

Federal Court



Cour fédérale

Date: 20221006

Docket: IMM-8547-21

Citation: 2022 FC 1381

Ottawa, Ontario, October 6, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

**SHAHEEN ZAMAN,
REHAN AHMAD BUTT (A MINOR),
SHAYAAN AHMAD BUTT (A MINOR),
ERSA MUHAMMAD IMRAN BUTT (A MINOR),
MEERAB MUHAMMAD IMRAN BUTT (A MINOR),
MUHAMMAD FARHAN BUTT (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated November 5, 2021, affirming a decision of the Refugee Protection Division

[RPD], which found that the Applicants are neither Convention refugee nor person need of protection. At issue before both the RAD and the RPD was the credibility of the Applicants' narrative.

II. Facts

[2] The Principal Applicant [PA], Shaheen Zaman, and her five minor children are Shia Muslims from Pakistan. The following is the PA's narrative.

[3] The Applicants fear persecution due to their Shia faith and harm from the former business partner of the PA's husband, who is a colonel in the Pakistani army and has targeted the Applicants with the aid of extremist group Lashkare-Taiba.

[4] The PA contends that for much of her life in Pakistan she has faced a constant threat of harm due to anti-Shia hatred. The PA has experienced verbal abuse from classmates and teachers particularly during the holy month of Muharram.

[5] In 2004, the PA married her husband, a fellow Shia. The PA's in-laws had previously owned substantial land, but were subject to faith-based persecution, which eventually drove them to abandon their home and move to the United Arab Emirates [UAE] in 1989. In November 2004, the PA and her children joined her husband in the UAE.

[6] The PA's husband launched a trading business with the aforementioned colonel. The business ultimately failed in 2018 and the colonel blamed the PA's husband. He was not found to

be at fault, but the colonel began to threaten and harass him regardless. The Applicants then returned to Pakistan in December 2018 following the resurgence of ISIS, which many Middle Eastern countries took as a reason to evict Shia Muslims. The PA's husband was able to remain in Dubai with the help of a business partner.

[7] The Applicants contend that the situation for Shia Muslims was even worse than when they left. They were subject to mocking and harassment in public. The Applicants remained fearful because Shia populations were also allegedly targeted for violence and kidnappings.

[8] In February 2019, two men arrived at their door, allegedly to collect information from them for security reasons. The men asked some questions about the whereabouts of the Applicant's husband and whether the Applicants had relatives in the area. A few weeks later, two women attended the Applicants' home. One of the women identified herself as the wife of the Colonel, who she alleged had been defrauded by the PA's husband. The woman told the PA that if she cared for her life and that of her children, she had to arrange to pay 30 million rupees to the Colonel. She said they had connections with terrorist groups would use them against her.

[9] Following this event, the Applicants sought help from a neighbour who allowed them to stay at their home. The Applicants then travelled to Islamabad to stay with a relative. They did not venture out the home unless necessary. The Applicant's children also did not attend school as a result.

[10] The PA's neighbour informed her that some men had been around to ask about her. The PA also received several threatening phone calls from different individuals seemingly associated to the Colonel. Then, on May 21, 2019, three masked men attacked the Applicants in their relatives' home and held them at gunpoint. The men said the PA's husband owed money to their boss. The men then took the Applicant's eldest son and left in a pickup truck. The PA and her daughter also sustained some injuries. The police arrived too late to stop the men, but took a statement and lodged a First Information Report.

[11] The PA did not hear from the kidnappers for three days. Neither did the police have any news or leads. On the fourth day, the relevant terrorist group called the PA and stated that they would kill her son unless she paid a ransom of 30 million rupees. The PA's husband reached out to friends who were to be able to assist in negotiating a deal with the Colonel. It was agreed that the PA would pay 5 million rupees for her son's release and the remaining 15 million within one month.

[12] In May 2019, the PA's son was released from captivity. While he sustained no physical injury, he suffered from stress and anxiety, and was afraid to go outside or be separated from his mother. Following this event, the Applicants relocated, but the threats continued. Despite changing her phone number, the PA started receiving phone calls from the terrorist group a few weeks later demanding that the remainder of the sum be paid or her son would be taken again.

