

Federal Court



Cour fédérale

Date: 20220719

Docket: IMM-522-21

Citation: 2022 FC 1065

Ottawa, Ontario, July 19, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**EJAZ GEORGE
RUBINA GEORGE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Mr. Ejaz George and Ms. Rubina George, seek judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD], dated January 5, 2021. The RAD determined that the Applicants had not established their identities as citizens of Pakistan and were, therefore, neither Convention refugees nor persons in need of

protection within the meaning of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is dismissed. The Applicants have not demonstrated any reviewable error in the RAD's decision, which was sufficiently transparent, justified by the evidence on the record and the law, and intelligible.

I. **Background**

[3] The Applicants state that they are a brother and sister. They seek refugee protection based on their allegations of persecution as Christians in Pakistan.

[4] The Applicants were each granted temporary resident visas in April 2016 to attend the funeral of a nephew. Mr. George arrived in Canada on April 29, 2016, and made his refugee claim on November 18, 2016. Ms. George arrived on May 8, 2016, and made her refugee claim on October 19, 2016.

A. *Procedural History*

[5] Each applicant initially made separate claims for refugee protection. The claims were joined at the request of the Minister, pursuant to rule 55(1) of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], which provides for the joinder of claims of family members. The claims were subsequently separated at the request of Ms. George, who alleged that there was a family dispute with her brother.

[6] Mr. George's claim was heard first by the Refugee Protection Division of the Immigration and Refugee Board [RPD]. The RPD granted him refugee protection from the bench on November 30, 2017. His claim was reopened in March 2018, on the basis that the Minister had not been notified of the hearing nor of the separation of the Applicants' claims.

[7] At the hearing of Ms. George's claim in May 2018, the RPD noted that Ms. George had not been forthcoming about the fact that she and Mr. George had been living at the same address in Canada. The Minister applied to rejoin the claims of the two family members. The RPD ordered the claims rejoined on May 7, 2018.

[8] Following further procedural complications involving allegations of deficient interpretation at the RPD hearing, a *de novo* hearing was ordered and the Applicants' claims were heard by the RPD on January 29, 2019, and May 28, 2019.

B. *The RPD Decision*

[9] The RPD rendered its decision on August 8, 2019, rejecting the Applicants' refugee claims on the basis that they had not established their identities.

[10] The RPD noted that the Applicants had provided what appeared to be genuine passports issued by the government of Pakistan. However, the passports, along with the other identity documents, indicate that Mr. George was born on August 25, 1970, and that Ms. George—his sister—was born on January 14, 1971. The RPD noted that it was “inherently improbable” that the Applicants—who allege through both their testimony and their documents that they are

biological siblings born of the same mother and father—could have been born less than five months apart.

[11] The RPD noted the Applicants' explanation that these were the birth dates that their parents had provided and that they had used all their lives. The RPD found it implausible that the Applicants would not have inquired into the accuracy of these birth dates and had them corrected. The RPD found that the Applicants' testimony about their birth dates was not credible.

[12] The RPD also noted that several other corroborating identity documents were obtained by other persons in Pakistan after the Applicants' arrival in Canada and/or were obtained in an irregular manner. For example, the RPD noted the Applicants' testimony that their National Identity Cards and passports were issued on the basis of a photocopy of their parents' identity documents, and not with any of their own identity documents. The RPD noted Mr. George's testimony that he had obtained a baptismal certificate in 2016 in order to obtain a family certificate; however, his family certificate was issued two years later and was obtained by someone other than Mr. George on the basis of information in government databases. The RPD also noted that Ms. George had provided residence and domicile certificates, which stated her father-in-law's name as her husband, which she could not reasonably explain.

[13] The RPD generally found the Applicants' explanations of the problems with their identity documents to be vague, contradictory, and evolving.

[14] The RPD concluded that the Applicants' birth dates could not be accurate, whether the identity documents were fraudulent or simply improperly obtained with incorrect information; the RPD noted that both types of documents are widely available in Pakistan. The RPD concluded that the Applicants had not established their identities with credible and reliable evidence and dismissed their refugee claims without further analysis.

II. The RAD Decision Under Review

[15] In the Applicants' appeal to the RAD, they submitted letters and affidavits after their record had been filed, which sought to briefly explain what they characterized as a technical error with their birth dates.

[16] The RAD found that this evidence did not meet the legislative requirements for new evidence, as it would have been reasonably available prior to the RPD decision. The RAD also noted that this evidence appeared to be an attempt to repair the Applicants' testimony before the RPD. The RAD therefore did not consider this evidence. The Applicants have not disputed this finding.

[17] The RAD then considered the Applicants' allegation that the RPD's finding that Ms. George had not been forthcoming at her initial hearing about her first address in Canada (whether she lived with her brother, the Principal Applicant, or with her cousin) had biased the RPD in considering the Applicants' testimony in their subsequently joined claims. The RAD rejected this assertion, finding no evidence of a reasonable apprehension of bias on the part of

the RPD. The RAD also noted that counsel for the Applicants had the opportunity to raise procedural concerns about bias at the RPD hearing but did not do so.

