

Federal Court



Cour fédérale

Date: 20230524

Docket: IMM-368-22

Citation: 2023 FC 724

Toronto, Ontario, May 24, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

RANJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of India and practicing Sikh, claims that he fears a cult, Dera Sacha Sauda [DSS] led by Guru Gurmeet Ram Rahim, that attempted to recruit him and then beat and threatened him on various occasions. The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated December 24, 2021, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant asserts that the RAD's decision was unreasonable for several reasons related to its assessment of the Applicant's credibility and the evidence filed by the Applicant.

[3] For the reasons that follow, I am not satisfied that the Applicant has demonstrated that the RAD's decision was unreasonable and accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicant entered Canada on March 29, 2016 using a fraudulent passport and claimed refugee protection. In his Basis of Claim [BOC] form, the Applicant alleged that the DSS had attempted to recruit him and convert him from his Sikh religion. The Applicant alleged that he had been assaulted and that both he and his family had been threatened, on several occasions, by DSS followers. The Applicant stated that he did not keep track of the dates of the alleged beatings or mistreatment by the DSS.

[5] The Applicant further alleged that: (a) local police had refused to assist him after he was harmed by the DSS as the DSS had followers in the police department and political allies; (b) the DSS was looking for him and his family; (c) the DSS would "do anything" to harm him and his family; and (d) if he returned to India he would be harmed or even killed. The Applicant stated that before he fled to Canada he had moved to other regions of India, specifically Punjab and Delhi, and that his family was "in hiding" to escape the DSS.

[6] On August 9, 2021, the RPD dismissed the Applicant's refugee claim, with the determinative issue being the Applicant's credibility. The Applicant appealed the RPD's determination to the RAD.

[7] On December 24, 2021, the RAD dismissed the Applicant's appeal and confirmed the decision of the RPD that the Applicant was neither a Convention refugee nor a person in need of protection. The RAD reviewed the decision of the RPD and determined that despite some errors on the part of the RPD, overall there were numerous credibility concerns with the Applicant's allegations and therefore the Applicant failed to support his claim with sufficient credible evidence.

[8] The RAD agreed that the credibility of the Applicant's allegations and the Applicant's overall credibility was undermined for several reasons, including: (1) his inability to provide any details or dates with respect to the alleged mistreatment and beatings by the DSS; (2) his inconsistency as to whether or not he was a "Panch" (an elected representative and leader in the village), a material fact that would raise the level of the Applicant's risk; (3) his vague, inconsistent and evolving evidence concerning his allegation that he and his family were in hiding and threatened for years prior to the Applicant coming to Canada; (4) he alleged that his family has been in hiding or are being threatened and harassed by the DSS since the Applicant left for Canada, yet no harm has come to them even though the Applicant's evidence was that the DSS would not "let them live" if the Applicant and his family did not convert; and (5) his inconsistent evidence with respect to having received medical attention after an alleged assault by the DSS.

[9] Additionally, the RAD acknowledged that the RPD had considered the Applicant's limited formal education (which the Applicant emphasized), the stress inherent at an RPD hearing and cultural factors. The RAD also took into consideration the fact that the Applicant was familiar with the format and issues that would be addressed at an RPD hearing (having participated in one prior) and had assistance from counsel. The RAD was not satisfied that the Applicant's credibility problems were attributable to his low level of education or cultural factors.

[10] The RAD also considered the Applicant's allegation that the RPD had erred by failing to give weight to his supporting documents, which consisted of two affidavits and one certificate. The RAD found that these documents were not credible and were to be given no weight. The RAD identified specific concerns on the face of the documents and their delivery, as well as in comparison to the National Documentation Package information regarding proper affidavits from India.

II. Issues and Standard of Review

[11] The sole issue for determination is whether the RAD's determination regarding the Applicant's credibility was reasonable.

[12] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will

intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

III. Analysis

[13] Credibility findings are part of the fact-finding process and are to be given significant deference upon review. This Court must refrain from impermissibly re-weighing and reassessing the evidence considered by the decision-maker absent exceptional circumstances [see *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6; *Vavilov, supra* at para 125].

[14] The Applicant points to several errors that he asserts render the RAD's credibility determination unreasonable, which I will address in turn. While the Applicant may not agree with the RAD's ultimate determination regarding his credibility, for the reasons that follow, I am not satisfied that he has demonstrated any errors made by the RAD in its consideration of his credibility that warrant the Court's intervention.

