

Federal Court



Cour fédérale

**Date: 20230608**

**Docket: IMM-4338-22**

**Citation: 2023 FC 813**

**Toronto, Ontario, June 8, 2023**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**MUHAMMAD ARSHAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated April 25, 2022 [the Decision]. In the Decision, the RAD upheld the decision of the Refugee Protection Division [RPD], which found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is dismissed, because I find the Decision to be reasonable.

## II. Background

[3] The Applicant is a citizen of Pakistan who alleges that he faces religious persecution from various religious extremist groups, namely the Lashkar-e-Jhangvi [LeJ], Sipah-e-Sahaba, and Tehrik-e-Taliban. He claims to have received threats and been subject to attacks in 2018 and 2019 due to his faith as a Shia Muslim and his activities organizing and fundraising for his Imam Bargah in Sialkot, Pakistan.

[4] The Applicant was appointed as the Matwali (administrator) of his Imam Bargah in September 2017. He claims that in December 2018 he received a call from a private number. The Applicant says that, after identifying himself as a member of the LeJ, the caller threatened him, stating that he would face consequences if he did not discontinue his services for the Imam Bargah. He claims he received another threatening call on May 5, 2019, this time from someone who identified himself as the District Organizer of the LeJ.

[5] The Applicant claims in his Basis of Claim [BOC] narrative that, on May 22, 2019, while returning home after completing his Imam Bargah work, he and his friend were shot at by two unknown persons on motorbikes [the May Incident]. He says that he went to the local police to report what had happened and register a criminal case, but that the police were reluctant to do so because of his mention of the LeJ. He states that he filed a petition in the court and that the court issued a notice to the Station House Officer for a detailed report.

[6] The Applicant claims to have had two other encounters with members of the LeJ. First, he claims to have received another threatening phone call in June 2019. Second, he claims that in July 2019, while he was away, LeJ members came searching for him at the house at which he had been staying.

[7] The Applicant states that after these encounters he realized that the LeJ would trace him anywhere in Pakistan and murder him. As he had already obtained a Canadian visitor visa, his family advised him to travel to Canada, and he did so on July 16, 2019, following which he sought refugee protection.

[8] The RPD denied the Applicant's claim on January 21, 2022, with the determinative issue being credibility. He appealed the RPD's decision to the RAD.

### III. Decision under Review

[9] As with the RPD's decision, the determinative issue before the RAD was credibility. After conducting an independent review of the arguments and evidence, the RAD concluded that the RPD had correctly found that the Applicant was not a credible witness and had not presented sufficient credible and trustworthy evidence to establish the allegations at the core of his claim for protection. The RAD reviewed each of the RPD's adverse credibility findings.

[10] First, the RAD noted that the Applicant's evidence was inconsistent as to his intention to stay in Canada. After reviewing the transcripts from the RPD hearing, the RAD noted that the Applicant clearly and directly stated, multiple times, that he intended to return to Pakistan.

However, later in the hearing, the Applicant changed his testimony to state that, while he initially planned to stay in Canada only for a short period of time, he changed his mind after learning new information. The RAD noted that, in his BOC narrative, the Applicant had indicated that at the time he left Pakistan in July 2019 he knew that the LeJ would trace him anywhere in Pakistan and that he had to flee Pakistan for his life. The RAD found this to be inconsistent with his testimony that he initially only intended to visit Canada briefly and concluded that this inconsistency undermined his alleged subjective fear and his overall credibility.

[11] Next, the RAD analyzed the Applicant's omission from his BOC narrative of any reference to a *fatwa* having been issued against him. While the Applicant testified at his RPD hearing that he found out about the *fatwa* on June 28, 2019, and saw the *fatwa* posted to the wall outside of his home on June 30, 2019, the RAD noted that there was no mention of the *fatwa* in his BOC narrative, which was signed in August 2019. When asked by the RPD about the omission, the Applicant stated that he had forgotten about the *fatwa*. The RAD found that it was reasonable to expect that he would both remember and mention this significant event in his narrative, which was completed with the assistance of counsel. It found that the omission of the *fatwa* from the BOC narrative was material and significant and, although it did not in itself establish that the Applicant was not telling the truth about the *fatwa*, the omission undermined his overall credibility.