[18] With respect to the issue of identity, the RAD agreed with the RPD that it was not possible that the Applicants could be biological siblings with the birth dates they asserted and which were noted on their documents. The RAD also agreed that they had not provided a reasonable explanation. The RAD dismissed the Applicants' arguments that the RPD had failed to consider their explanations and had overlooked that record keeping in Pakistan should not be held to the same standard as in Canada. The RAD noted that the Applicants had not made this argument, but rather counsel for the Applicants made the submission about inadequate record keeping without any supporting evidence. The RAD noted that the Applicants had consistently stated that their birth dates were correct.

[19] The RAD upheld the RPD's findings regarding the other identity documents that had been obtained by other persons. The RAD noted that the documentary evidence in the National Documentation Package indicates that a person cannot obtain a National Identity Card in Pakistan without presenting his or her own identity documents. The RAD noted that the Applicants' explanation of the documents they had submitted to obtain their passports was also inconsistent with the evidence of the documentation required. The Applicants had not contested the RPD's findings with respect to their family and residence certificates; nonetheless, the RAD shared the RPD's concerns about the credibility and reliability of these documents.

[20] The RAD considered the Applicants' argument that the RPD had made vague, unclear, and unintelligible credibility findings regarding their testimony. The RAD agreed that the RPD had not provided specific examples. However, the RAD conducted an independent assessment of the evidence, including reviewing the transcript of the RPD hearing. The RAD also found that the Applicants' testimony on a range of questions was contradictory, vague, and evolving and identified several specific examples.

[21] The RAD rejected the Applicants' submission that the RPD had erred by not sending the Applicants' passports for verification of authenticity. The RAD noted that the onus is on refugee claimants to present acceptable identity documents and that the RPD is not required to send them for forensic analysis.

[22] The RAD concluded that the RPD did not err in declining to further assess the Applicants' refugee claims, given that identity is a critical, threshold issue.

III. **The Issue and Standard of Review**

[23] The issue is whether the RAD reasonably dismissed the Applicants' refugee claims on the basis that the Applicants had not established their identities.

[24] The RAD's decision is reviewed on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 25 [*Vavilov*]; see also *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 at para 15; *Behary v Canada (Citizenship and Immigration)*, 2015 FC 794 at para 7.

[25] A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85, 102, 105–07). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). Courts should generally refrain from reweighing and reassessing the evidence that was before the decision maker, although they may interfere where the decision maker has fundamentally misapprehended or failed to account for the evidence (*Vavilov* at paras 125–26).

IV. **The Applicants’ Submissions**

[26] In their written submissions, the Applicants submit that they may have been naïve in accepting their parents’ assurances that their birth dates were correct, but that this does not mean they are not in fact siblings. They also submit that this naïveté does not preclude the possibility that their birth dates result from inadequate record keeping in Pakistan. The Applicants point to documentary evidence describing problems with the recording of births in Pakistan, particularly for infants born outside of hospital, and with inaccuracies on National Identity Cards.

[27] The Applicants submit that they provided many other documents that corroborate their identities as citizens of Pakistan, including government-issued certificates, school documents and letters from relatives and from the Applicants’ church, which span a long period of time. The Applicants argue that the RAD unreasonably focussed on the implausibility of their birth dates faced with the other overwhelming evidence that they are citizens of Pakistan. The Applicants

argue that the RAD erred in not assessing the other documents and in not making any specific findings about their authenticity.

V. **The Respondent's Submissions**

[28] The Respondent submits that the law is clear that where a refugee claimant fails to establish their identity, the RPD need not further analyze the evidence and the claim. The Respondent notes that country conditions alone cannot justify the granting of refugee protection where the claimants have adduced no credible evidence (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381).

[29] The Respondent submits that the RAD's concerns about the identity documents and the improbable birth dates were reasonable and thoroughly explained.

[30] The Respondent notes that the RAD addressed and rejected the Applicants' submission that inadequate record keeping in Pakistan should have been considered.

VI. **The Decision Is Reasonable**

[31] I note that the Applicants have not filed an affidavit on this Application, leaving the Court with the transcripts of their testimony before the RPD, the documents on the record, and their submissions that they are brother and sister born less than five months apart and that they had no reason to question this oddity until they sought refugee protection in Canada.

[32] Section 106 of the Act provides as follows:

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

106 La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

[33] The *RPD Rules* provide:

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

11 Le demandeur d’asile transmet des documents acceptables qui permettent d’établir son identité et les autres éléments de sa demande d’asile. S’il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[34] As noted in *Naeem v Canada (Citizenship and Immigration)*, 2014 FC 1134 at para 5:

The question of identity is determinative of a refugee claim. If a claimant cannot demonstrate to the reviewing Court that the Board acted unreasonably in the assessment of identity, the judicial review must fail (*Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425 at para 16; *Hang Su v Canada (Citizenship and Immigration)*, 2007 FC 680 at para 14; *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 47 [*Rahal*]; *Diallo v Canada (Citizenship and Immigration)*, 2014 FC 471 at para 17).