[13] In July 2019, the terrorist group attacked the Applicants' relatives at their home in Islamabad. They were held hostage, interrogated and threatened. The relatives had no choice but

to reveal that the Applicants were hiding with a relative. A month later, in August 2019, four armed men attacked the Applicants' relatives' home. The family members were beaten and warned not to mess with the group. The relatives called the Applicants once the men left and told them to hide.

[14] The deadline to pay the remaining sum had passed and the Applicants were not able to arrange the money. The PA and her husband decided that she and the children would use their Canadian visas, previously obtained for tourism purposes, to fly to Canada. They arrived in Canada in August 2019, and made a claim for refugee protection.

III. Decision under review

[15] The determinative issue for both the RAD and RPD was credibility.

[16] The RAD found the RPD erred in one of its credibility conclusions, as noted below, but was generally correct in its assessment of the Applicants' credibility and in its finding the basis of claim was not established on a balance of probabilities.

A. *Principal Applicant's Fears*

[17] The RAD noted an inconsistency between the PA's Basis of Claim [BOC] form and oral testimony. The form noted the PA has received in-person threats from the Colonel's wife, a military officer and members of a terrorist group. However, during oral testimony, the PA testified that she was not directly threatened and only referencing general fears relating to

extremist Sunni clerics and discrimination that she faced as a child. The RAD further noted the PA had never testified to having received threats from a military officer.

[18] The RAD also found the PA was unclear about whether her fear of the extremist group related to her faith. The PA named the extremist group when asked which Sunni extremist posed a threat to her with respect to her faith, but then immediately clarified that this threat was related to the Colonel, not her Shia faith.

[19] For this reason and those that follow, the RAD found the RPD correctly displaced the presumption of truth associated with the PA's testimony.

B. *Delay in leaving Pakistan*

[20] The RAD notes that despite having valid Canadian visas issued in June 2018, the Applicants did not leave Pakistan until August 2019. The RAD found that in the context of multiple moves within Pakistan to evade harm, the delay of six to eight months was not of great concern. However, there remained significant credibility concerns with the Applicants' claims of harm within the country, namely the PA's husband's visit to Canada while his family was allegedly hiding in Karachi. In the RAD's view, the credibility problems related to this travel and its omission from the BOC narrative create credibility concerns related to how and when the Applicants left Pakistan.

C. *Husband's travel to Canada*

[21] The Minister intervened in the Applicants' claim before the RPD with photographic evidence the PA's husband travelled to Canada and the U.S. as a tourist while his family was allegedly in hiding fearing for their lives. This was despite the PA's allegation her husband was scrambling to pay the Colonel's ransom demand. The PA was not able to fully explain this evidence, except to say that her husband travelled to secure the funds necessary to secure their safety and that the photos may have been arranged by friends to fend off the Colonel.

[22] The RPD noted that the husband's trip to Canada and the US was not declared in the BOC. This is a central point of dispute in this Application for judicial review, as it was in both tribunals below.

[23] The RAD found this omission raised a major credibility concern and agreed with the RPD that its omission from the BOC displaces the presumption of truth associated with the PA's credibility.

[24] In the RAD's view, the PA's subsequent explanations did not resolve these concerns. Nor did the RAD accept the PA's claim that the patriarchal nature of Pakistani society caused the family to go along with her husband's plans.

[25] The primary concern for the RAD was the omission of the PA's husband's travel plans from the BOC narrative. This omission came from the Applicants themselves, not the husband.

Given this, the RAD did not believe the omission could be explained through a gender-based lens. The PA also did not note any gender-based fears in her narrative.

[26] The RAD also took issue with the Applicants' delay in seeking asylum despite having had valid Canadian visas. The RAD affirmed the RPD's questioning into why the Applicants did not book tickets to Canada prior to August 2019 particularly after the PA's son was kidnapped. In the RAD's view, this issue was compounded by the revelation that the PA's husband was in Canada in June 2019. The husband's affidavit similarly posited that he travelled to Canada to gather funds. However, the RAD notes, the PA's son had already been released by July 2019. Even if the husband had been raising money required to pay the Colonel the remaining amount after the kidnapping, the evidence indicates that he returned to Dubai and purchased plane tickets for the Applicants to travel to Canada.

[27] The RAD also points to the PA's reference in her narrative to her husband's inability to raise the money to pay off the kidnappers without mentioning his alleged efforts in Canada and the U.S. The RAD agreed with the RPD that the omission of this level of detail is a serious credibility concern given that his efforts are meant to be central to their ability to escape harm and ultimately leave Pakistan with the funds raised.

[28] The RAD also draws on some inconsistencies in the affidavits of the husband's Canadian friends. Small contradictions in dates, which were present, would not be a significant concern generally. However, given there are already questions around when the PA's husband was in Canada, and his failure to provide the specific dates of his trip, the Applicants credibility is

sufficiently damaged. In the RAD's view, the Applicants have not provided an acceptable explanation for this issue. Simply, without more, the fact that the PA's husband was engaging in tourist activities in Canada while she lived in lockdown detracts from the credibility of the claim.

[29] These issues also led the RAD to find that, on a balance of probabilities, the PA has not established that her son was kidnapped and that she was required to relocate with her children.

D. *Supporting Documents*

[30] The RAD found other documents provided by the Applicants to corroborate their claim did not overcome the credibility concerns.

[31] First, while certain medical documents provided are credible and outline injuries sustained by the Applicants, but do not overcome the credibility concerns, specifically with respect to the husband's travel.

[32] Second, a First Information Report [FIR] did not address the RPD's primary concern, which is that they did not provide its original copy. The Applicants also did not address the RPD's concern that the individual that obtained the FIR did not attest to doing so in an affidavit provided by the Applicants. This in conjunction with the objective evidence on the availability of fraudulent documents in Pakistan and the other credibility concerns inherent in this claim, deems it not sufficiently reliable.

[33] Third, the affidavits and letters from friends did not speak to the RPD's specific credibility concerns and none of the Canadian letter writers had presented *sworn* documents. The RAD agreed that these were not sufficient to overcome the negative credibility findings. Additionally, an affidavit from the PA's uncle seemingly omits any mention of a kidnapping occurring prior to the Applicants' arrival in Karachi. The omission of this event detracts from the credibility of this affidavit.

E. *Procedural Fairness*

[34] The Applicants alleged in their appeal to the RAD that the RPD violated procedural fairness in finding that the extremist party threatening the Applicants does not generally conduct attacks in Pakistan and is not anti-Shia; they submit that they were not given notice of the tribunal's concerns regarding the documentary evidence on the extremist group nor a chance to respond.

[35] In reviewing the record, the RAD noted the RPD did raise the facts that according to the country conditions evidence, the extremist party did not have a domestic jihadist agenda and did not conduct attacks within Pakistan. The PA responded by noting that the group operated all over Pakistan and there is a common belief that they are funded by the "ISI". Considering this response, the RAD found that the PA did have the opportunity to respond.

[36] To summarize the RAD's findings on potential harm to the Applicants, the decision maker found that the RPD correctly determined that the objective evidence does not provide an objective basis for the Applicants' claims of persecution or harm.

F. *Discrimination as Shia Muslims*

[37] The Applicants alleged in their appeal that the RPD did not address their post-hearing written submissions concerning the targeting of ordinary Shia Muslims in Pakistan. They further submitted that the RPD did not address the detailed allegations in the PA's BOC regarding the discrimination she faced as a Shia Muslim.

[38] The RAD found the RPD correctly considered the evidence and did not err by concluding that the Applicants' Shia faith does not expose them to a serious possibility of persecution in Pakistan. Applicants' counsel raised sections of empirical evidence that refers to the risk of sectarian violence that Shia's face. Submissions were also made on various extremist groups that targeted Shia Muslims and the threats they face as targets of hate speech campaigns in mosques, schools and other places.

[39] The RAD noted Counsel's submissions as being incomplete. The RAD referenced additional empirical data from the South Asia Terrorism Portal that outlined violent incidents against Shia Muslims, but found that given the relatively large size of the Shia population, these incidents did not indicate a situation of insecurity. Additionally, the RAD pointed out that the credible objective evidence indicates that one terrorist attack and no militant attacks were recorded in Azad Kashmir in 2018. In the RAD's view, the violence referenced by the Applicants must be considered in the context of millions who do live and practice their religion safely.

[40] In their appeal, the Applicants further cited to the United Nations High Commissioner for Refugees Handbook, which states:

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

[41] The RAD also considered the following sections:

54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.

55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

[42] Given these passages, in the RAD's view, it was necessary to consider whether the Applicants faced serious restrictions with respect to expressing their religious beliefs. The RAD found that the Applicants had not established that they were or will be faced with serious restrictions on their right to earn a livelihood, practise their religion, access educational facilities, access social services, exercise their political rights, or generally participate in society due to their Shia beliefs.

[43] Finally, the RAD did not find that the PA's testimony indicated that she faced discrimination amounting to persecution as a Shia Muslim in Pakistan. The RAD acknowledged the PA had fears about practising her religion due to reports of extremist violence, but found the evidence did not show that she faced a barrier to practicing her religion on a balance of probabilities. Furthermore, while the discrimination she faced during childhood was "reprehensible", the RAD found that the PA did not establish she was denied her fundamental rights.

IV. Issues

[44] The only issue in this application is whether the RAD's decision was reasonable.

V. Standard of Review

[45] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653

[*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] 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 para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[46] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are “exceptional circumstances”. The Supreme Court of Canada instructs:

[125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[Emphasis added]

[47] The Federal Court of Appeal also recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

[3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director’s decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.

[4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[Emphasis added]

[48] Furthermore, in this Court’s decision of *Martinez Giron v Canada (Citizenship and Immigration)*, 2013 FC 7, Justice Kane enunciated the deference owed to tribunal decision makers:

[14] With respect to the Board's analysis of credibility and plausibility, given its role as trier of fact, the Board's findings warrant significant deference: *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857, [2012] FCJ No 924 at para 65.

[15] This does not mean, however, that the Board's decisions are immune from review where intervention is warranted. In *Njeri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 291, [2009] FCJ No 350 Justice Phelan stated:

[11] On credibility findings, I have noted the reluctance that this Court has, and should have, to overturn such findings except in the clearest case of error (*Revolorio v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1404). The deference owed acknowledges both the contextual circumstances and legislative intent, as well as the unique position that a trier of fact has to assess testimonial evidence. That deference is influenced by the basis upon which credibility is found. The standard is reasonableness subject to a significant measure of deference to the Immigration and Refugee Board.

[12] However, deference is not a blank cheque. There must be reasoned reasons leading to a justifiable finding. With considerable reluctance, I have concluded that this decision does not meet this standard of review.

VI. Analysis

[49] The Applicants submits the RAD's determination on credibility was based on a series of unreasonable findings. I will review and assess these, very mindful however that judicial review is conducted in a holistic and contextual manner, that weighing and assessing evidence are roles for the RPD and RAD (not this Court) whose assessments are entitled to deference, and that

aside from fundamental errors in fact-finding that undermine the acceptability of a decision, reweighing and second-guessing the evidence is no part of the role of this Court.

A. *Actions of the Applicant's husband*

[50] The Applicants submits that the RAD's finding on the PA's husband's trip was based on a misunderstanding of the facts, namely that the Applicants still had to pay a balance of 15 million rupees following their son's release, and that his purpose was to raise the extra money over and above the 5 million rupees already paid. In the Applicant's view, there was no inconsistency in the evidence and no basis for a finding of implausibility.

[51] To the contrary, the Respondent submits the RAD's comments at paragraph 18 of its decision clearly indicate it understood the PA's husband traveled to collect ransom funds after the son's release. I am satisfied the RAD was aware of this nuance. The RAD states in its Decision that "even if the PA's husband is referring in his affidavit to raising the money required to pay the Colonel after the kidnapping..."

[52] The Applicants submits the RAD lacked logical grounds for finding that the Applicant's allegations of fear were not credible because her husband flew to Dubai after traveling to Canada and United States. The Applicants point to the RAD's assertion that if the Applicants were really afraid, the Applicant's husband would have remained in Canada or the United States to "await the Appellants in order to request protection."

[53] In my view, while the RAD had a view on when the Applicants should flee, this was a matter of conjecture on its part. I agree with the Applicants' cite to *Yu v Canada (MCI)*, 2015 FC 167:

[12] It was not possible to discern the objective basis for many of the implausibility findings. A conclusion that a matter is implausible without articulation of the basis in the record (rather than just some personal opinion) is arbitrary and unreasonable.

[54] That said, I am not persuaded this finding renders the RAD's overall assessment of the evidence unreasonable; the error was not a fundamental error in fact-finding that undermines the acceptability of this Decision.

[55] The Applicants submit the RAD also lacked reasonable grounds for finding that there was a material omission in the Applicant's BOC narrative. In the Applicants' view, this finding was based on an unduly microscopic approach to the evidence. The Applicants point out that the PA was clear in her narrative that after her son was kidnapped, her husband undertook a series of efforts to gather the ransom money. The mere fact that she did not indicate in her BOC that her husband traveled to North America as part of these efforts was, the Applicants' view, not a "major omission." The PA submits the BOC is intended to be a general summary of the central aspects of the claim, not an encyclopedic recitation of the evidence. For this proposition, the Applicants cite *Manan v Canada (MCI)*, 2020 FC 150, which states:

[44] A BOC is expected to contain an overview of the material details of a refugee claimant's story, including all the important facts and details of the claim, and failing to do so can affect the credibility of all or part of a claimant's testimony: *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 [*Ogaulu*] at para 18. It serves to put the RPD on notice of the aspects [and possible issues] of a claimant's story, so that the RPD accordingly can prepare to test and verify the claimant's story. This Court long

has accepted a claimant may provide details in oral testimony not included in a personal information form, and this will not serve to impugn an applicant's credibility, so long as the omitted information is not significant to the claim: *Ogaulu*, above at para 19, citing *Selvakumaran v Canada (Minister of citizenship and immigration)*, 2002 FCT 623 at para 20.

[56] The Applicants also point out the PA's husband's trip was not a fact raised for the first time at the hearing. Rather, it had been disclosed in several letters and affidavits. Given this, the Applicants submit that it was unreasonable for the RAD to microscopically focus on the Applicant's alleged BOC omission when there was so much additional evidence corroborating the purpose of her husband's trip to North America. The Applicants note the RAD acknowledged these documents, though they were dismissed on various grounds, namely that they did not speak to credibility concerns and were largely unsworn.

[57] The Applicants point to *Ugalde v Canada (MPSEP)*, 2011 FC 458, for the proposition that claimants must obtain statements from anyone familiar with their circumstances. In *Ugalde*, Justice de Montigny (as he then was) states:

[28] In light of this jurisprudence, and under the circumstances, I do not believe it was reasonable for the Officer to award this evidence low probative value simply because it came from the Applicants' family members. Presumably, the Officer would have preferred letters written by individuals who had no ties to the Applicants and who were not invested in the Applicants' well-being. However, it is not reasonable to expect that anyone unconnected to the Applicants would have been able to furnish this kind of evidence regarding what had happened to the Applicants in Mexico. The Applicants' family members were the individuals who observed their alleged persecution, so these family members are the people best-positioned to give evidence relating to those events. In addition, since the family members were themselves targeted after the Applicants' departure, it is appropriate that they offer first-hand descriptions of the events that they experienced. Therefore, it was unreasonable of the Officer to distrust this

evidence simply because it came from individuals connected to the Applicants.

[58] The Applicants also reject the RAD's finding that these documents do not speak to credibility issues when they directly reference the purpose of the PA's husband's trip to Canada and the U.S. Similarly, the Applicants suggest that there is no need for corroborative evidence to be sworn, citing *Shahaj v Canada (MCI)*, 2005 FC 1044:

[9] Further, the Board indicated it also gave little weight to the sister's affidavit because "it did not have the opportunity to test the credibility of her statements." If the Board was suggesting by that comment that her evidence could be discounted merely because she was unavailable for cross-examination, it erred. As stated by the Federal Court of Appeal in *Fajardo v. Canada (Minister of Employment and Immigration)* (1993) 157 N.R. 392 (F.C.A.), it is not for the Refugee Division to impose on itself or claimants evidentiary fetters from which Parliament has freed them.

[Emphasis added]

[59] The Applicants submits it was unreasonable for the RAD to find the documents corroborating the purpose of the Applicant's husband's trip to Canada were not sufficient to overcome its finding that the Applicants were not credible about this purpose. The Applicants cite *Sterling v Canada (MCI)*, 2016 FC 329, at para 12, for the proposition the RAD's approach was tantamount to, "I do not believe you, therefore I do not believe anything that explains why I might be wrong."

[60] The Applicants submit the RAD erred by impugning the corroborative documents because they were disclosed after the Minister intervened in the Applicants' case. The Applicants note that they disclosed this evidence well in advance of their hearing and within the disclosure

deadline. As such, there was no basis for any adverse inference. In the Applicants' view, the RAD compounded its error by finding that there were "minor inconsistencies" in these documents in respect of whether the Applicant's husband was in Canada or the U.S. in July 2019.

[61] The Applicant's suggest that this finding is not borne out by a review of the documents. Nevertheless, the RAD acknowledged that any discrepancies were minor and would not have been a significant concern had there not "already" been questions about when the Applicant's husband was in Canada and the United States. However, no such questions were raised in the RPD's decision. The RPD did not question when the Applicant's husband traveled; it questioned why he traveled. [Emphasis added]

[62] With respect, the Respondent points out and I agree that material omissions in a claimant's BOC may impugn a claimant's credibility: *Ogaulu v Canada (MCI)*, 2019 FC 547. As such, to determine the materiality of an omission, the nature of the omission and the context in which the new information surfaced must be examined. The Respondent cites to Justice MacTavish's (as she then was) decision in *Naqui v Canada (MCI)*, 2005 FC 282:

[23] Not every omission from an applicant's PIF will, however, be determinative of the individual's credibility: *Akhigbe v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, [2002] F.C.J. No. 332 (FCTD) online: QL. The nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission.

[63] The Respondent also refers to *Lawani v Canada (MCI)*, 2018 FC 924, for the proposition a lack of credibility on the central aspects of a claim may extend to other areas. In *Lawani*,

Justice Gascon states:

[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 CanLII 13057 (FCA), [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).

[64] As it pertains to the Applicants' omission, the Respondent submits the RAD's credibility assessment was reasonable.

[65] With respect, I agree. The Respondent highlights that when asked to explain the omission, the PA stated she did not want to make her narrative too long. In my view the RAD reasonably found this explanation insufficient. The PA's BOC was six pages long, contained details of her son's kidnapping, and referred to her husband's failure to raise the ransom funds. Furthermore, she testified that she was aware of her husband's trip and its purpose at the time he travelled.

[66] The Respondent points out the PA's husband's trip only surfaced when the Minister intervened. It was then that the Applicants provided an affidavit from the PA's husband and letters to support his explanation.

[67] In my view, this also counts against the Applicants. The trip was a central part of their narrative: it was allegedly a trip to raise money because the son had been kidnapped. It should have been in the BOC, and I find the RAD's treatment of it reasonable, noting as well that the RPD came to the same conclusion after hearing the PA's oral testimony which it obviously found inadequate.

[68] In addition, the PA's husband did not provide specific dates of his stays in North America, nor did he supply corroborative evidence to resolve the credibility concerns related to these inconsistencies, such as travel itineraries, plane tickets, or passport stamps.

