had about the new evidence. There is no obligation to convene an oral hearing to assess the credibility of new evidence (*AB v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17).
>
> (emphasis in *Abdulai*)

(See also: *Tahir v Canada (Citizenship and Immigration)*, 2021 FC 1202 at para 20; *Tan v Canada (Citizenship and Immigration)*, 2021 FC 1204 at paras 39-40; *Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at para 44.)

[44] The scheme of the IRPA is that the RAD must proceed without conducting a hearing. The exception to this is where the new evidence meets the s 110(4) requirements; meets the implicit *Raza* criteria, which includes the credibility of the evidence (*Singh* at para 44 and 49); and, meets the requirements of s 110(6), being that the RAD is of the opinion there is documentary evidence that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim and, if accepted, would justify allowing or rejecting the refugee protection claim.

[45] The Applicant points to no jurisprudence to support his position that when the RAD is of the view that new evidence is not credible – and is therefore inadmissible – that the RAD is

under a duty of procedural fairness to notify the applicant of its concerns and provide them with an opportunity to respond to those concerns, prior to the RAD making its admissibility finding. The Applicant suggests that a discrete credibility hearing may not be required but another process, such as the issuance of a procedural fairness letter, is required. While acknowledging that this suggestion is not reflected in the legislative regime for appeals to the RAD, the Applicant submits that the basic principles of procedural fairness apply, requiring notice and an opportunity to respond.

[46] In *Sanmugalingam* one of the issues before the Court was whether the RAD breached procedural fairness by making credibility findings with respect to proposed new evidence. Justice Kane held:

> [71] The RAD did not breach the common law duty of procedural fairness. The applicant had the opportunity to respond to the RPD's credibility concerns in his submissions to the RAD, including by requesting to submit new evidence. The RAD was not required, on the facts of this case, to provide an opportunity for the applicant to respond to its concerns about an affidavit that they refused to admit primarily based on statutory criteria.

[47] In my view, this is a similar circumstance.

[48] And, although the Applicant relies on *Khan* in support of his position, in my view that decision does not assist him. In *Khan*, Justice Gascon reviewed the requirements that must be met in order for the RAD to admit new evidence and concluded that the RAD had misconceived the requirements set out in s 110(4) of the IRPA and unreasonably interpreted and applied the extended *Raza* factors in regard to relevance and credibility. With respect to the test for relevance, Justice Gascon found that the RAD's reasons did not explain or justify how the

proposed new evidence was not relevant to the applicant's claim for protection. Accordingly, its decision was unreasonable. Contrary to the Applicant's submission, I do not understand Justice Gascon to be suggesting that procedural fairness requires the RAD to give notice to an applicant that the credibility of proposed new evidence is at issue and to provide them with an opportunity to respond to the RAD's credibility concerns with those documents – prior to making an admissibility finding. Nor would that in in line with the jurisprudence cited above.

[49] Concluding on this issue, the RAD reasonably found that the new evidence was not admissible because it did not meet the statutory requirements. Nor did the RAD breach procedural fairness by failing to afford the Applicant an opportunity to address its further finding that the FIR and blog post were not credible evidence and were also inadmissible on that basis.

Reasonableness

Applicant's position

[50] The Applicant submits that the RAD erred in failing to admit the psychological report as proof that his mental health affected his ability to testify. The Applicant submits that this is new evidence that arose after the RPD decision and he could not reasonably have been expected to provide this information, given that the RPD's concerns – which necessitated this evidence – only became apparent after the hearing.

[51] The Applicant also submits that the RAD inappropriately deferred to the RPD's findings instead of applying the correctness standard and coming to its own conclusions about the

correctness of the RPD's findings. That is, that the RAD failed to conduct an independent assessment of the evidence and merely "rubber stamped" the RPD decision including adopting reasons given by the RPD as its own. The Applicant relies on *Jeyaseelan v Canada (Citizenship and Immigration)*, 2017 FC 278, where Justice Diner stated "there must be a point at which one can discern where deference to the RPD stops and where the RAD's own independent analysis begins" (at para 19).

[52] The Applicant also submits that the RPD and the RAD engaged in a microscopic assessment of the evidence. In that regard, the Applicant submits that the RAD and RPD's finding that the attack in 2014 did not occur was based on a negative credibility finding arising from the fact that he did not mention that there was an attempted kidnapping in his narrative.

[53] Finally, the Applicant submits the RAD blindly endorsed the RPD's reasoning that the Applicant had to show actual harm in order to be at risk of persecution.

Respondent's position

[54] The Respondent submits that it is clear that the RAD thoroughly reviewed the record before concluding that the Applicant had failed to satisfy his burden to establish that the RPD decision was not correct. The RAD did not defer to the RPD's findings. Rather, with respect to every credibility issue raised by the Applicant before the RAD it outlined the RPD finding being challenged, the Applicant's arguments and, then reached its own independent conclusion on whether the RPD's findings were correct. It is not an error for the RAD to state that it agreed with the RPD's findings and this is also not indicative of the absence of an independent

assessment. Rather, the RAD and the RPD had the same substantive and substantial credibility concerns.