[35] In *Toure v Canada (Citizenship and Immigration)*, 2014 FC 1189 at para 32 [*Toure*], the Court explained that determining identity is within the expertise of the RPD (and this same principle applies to the RAD):

It is also well established that the issue of identity is at the very core of the RPD's expertise and this Court should be cautious about intervening on such decisions (*Barry v Canada (Minister of Citizenship and Immigration)*, 2014 FC 8, [2014] FCJ No 10 at para 19 [*Barry*]). Justice Gleason further states in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 at para 48 [*Rahal*]:

[...] In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly suspicious) and provided there is no glaring inconsistencies between the Board's decision and the weight of evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[36] In *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 at para 20, the Court noted:

When a refugee claimant is unable to establish their identity, a negative conclusion as to credibility "will almost inevitably be drawn" and thus be "fatal" to the claim (*Barry v. Canada (Citizenship and Immigration)*, 2014 FC 8, at paragraphs 21–22). The Court has consistently held that identity is a determinative issue and that no analysis of the merits of a claim is required if a refugee claimant's identity is not proven (*Daniel v. Canada (Citizenship and Immigration)*, 2016 FC 1049, at paragraph 28).

[37] More recently, the same principles were noted in *Habimana v Canada (Citizenship and Immigration)*, 2021 FC 143 at para 12.

[38] In other words, identity is a central element of each refugee claim; the refugee claimant must establish their identity with acceptable documentation on a balance of probabilities; and failure to establish identity is fatal to the claim. In addition, a refugee claimant's ability to establish their identity goes to their credibility more broadly.

[39] Although the finding that identity has not been established has harsh consequences, as it forecloses consideration of the claims of persecution, no error can be found in the decision of the RAD. As noted in *Toure* at para 32, the RPD—and for the same reasons, the RAD—has the expertise to determine whether identity has been established and such determinations are owed deference.

[40] In this case, the RAD independently assessed the evidence and came to the same conclusion as the RPD regarding the Applicants' failure to establish their identity or to provide a reasonable explanation for their failure to do so. The RAD also made additional credibility findings based on its review of the transcripts of the RPD hearing and explained the reasons for these findings.

[41] The Applicants now reiterate their argument, made by their counsel to the RAD, that their implausible birth dates may result from a record keeping error. However, the RAD addressed this argument and noted that the Applicants had insisted that their birth dates were correct—despite the implausibility of having been born 4.5 months apart. The RAD also found that there was no evidence of a record keeping error.

[42] While it may be possible that their birth records were issued with incorrect dates, this was not the Applicants' explanation. Nor did the Applicants ever seek to provide any personalized evidence to support this possibility. The Applicants maintained the position that the documents were correct and that they never had reason to question their birth dates. The Applicants' later change of approach cannot repair their testimony to the RPD.

[43] The Applicants' assertion that the RAD's conclusion was unfair ignores the jurisprudence, which notes that failure to establish identity is fatal.

[44] Contrary to the Applicants' submission that the RPD unreasonably focussed on their birth dates and in doing so ignored other documentary evidence that supports that they are citizens of Pakistan, the RAD independently reviewed the record, including the transcripts, and considered the Applicants' responses to the RPD's questions about the provenance of the other documents. The RAD found that the inconsistency between the Applicants' testimony and the objective documentary evidence with respect to which documents were needed to obtain their passports and National Identity Cards supported a negative credibility inference. The RAD also shared the RPD's concerns about Mr. George's family certificate and Ms. George's residence and domicile certificates. The Applicants did not contest these findings.

[45] With respect to the Applicants' submission that the RAD erred by failing to assess all the identity documents submitted and determine their authenticity and probative value, the RAD is presumed to have considered all the evidence. The RAD clearly stated that it had reviewed all the documents and shared the RPD's concerns about their credibility and reliability. The

Applicants have not pointed to any specific document that would overcome the RAD's overall credibility findings regarding their identity.

[46] The transcript of the RPD hearing clearly demonstrates that the Applicants consistently stated that they accepted their birth dates without question. They never suggested that record keeping in Pakistan was inadequate as they now suggest. In addition, their testimony regarding their identity was contradictory and nonsensical. For example, Mr. George had several other names that he used for email and Facebook accounts, which he was reluctant to acknowledge. Ms. George was evasive and inconsistent regarding where she lived before her marriage, why her father-in-law's name was listed on some of her documents as her husband, why she did not provide the address where she first lived in Canada, and whether the address of her cousin was used to disguise the fact that she lived with her brother in order to avoid joinder of their claims. Ms. George could not explain why she had no first-hand knowledge of the information provided on some forms, except that she apparently did not read the forms before signing them. The RPD extensively probed the Applicants' testimony and provided repeated opportunities for them to clarify their answers, which only led to more inconsistent and non-responsive answers.

[47] The RAD did not misapprehend or ignore any evidence or jurisprudence. There are no serious shortcomings in its decision. It is not the role of the Court to reweigh the evidence presented to establish the Applicants' identities. The RAD's determination that the Applicants' documents and testimony are insufficiently credible to establish their identity is well supported by the record; the decision is reasonable and is owed deference.

JUDGMENT in file IMM-522-21

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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