[69] With respect, the RAD's approach was not "microscopic" in its assessment of this important omission. Instead, I conclude the Applicants failed to persuade the RAD in respect of a very material omission concerning a central part of their narrative. The omission undermined the Applicants' claim given they were allegedly in hiding and under threat. In my view this came down to the assessing and weighing of evidence, a function reasonably carried out by the RAD and which in any event forms no part of the role of this Court on judicial review: *Doyle*.

B. *Alleged delay in seeing asylum*

[70] The Applicants submit the RAD's reasoning regarding the delay is confusing and unreasonable. The Applicants point to the RAD's finding of implausibility that the Applicants did not book plane tickets to Canada prior to August 2019 given that they were already in possession of valid Canadian visas. The RAD further found that if the Applicants had really faced violence in their Kashmiri homeland, and then relocated to Islamabad and Karachi, they

would have come to Canada earlier. In the Applicants' view, these findings are impossible to square with the RAD's previous (and opposite) determination that "[i]n the context of multiple moves within Pakistan to evade harm, the delay of six to eight months before leaving Pakistan is not of great concern."

[71] With respect, I disagree. While I agree the several months delay in leaving the country was not determinative by itself, it was open to the RAD to assess this fact in the broader context of subjective fear and find against the Applicants as it did. Taken with the other factual considerations, this finding was not inconsistent but simply another matter of weighing and assessing evidence for and against the Applicants' claims.

[72] More generally, the Applicants' submissions in this respect as in relation to many if not most of their other concerns, are matters of weighing and assessing evidence which are roles assigned to the RPD and the RAD, particularly where credibility is concerned as in this case, and which form no part of the role of this Court on judicial review.

C. *Other corroborative evidence*

[73] The Applicant's submit the RAD erred by rejecting the balance of the Applicants' corroborative documents, including medical evidence, a police complaint (FIR), and affidavits sworn by individuals with first-hand knowledge of the alleged events.

[74] While the reasonableness of the Decision must and will be approached not on a piecemeal but on an overall basis, I will nonetheless address each.

[75] The Applicants say medical documents were submitted to substantiate that the PA and her daughter were wounded during the attack in May 2019, when the Applicant's son was kidnapped. The Applicants refute the RAD's findings that these documents were not sufficient to prove the facts alleged. In this, I agree with the Applicants. In my view, unless a treating physician has personal knowledge of the cause of injuries, they cannot say how it occurred. That said, the RAD's error was not fundamental in fact-finding such that it undermines the acceptability of the Decision.

[76] Moreover, it remained open to the RAD to conclude as it did that this evidence did not overcome the significant omission of the husband's travel from the PA's BOC. The RAD was entitled to make this finding in light of the major credibility issues. This again is part of the weighing and assessing of evidence, which was for the RAD to do.

[77] Concerning the FIR, the Applicants submits the RAD unreasonably impugned the report regarding the son's kidnapping. In the Applicants' view, the fact the Applicants were not in possession of the original FIR at the hearing was out of her control and not a reasonable basis for impugning the document, particularly given that there was other evidence to substantiate the information in the FIR. The Applicants also submit the fact the Applicant's relative did not state in his affidavit that he obtained a copy of document was irrelevant. The Applicants suggests that the RAD's microscopic analysis suggests it approached the evidence with "a zeal to impugn it" (*Attakora v Canada (MEI)*, [1989] FCJ No 444 at para. 9).

[78] I am not persuaded. The Applicants had ample time to obtain the original, before or even after the RAD hearing. The issue with the FIR was that the RPD did not have an opportunity to examine the original, an expectation it reasonably had, given the credibility issues in this case and the prevalence of fraudulent documents from Pakistan. And yet the Applicants took no steps to resolve this issue before the RAD hearing.

[79] The Respondent points out that the RAD considered the person who allegedly obtained the FIR did not attest to doing so, a concern the RPD raised, but which the Applicants although given the opportunity, chose not to address. The Applicants failed to heed the concerns of the RPD and I do not fault the RAD for raising them again with the PA on appeal. The onus was on the Applicants to make their case, and in this respect they failed to do so; the RAD's conclusions were reasonably made in the circumstances when looking at the context and cumulative effect of these issues relating to credibility concerns.

[80] On the letters of support and affidavits, the Applicant's submit that the RAD's rejection of these documents was unreasonable. In the Applicants' view, it is unreasonable to distrust evidence merely because it emanates from family and friends, particularly where such persons are the ones with first-hand knowledge of the events alleged, and on this I agree. However, I also find this error was not a fundamental error in fact-finding that undermines the acceptability of this Decision.

[81] Regarding the affidavit by the PA's uncle, the Applicants submit the document's failure to explicitly reference the kidnapping was not a reasonable basis for rejecting it. The Applicants

point out that the Federal Court has consistently warned against impugning corroborative documents based on what they do not say, rather than what they do say. Moreover, given all of the circumstances outlined in the affidavit, the affiant's belief that the Applicants were in danger of being killed by an extremist group is not a reasonable basis for impugning this evidence. In the Applicant's view, the RAD's finding was particularly untenable given the RPD's acknowledgment that the extremist group has connections to the ISI and that "the group's actions are heavily influenced by Pakistani ISI and aligned with the Pakistani state's interests."

[82] Concerning the support letters and affidavits, the Respondent submits these documents did not address the specific credibility issues raised with the PA's material omission of her husband's travel to Canada and the U.S. And, with respect, it is fairly obvious that they don't.

[83] More fundamentally however, the Applicants are again asking the Court, as they asked the RPD and the RAD before, to weight and assess the evidence which is for the RAD, not this Court to do.

[84] Moreover, on judicial review the case must be viewed holistically and contextually, and while some of the Applicants' submissions are attractive standing alone and out of context, when assessed with the totality of their case, I am not persuaded the RAD's conclusions are unreasonable.

D. *Plausibility of the agents of persecution*

[85] The Applicants submit the RAD lacked reasonable grounds for finding that the Applicants were not credible because it is “implausible” that the extremist group would target them. The Applicants “confirmed that the alleged [extremist] threat against her was not related to her Shia belonging.” As such, the Applicants submit that it did not make sense for the RAD to acknowledge that the extremist group did not target the Applicants for being Shia, and then to find that the extremist group would not target the Applicants because they do not specifically target Shias.

[86] The Applicants submit the RAD erred by focusing on the extremist ideology and lack of anti-Shia behaviour rather than considering the group’s connections to the Pakistani state and the ISI, which, in the Applicants’ view, were at the heart of this case given the alleged connection between the group and the colonel. The Applicants’ suggest that the RAD’s omission was particularly unreasonable given the RPD’s undisturbed acknowledgment the extremist group has connections to the ISI.

[87] The Respondent submits the issue on this point was whether the objective evidence aligned with the PA’s assertions. Given the significant credibility issues with the Applicants’ claim, the Respondent’s submit and I agree the RAD was entitled to prefer the objective evidence as a subject matter expert and upon balancing the record before it.

[88] Again and with respect, the Applicants are raising issues of weighing and assessing evidence. This was a job for the RPD, which had the benefit of the PA's oral testimony, and then for the RAD. I am not persuaded the RAD assessed these matters unreasonably.

VII. Conclusion

[89] In my respectful view, the Decision of the RAD was reasonable. In my view it is justified, transparent and intelligible. Therefore, the Application for judicial review will be dismissed.

VIII. Certified Question

[90] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-8547-21

THIS COURT'S JUDGMENT is that judicial review is dismissed, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8547-21

STYLE OF CAUSE: SHAHEEN ZAMAN, REHAN AHMAD BUTT (A MINOR), SHAYAAN AHMAD BUTT (A MINOR), ERSA MUHAMMAD IMRAN BUTT (A MINOR), MEERAB MUHAMMAD IMRAN BUTT (A MINOR), MUHAMMAD FARHAN BUTT (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 28, 2022

JUDGMENT AND REASONS: BROWN J.

DATED: OCTOBER 6, 2022

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