[55] The Respondent also submits that the RAD did not engage in a microscopic analysis, but rather noted several significant inconsistencies in the Applicant's evidence including: where and by whom his parents were threatened, where he had been assaulted, when he received a death threat from the Taliban, and that he was kidnapped. These inconsistencies are not irrelevant or peripheral. They are material and central to the Applicant's claim.

[56] Finally, the Respondent submits that the RAD did not insist that the Applicant must face actual harm as the Applicant suggests. Rather, the Applicant selectively quotes portions of the RAD decision, redacting or ignoring a significant portion of the RAD's reasoning on this point. The RAD assessed the risk of harm based on documentary evidence, and noted that the Applicant failed to outline a specific reason why the RPD's assessment of risk of harm was incorrect.

Analysis

[57] In my view, none of the Applicant's arguments have merit.

i. Psychological report

[58] As pointed out by the RAD, the Applicant did not explain why the psychological report, which post-dated the RPD's decision, was new evidence that was not reasonably available or

could not have been reasonably expected as necessary at the time of the RPD hearing. That is, the Applicant failed to meet the above discussed s 110(4) requirements for the admissibility of new evidence. On this basis alone, the psychological report was reasonably found to be inadmissible by the RAD. And, although the Applicant attempts to provide an explanation by way of his written submissions made in support of this judicial review, those arguments were not made before the RAD.

[59] In any event, the explanation now offered by the Applicant is wholly without merit. The Applicant submits that he could not reasonably have been expected to provide this evidence until after the hearing because it was the RPD who "required" medical evidence as proof that his psychological issues affected his ability to testify. He submits that "the RPD asked and the Applicant delivered". And, in light of these circumstances, there was no need of further explanation from the Applicant with respect to admissibility of the new evidence. This argument cannot succeed. The onus was on the Applicant to provide evidence to support his claim. He was also represented by counsel. Had there been concerns with his ability to testify due to his mental health, then the obligation was on him to document this prior to the RPD hearing. Nor did his counsel identify this as a concern at the commencement of the hearing.

[60] And, contrary to the Applicant's submissions, the RPD did not "require" the Applicant to provide psychological evidence. At the RPD hearing, the Applicant's counsel acknowledged that there had been events that the Applicant had forgotten to mention and that he was confused about the timeline when questioned by the RPD. His counsel then asked if the Applicant was "suffering from some sort of psychological issues". It was in response to this question that the Applicant

claimed, for the first time, that he had “some psychological issues”, such as difficulty sleeping. This was not, as the Applicant submits, a new concern raised by the RPD. The Applicant raised his mental health, the RPD simply pointed out that the Applicant had failed to provide medical or any evidence to support this explanation for the inconsistencies and omissions in his evidence. Further, as stated in *Khan*, an appeal before the RAD is not a second chance to submit evidence answering weaknesses identified by the RPD.

[61] The RAD’s decision on this point is reasonable.

ii. Independent assessment

[62] Although the Applicant has made many submissions on this point, I do not agree with his premise that the RAD failed to conduct an independent assessment in reaching its decision. The RAD stated that its role is to look at all of the evidence and decide if the RPD made the correct decision. It stated that it reviewed the written transcript of the RPD hearing and considered all of the documentation in both the RPD and Applicant’s records in order to conduct an independent assessment of the claim in light of his arguments on appeal. For the reasons it set out, the RAD found that the determinative issue was credibility and it agreed with the RPD that the Applicant was not credible. The RAD then went through each individual challenged credibility finding.

[63] For example, the RAD first addressed the RPD’s finding that it was implausible that the Taliban did not seek out the Applicant to harm him at his home given that it was likely that the Taliban would easily have been able to locate him there. The RAD then set out the Applicant’s position which was that the RPD had erred because it failed to consider that his home was

situated in a very narrow street, thus, it would be highly impossible for the Taliban to easily escape after an attack. Further, that the RPD had failed to consider that the Taliban prefer to attack in public places and this explained why they had not attacked the Applicant in his home. The RAD found that there was no basis to interfere with the RPD's credibility finding. It stated that this was because the Applicant had failed to provide any credible evidence to support his assertion that an attack by the Taliban would be impossible or unlikely due to his home being located on a narrow street or evidence that the Taliban only causes harm in public places. The RAD then referred to country conditions documentation which spoke to the Taliban's infiltration of the authorities and capacity to cause harm, and, based on this, stated that it agreed with the RPD's implausibility finding. The RAD then stated that it adopted the RPD's reasons at paragraphs 23 to 27 as its own and as correct.