[15] With respect to the RAD's finding that the Applicant gave inconsistent evidence regarding when his problems with the DSS commenced, the Applicant asserts that the collective reading of the evidence clearly shows that initially the Applicant was just being approached to convert but that as time passed, he was being mistreated, threatened and then finally beaten. As this occurred over a period of time, the Applicant asserts that it was unreasonable for the RAD to determine that there had to be a fixed date when the problems with the DSS began. Moreover, the Applicant asserts that the RAD erred in not reasonably considering the Applicant's level of education of only

five years, his occupation as a farmer in rural India and cultural aspects prevalent in a small village in a developing country.

[16] I reject these assertions. It was open to the RAD to consider the Applicant's shifting and contradictory accounts as to these key aspects of the Applicant's narrative to conclude as it did on the record before it. The RAD articulated numerous inconsistencies and contradictions in the evidence presented by the Applicant related to the central allegations of mistreatment by the DSS. I find that the RAD's credibility findings made as a result of the Applicant's evolving testimony engaging facts central to his claim were reasonable [see *Oviawe v Canada (Citizenship and Immigration)*, 2021 FC 204 at para 27; *Mahmoud v Canada (Citizenship and Immigration)*, 2016 FC 1020 at paras 12-13; *Karakan v Canada (Citizenship and Immigration)*, 2014 FC 586 at paras 19-20].

[17] Moreover, I find that the RAD reasonably considered the Applicant's limited level of education, his occupation as a rural farmer, and cultural factors to determine whether they could impact his ability to recount his narrative or to identify any specific dates or details as to the DSS's alleged beatings, mistreatment or torture at any point between 2014 and 2016. The RAD reasonably found that the Applicant's level of education was not a sufficient explanation for his lack of clear evidence of dates as to when he claimed to have been mistreated. With respect to cultural differences, I acknowledge that this Court has held that credibility determinations based on "a finding of implausibility" must be sensitive to cultural differences [see *Idimogu v Canada (Citizenship and Immigration)*, 2019 FC 375 at paragraph 16]. However, the RAD's credibility

determination was not based on a finding of implausibility, but rather on clear contradictions in the evidence. As such, the role of cultural differences was not paramount to the RAD's findings.

[18] With respect to the context of the geographical area and circumstances of the small village where the Applicant lived and its potential relevance to his evidence on avoiding and hiding from the DSS for two years, the Applicant asserts that "it is possible that initially the harassment and threats were not that serious the Applicant tried to avoid the perpetrators by avoiding or hiding and was successful but at times was also harassed when they would run into him" [sic, emphasis added]. However, this explanation was not advanced before the RPD or the RAD and it is not open to the Applicant to advance it for the first time on judicial review. Moreover, this submission lacks merit as it is based on speculative possibilities and in any event, these possibilities completely fail to address why the basis for the RAD's finding - that the Applicant's evidence concerning being in hiding was inconsistent, vague and evolving - is unreasonable.

[19] In relation to the evidence of the Applicant allegedly being in hiding from the DSS for two years, I do not accept the Applicant's argument that it was unreasonable for the RAD to expect the Applicant to provide an account of this time. The RAD considered the lack of any dates, details, and relocation addresses, as well as the inconsistencies between the Applicant's oral testimony and written narrative as to the few details that he did provide. The RAD evaluated the evidence and reasonably concluded that the evidence was vague, evolving and not credible.

[20] The Applicant submits that the RAD erred in doubting the truth of his testimony regarding his status as a Panch in the face of his inconsistent supporting documentation identifying him as

one. The Applicant states that the Applicant “never denied that he was a Panch” and the documents relied upon by the RAD (which identify him as a Panch) do not indicate that he was being forced to convert because of his role as Panch.

[21] I am not satisfied that the Applicant has demonstrated any error on the part of the RAD in finding that his inconsistency regarding whether he was a Panch undermined his credibility. The RAD considered the Applicant’s supporting documents explicitly stating he was a Panch and reviewed and considered the Applicant’s testimony at his RPD hearing, noting that the Applicant did not testify he was a Panch. The RPD hearing transcript records the Applicant’s testimony as follows:

MEMBER: Okay. And do you know if there's any reason why you were targeted, why you were singled out the - by him and his people?