[12] The RAD then considered the Applicant's inconsistent testimony concerning the provenance of the *fatwa* document that the Applicant had entered into evidence. The RAD found the Applicant's testimony concerning how he obtained the *fatwa* to be evolving. While he

initially testified that his wife obtained the *fatwa* from his lawyer in Pakistan and sent it to the Applicant, he later testified that he spoke to his lawyer and instructed him to collect the document from his wife. The RAD also found that this testimony was inconsistent with the Applicant's testimony at the outset of the RPD hearing that, since coming to Canada, he had not communicated with anyone from Pakistan other than his family.

[13] Based on these inconsistencies, the RAD found that the Applicant's credibility was further undermined, as was the reliability of the *fatwa*, and that corroborative evidence was therefore required, but had not been provided, with respect to the provenance of the *fatwa*. Given the credibility issues with respect to the *fatwa*, and in consideration of the prevalence and availability of forged and fraudulent documents in Pakistan, the RAD found that the *fatwa* was not a reliable document and gave it no weight in establishing the Applicant's allegations.

[14] Next, the RAD considered the Applicant's supporting affidavits and his testimony concerning them. After reviewing the evidence, the RAD found that the affidavits were not credible and that the Applicant's explanations concerning them were not credible. The RPD first raised concerns about the affidavits because they were drawn in English without any indication that they had been translated, while the Applicant had testified at the outset of the hearing that the affiants did not understand English. In response, the Applicant testified that his lawyer in Pakistan told him that the affiants had visited the Applicant's lawyer, who assisted them in translating and swearing the affidavits, and then forwarded the documents to the Applicant in Canada.

[15] The RAD noted again that the Applicant had not addressed the inconsistency in his testimony concerning with whom he had been in contact in Pakistan since being in Canada. The RAD then noted concerns that the Applicant's explanation about the provenance of the affidavits was not consistent with the documents themselves. The RAD observed that, while the Applicant testified that the affiants visited his lawyer who is located in Sialkot, Pakistan, the affidavits themselves showed that they were sworn by different notaries in different locations, which were 125 and 600 kilometers away from Sialkot. The RAD also noted that the affidavits were drawn up on stamp paper, containing notations that they were obtained from different stamp paper vendors from different cities and yet bearing closely sequential serial numbers. The RAD found these circumstances unlikely and, based on the analysis explained above, concluded that the affidavits were not reliable documents.

[16] The RAD then addressed the Applicant's inconsistent testimony about the May Incident. In his narrative, the Applicant stated that he was returning home with a friend on a motorbike when two unknown persons on motorbikes shot at them. At the RPD hearing, however, he initially testified that he was with his brother at the time of the attack, rather than a friend, and then later recounted in testimony that two men on a single motorbike approached him and his friend. When faced with these inconsistencies, the Applicant reiterated that he was with his friend and was unable to explain the inconsistencies. The RAD found that these inconsistencies cast doubt on the allegation and on the Applicant's overall credibility.

[17] Ultimately, in light of all the inconsistencies, the RAD found that the Applicant was not a credible witness.

[18] Turning to the supporting evidence, the RAD concluded that the supporting evidence was insufficient to establish the Applicant's claim. The three documents analyzed by the RAD were the court petition, a letter from the Imam Bargha in Pakistan, and a letter from the Al-Eman Society of Canada.

[19] The Applicant submitted a copy of the court petition allegedly filed in respect of the May Incident, and he claimed that it had been forwarded to him by his lawyer in Pakistan. The RAD found that the court petition, irrespective of whether it was genuine, did not establish the truth of the allegations it contained, as these allegations originated from the Applicant, whom the RAD found to not be credible. Further, while the petition appeared to be an original copy from the court, the RAD also noted that the Applicant testified that the copy of the petition he submitted into evidence was not an original, and that the original Urdu petition was translated by his lawyer in Pakistan. As such, in addition to the Applicant's testimony being inconsistent, the RAD found that it was reasonable to expect that a translated document would contain a statement attesting to the translation and that the lack of such attestation undermined the reliability of the document.

[20] The Applicant also presented a copy of a letter from his Imam Bargah confirming his appointment as Matwali. Again, despite the Applicant's initial testimony that he had not communicated with anyone in Pakistan other than his family since leaving for Canada, the Applicant changed his testimony when asked how he obtained the letter, indicating that he contacted the Imam Bargah to ask for a letter after he filed his refugee claim. Further, while the Applicant initially testified that the Imam Bargah uses only Punjabi and Urdu, the RPD noted that the letter was in English, after which the Applicant stated that he requested that the Imam

Bargah translate the document into English. The RAD agreed with the RPD's findings that it was reasonable to expect that a translated document would contain a statement attesting to the translation and that the lack of such statement undermined the reliability of the document.

[21] Finally, with respect to the letter from the Al-Eman Society of Canada, the RPD found that the letter established that the Applicant is a practicing Shia Muslim but that it did not establish the allegations at the core of his claim. This finding was unchallenged on appeal, and the RAD agreed with the RPD's findings.

[22] In light of the foregoing analysis, the RAD found that the Applicant was not a credible witness and did not provide sufficient credible and trustworthy evidence to establish the allegations at the core of his claim. The RAD also noted that the Applicant did not challenge the RPD's finding that the Applicant does not face serious possibility of persecution based on his profile as a Shia Muslim, with which the RAD agreed.

[23] The RAD therefore confirmed that RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection.

#### IV. Issues and Standard of Review

[24] The sole issue raised in this application for judicial review is whether the RAD's decision is based on unreasonable credibility findings.



[25] As suggested by this articulation of the issue, the parties agree (and I concur) that the applicable standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

[26] The Applicant's submissions challenge particular aspects of the RAD's credibility analysis, each of which I will address below.

A. *The Applicant's Intentions in Canada*

[27] The Applicant submits that the RAD's finding that he was not credible, because he initially testified that he intended to return to Pakistan, was based on a microscopic assessment of his testimony. He argues that it is clear from his testimony that his plans changed after he arrived in Canada and was advised by family members that the LeJ were still looking for him in Pakistan.

[28] I find no merit to this submission. Like the RPD, the RAD found not only an inconsistency within the Applicant's testimony but also an inconsistency between his testimony and his BOC narrative, which stated that he feared for his life before he left Pakistan. It was reasonable for the RAD to make an adverse credibility finding based on this inconsistency.

[29] I have also considered the Applicant's argument, advanced at the hearing of this application, that the RAD made a factual error in stating in its decision that the Applicant

testified that, after arriving in Canada, he learned that a *fatwa* had been issued against him, which caused him to change his intention and decide to remain in Canada and seek refugee protection. I accept the Applicant's submission that the Applicant testified not that he learned of the *fatwa* after arriving in Canada but rather that he learned that the LeJ were still looking for him, and that it was learning the LeJ were still looking for him in Pakistan that caused him to change his original intentions of returning to Pakistan.

[30] However, the RAD's reference to this testimony is found in a paragraph of the Decision in which the RAD was explaining the RPD's decision. What the RPD actually said was that the Applicant testified that, after arriving in Canada, he learned from his wife that the LeJ were looking for him, because of the *fatwa* that had been issued against him. While the RAD's summary of this portion of the RPD's decision is inaccurate, I agree with the Respondent's position that this error does not undermine the reasonableness of the RAD's decision. As is its obligation, the RAD conducted its own analysis and made its adverse credibility finding based on the inconsistencies explained above, not based on evidence related to when the Applicant learned of the issuance of the *fatwa*.

#### B. *The Fatwa*

[31] The Applicant also argues that the RAD erred by finding that he was not credible about the *fatwa* because he did not mention it in his BOC narrative. He submits that this omission was not a reasonable basis for the adverse credibility finding, because he disclosed the *fatwa* in his evidence in support of his claim. However, as the Applicant acknowledges, the RAD found that, while the omission of the *fatwa* from the BOC narrative was material and significant, this

omission did not in itself establish that the Applicant was not telling the truth about the *fatwa*. Rather, the RAD concluded that the document was not trustworthy because the Applicant provided inconsistent testimony about who sent it to him in Canada.

[32] The Applicant also challenges this aspect of the RAD's analysis, arguing that a review of his testimony in its entirety demonstrates that what he meant to express is that he had instructed his wife to collect his documents and deliver them to his lawyer in Pakistan, who then sent the documents to him in Canada. Again, I find no merit to this submission. As explained earlier in these Reasons, the RAD identified inconsistency in the Applicant's testimony as to who sent the *fatwa* to him, as well as inconsistency as to whether he had communicated with anyone in Pakistan other than his family after coming to Canada. It was reasonable for the RAD to doubt the reliability of the *fatwa* based on the inconsistent evidence surrounding its provenance.

### C. *May Incident*

[33] The Applicant argues that the RAD erred by finding that he was not credible in his evidence about the alleged attempt on his life in the May Incident. He acknowledges the inconsistency between his BOC narrative and his testimony, as to whether his assailants rode one or two motorbikes, but argues that he provided a plausible explanation that his reference to motorbikes in plural was meant to express that he and his friend were on one motorbike while his assailants were on another. He also argues that the RAD's finding was made without regard to corroborative evidence, including the Applicant's petition to the court in Sialkot, which referred to his assailants being on one motorbike.

[34] Again, the RAD's analysis was based on inconsistencies in the evidence, and the RAD was not obliged to accept the Applicant's explanation for those inconsistencies. Nor was its negative credibility finding precluded by the fact that the record includes other evidence that the Applicant argues to be corroborative. Moreover, the RAD based its analysis not only on the inconsistency as to the number of motorbikes ridden by the alleged assailants but also on inconsistency between the BOC narrative and the Applicant's testimony as to whether he was in the company of his brother or a friend at the time of the alleged attack. The RAD's analysis is reasonable and there is no basis for the Court to intervene.

D. *Corroborative Documents*

[35] The Applicant submits that the RAD erred by having already concluded that he was not credible before it considered his corroborative documents, such that it was not possible for the corroborative documents to overcome the RAD's adverse findings. This submission mischaracterizes the RAD's analysis, which expressly considered whether, notwithstanding the finding that the Applicant was generally lacking in credibility, there was insufficient corroborative evidence to establish the allegations at the core of his claim. However, the RAD found this evidence unreliable or otherwise lacking in probative value to establish the Applicant's allegations.

[36] The Applicant also argues that the RAD unreasonably impugned the corroborative evidence. He refers to the letter from his Imam Bargah in Pakistan, as well as the affidavits from his friends, which the RAD found unreliable in part because they were drawn in English (which the Applicant testified the authors did not speak) with no indication of translation. The Applicant

submits that this analysis was unreasonable, because the RAD based its analysis on Canadian evidentiary practices, without any evidence or specialized knowledge to support its assumption that a notation or other evidence of translation would be expected to accompany such documentation prepared in Pakistan.

[37] I find no error in this aspect of the RAD's analysis. Rather, I find it reasonable for a decision-maker to be concerned as to the reliability of documentary evidence, prepared in a language that the author of the document does not speak, without the benefit of evidence that the document has been accurately translated for the author or represents an accurate translation of a document that originated in the author's own language. In the case at hand, the Applicant testified as to his conversations surrounding translation of the documentary evidence, but the RAD rejected that testimony because of its inconsistency with the Applicant's previous evidence that he had not been in contact with anyone in Pakistan other than his family.

## VI. Conclusion

[38] Having considered the Applicant's arguments, I find that the Decision is reasonable and that this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-4338-22**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-4338-22

**STYLE OF CAUSE:** MUHAMMAD ARSHAD v THE MINISTER OF  
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**PLACE OF HEARING:** TORONTO, ONTARIO

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