[64] In my view, the RAD did not err in its approach. I also agree with the Respondent that the mere fact that the RAD ultimately agreed with and confirmed the RPD's credibility findings does not establish that the RAD did not conduct an independent assessment. I also note that in its reasons the RAD stated that it considered the RPD's reason to be detailed, which they were. Accordingly, I see no inherent error in the RAD, in addition to or as part of its own assessment, adopting specified reasons of the RPD, and finding them to be correct. For example, when addressing the RPD's credibility finding with respect to the Applicant's inconsistent evidence as to where he was when the Taliban delivered a threatening letter to his parents, the RAD outlined the RPD's finding, the Applicant's allegation of error on appeal and stated that it had independently reviewed the evidence, including the written transcript, and for the reasons outlined in paragraphs 41 through 44 of the RPD's reasons, which the RAD found to be correct,

it agreed that the Applicant's testimony relating to the letter was inconsistent, shifting and evasive and correctly represented yet another credibility concern.

[65] This Court has held that "[i]t is certainly open to the RAD to adopt the RPD's lengthy and reasoned treatment of the record, so long as the RAD itself does examine the record" (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 35). Reviewing the RAD's reasons in whole, I am not persuaded that the RAD failed to conduct its own independent analysis. And, given the detailed reasons set out by the RPD, the RAD did not err in adopting specified portions of them as its own. The RAD's reasons permit the Applicant to understand why the RAD reached its conclusions on each credibility finding. Nor am I convinced that the RAD fettered its discretion or simply deferred to the RPD as the Applicant submits.

[66] In sum, the RAD did not inappropriately defer to the RPD's findings instead of applying a correctness standard or fail to come to its own conclusions about the correctness of the RPD's findings of law, fact, or fact and law. Its decision was reasonable.

iii. Microscopic assessment

[67] As noted by the RAD, the RPD raised with the Applicant his omission of the attempted kidnapping from his narrative. Because the Applicant was represented by counsel and had submitted an updated narrative 10 days before the hearing, the RPD did not accept as reasonable his explanation that he had simply forgotten to do so. The RPD found that the Applicant's testimony about the Taliban attempting to kidnap him was more likely than not an attempt to bolster his claim and that this undermined his credibility.

[68] The RAD noted that the Applicant's position on appeal was that he suffered from PTSD, that he had brought this to the attention of the RPD and, that the RPD erred by impugning his credibility due to the omission of the attempted kidnapping from his narrative. The RAD again noted that there was no medical evidence before the RPD that the Applicant had been diagnosed with any mental health concerns such as PTSD or any other mental health disorder, nor had his counsel asked for any kind of accommodation at the outset of the RPD hearing. The RAD also pointed out that the Applicant did not testify before the RPD – as he submitted on appeal – that he had been diagnosed with PTSD.

[69] For these reasons, the RAD did not agree with the Applicant that the RPD erred by impugning his credibility due to the omission of mention of the alleged attempted kidnapping from his narrative.

[70] I note that the Applicant did not assert before the RAD that the RPD's finding on this point was microscopic. The Applicant raises this for the first time at this judicial review. Nor do I agree that the finding is peripheral or microscopic and is therefore unreasonable. And, even if it were, the RAD found that "the RPD was correct to find that the numerous credibility concerns, when viewed cumulatively, were such that the Applicant's credibility was fatally undermined". Accordingly, this would not amount to a reviewable error.

iv. Actual harm

[71] Finally, the Applicant submits that the RAD blindly endorsed the RPD's reasoning that for the Applicant to be at risk of persecution, actual harm must have occurred. In this regard, the

Applicant refers to the RAD finding with respect to the RPD's credibility determination, discussed above, that had the Taliban wished to harm him it was implausible that they did not seek him out given that it was likely that they could easily have located him at his home.

[72] I do not read the RAD's reasons as suggesting that the Applicant had to show actual harm. Rather, the RAD found that the Applicant had not provided any credible evidence to support his assertion before the RPD that an attack by the Taliban would be impossible or unlikely due to his home being located on a narrow street. In that regard, the RAD considered the country conditions documentation which it found spoke to the Taliban's infiltration of the authorities and capacity to cause harm. Based on this, the RAD agreed with the RPD that it was implausible that the Applicant was not sought out by the Taliban at his home, which they likely could easily have located. Neither the RPD nor the RAD were requiring the Applicant to show actual harm. The RAD rejected the Applicant's explanation of why the Taliban had not pursued him as not plausible because it was not supported by country conditions evidence. Nor do I agree with the Applicant's submission that the RAD and the RPD were speculating as to how a reasonable agent of persecution would act.

Conclusion

[73] For the reasons above, I find no reviewable error in the RAD's decision which was justified in relation to the relevant factual and legal constraints, and was intelligible. The decision was reasonable.

JUDGMENT IN IMM-4999-21

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-4999-21
STYLE OF CAUSE:	RAHEEL REHMAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	MAY 5, 2022
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	MAY 31, 2022

APPEARANCES:

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