CLAIMANT: Because from the very beginning, then they saw that I was going to the Sikh temple, I was living there, and they are telling me not to go to the Sikh temple, but go to them.

MEMBER: I understand, but were you a leader in the Sikh temple, or was there any particular reason? Were you a leader in the community?

CLAIMANT: It's just I wasn't anything like that. I was going to the Sikh temple, and then lot of other people were also going with me, so they knew that all these people knew me, so they thought if I go, then all these people will go to them too.

[Emphasis added.]

[22] Contrary to the Applicant’s assertion, the RAD did not consider the Applicant’s documents “for what they do not say”. Rather, the RAD properly considered the Applicant’s documents “for what they do say” – namely, that he was a Panch – and reasonably found that the documents were

inconsistent with the Applicant's testimony on the issue [see *Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 (FC), 167 FTR 309; *Olusola v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paras 17-19]. Moreover, the fact that the RAD ultimately gave these documents no weight does not prevent the RAD from considering their impact on the Applicant's credibility. It was the Applicant who presented these documents to the RAD as relevant and credible. It is therefore not now open to the Applicant to suggest that the RAD cannot consider them in assessing his credibility.

[23] The Applicant further asserts that the RAD did not explain how the Applicant's status as a Panch was a material inconsistency. I reject this assertion, as the RAD's reasons clearly state:

This inconsistency is material because he alleges the DSS was targeting him because of his ability to influence other Sikhs at his temple to join the cult, and the role of "Panch," or leader in the community, would engender a higher profile and therefore raise the level of risk. I find that the foregoing undermines the credibility of the Appellant's allegations and overall credibility.

[24] With respect to his medical treatment, the Applicant asserts that the RAD erred because there was in fact no inconsistency, as the Applicant clarified at the hearing that he did not need medical treatment even though he was taken to see a doctor. There is no merit to this assertion and it amounts to nothing more than an improper request for the Court to reweigh the evidence. Moreover, for the first time, the Applicant now asserts that the contradictions in the supporting documents regarding the need for medical care can be explained on the basis of the author's lack of familiarity with English. This argument was not raised before the RAD and therefore I will not consider it.

[25] The Applicant makes several arguments with respect to the RAD's evaluation of his three supporting documents. However, it is the role of the RAD to weigh and assess the quality of these documents. The RAD reasonably examined the documents, compared the documents to the available National Documentation Package information and identified specific weaknesses and concerns regarding the documents in coming to its decision not to give weight to them. It is not the role of this Court to now reweigh the same evidence [see *Azenabor, supra* at paras 29, 35; *Liu v Canada (Citizenship and Immigration)*, 2022 FC 1003 at para 75; (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61)].

[26] Finally, the Applicant asserts that the RAD erred in not considering three newspaper articles which provide information about the DSS. I reject this assertion. A decision-maker is generally presumed to have considered all of the evidence before them. It is well-established in the jurisprudence of this Court that a decision-maker need not refer to every piece of evidence they received that is contrary to their finding, and to explain how they dealt with it. However, this presumption will not stand where the decision-maker is silent on evidence that is critical and contradicts the decision-maker's finding [see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 39; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 FC 53 at paras 16-17; *Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10].

[27] Although the RAD's reasons for decision make no specific mention to these newspaper articles, the decision notes at the outset that an independent assessment of all the evidence before the RPD was conducted, which includes the newspaper articles. Moreover, the RAD was under no

obligation to address the newspaper articles directly as there was no evidence within them providing a personal link to the Applicant or his risk [see *Asashi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 102 at para 10] and the Applicant has not explained how the information contained in the articles contradicts any of the determinations made by the RAD.

[28] At the hearing, the Applicant asserted for the first time that the RAD erred in not remitting this matter back to the RPD in light of the RAD's finding that the RPD had made a number of errors. This argument appears nowhere in the Applicant's memorandum of fact and law and accordingly, I will not consider it.

IV. Conclusion

[29] For the reasons stated above, I find that the Applicant has not demonstrated that the RAD's credibility determination was unreasonable. Accordingly, the application for judicial review shall be dismissed.

[30] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-368-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Harry Mann FOR THE APPLICANT

Diane Gyimah FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mann Law FOR THE APPLICANT
Mississauga, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario