

Federal Court



Cour fédérale

Date: 20230629

Docket: IMM-4013-22

Citation: 2023 FC 914

Ottawa, Ontario, June 29, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**SAHIB SINGH
JASWINDER KAUR
PARMEET KAUR
ARMAN SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek the judicial review of the decision made by the Refugee Appeal Division [RAD]. The judicial review is made under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and concerns the appeal decision which affirmed the decision of the Refugee Protection Division [RPD] finding that the Applicants are neither Convention refugees nor persons in need of protection (sections 96 and 97 of IRPA).

[2] Both the RPD and the RAD concluded that the credibility of the Principal Applicant, Sabib Singh, was the determinative issue for all four of the Applicants. His wife and their two children rely on his narrative to advance their refugee protection claims. During the RPD hearing, the Principal Applicant's testimony changed when asked about the same events more than once. On appeal, his narrative evolved again as he sought to introduce new evidence and allegations.

[3] For the reasons that follow, I find that the RAD's decision was reasonable. The RAD appropriately made findings on the Principal Applicant's credibility and considered whether to admit new evidence in accordance with the IRPA and established case law. Therefore, this application will be dismissed.

I. The facts and the hearing before the RPD

[4] The Applicants are a family of Indian nationality and Sikh faith. The Principal Applicant was a farmer who owned a dairy farm in the city of Karnal. He alleges that he fears persecution from the Indian police acting on behalf of Ms. Davinder Kaur ("Gogi"). Gogi is the sister of the Principal Applicant's childhood best friend, Jatinder Singh. The Principal Applicant asserts that Gogi and her husband's family are well-connected members of the army and India's ruling party.

[5] The Principal Applicant's fear of persecution stems from four incidents that occurred over a period of two decades. The first incident happened in 2001, when the Principal Applicant angered Gogi by being critical of her plan to adopt her brother (Jatinder)'s son. Next, in 2010, Gogi allegedly threatened to kill the Principal Applicant after he again interfered in her family

affairs, this time concerning the division of property between Gogi and her brother. Third, the Principal Applicant alleges that in 2017, Gogi resorted to bribing local police officials to subject him to torture and falsely implicate him in criminal charges related to his role in the construction of a Sikh temple. The final incident arose after the Applicants' arrival in Canada but prior to the RPD hearing. He and his family arrived in Canada on June 25, 2017. The Applicants sought refugee protection on December 28, 2017. It is contended that in 2019, local police in India issued a "wanted notice" of the Principal Applicant and served it on his friend, Neelam Notna, on September 20, 2019.

[6] As can be seen, there are significant time gaps between the alleged incidents that are said to give rise to the justification for seeking refugee status in Canada. The time gaps between the four events are just as important as the events themselves. When questioned about the period between 2001 to 2010, as well as between 2010 to 2017, the Principal Applicant testified that while there were a series of "minor incidents", he chose not to document them on his Basis of Claim form (BOC) nor in subsequent amendments to his BOC. In fact, during the RPD hearing, the Principal Applicant was not able to answer basic questions when prompted to provide further information regarding the nature and content of these incidents on the time gaps. A closer examination of the alleged incidents will illustrate the difficulty.

[7] I begin with the first incident in 2001. The Principal Applicant alleges that his childhood friend Jatinder gave up his son Akashdeep for adoption to his sister Gogi. The Principal Applicant claims that he upset Gogi by trying to convince Jatinder not to go through with the adoption. According to him, Gogi has held a grudge against him since this incident.

[8] The Principal Applicant provides no information about any event arising over the next nine years (i.e. from 2001 to 2010). At some point in 2010, Gogi allegedly sought to reverse the adoption of her brother Jatinder's son following an argument she had with him and their father. It appears that the incident consists of an argument concerning the division of the father's property between Gogi and her brother. The Principal Applicant involved himself by engaging in a verbal altercation with Gogi in which he claims he received a death threat. Based on the Principal Applicant's testimony, he began fearing for his life at that time.

[9] During the RPD hearing, it sought to gain a better understanding of the intervening years from 2010 to 2017, which is when the next incident allegedly occurred. The Principal Applicant stated that only "small incidents" happened over this period. When asked what exactly Gogi did, the Principal Applicant raised a new contention that in 2010 he was "forced to save his life" after noticing Gogi and others were following him on the street. The Principal Applicant also stated that in 2014, he saw another individual follow him. No details were forthcoming. The RPD member questioned why the Principal Applicant had not mentioned these events on his BOC nor its subsequent amendments. The Principal Applicant stated as follows:

"For me, there was small incidents that happened on me. If there was an attack on my life with some weapon, I would have mentioned it. But the incidents that happened on me were small incidents. And what happened with the me in 2017 in the station, the big incident, that I have mentioned." (RPD Transcript p. 14 at line 40)

[10] The RPD member also sought to resolve inconsistencies regarding the residency and travel history of the Applicants. On Schedule A of his Generic Application Form, the Principal Applicant indicated that he had lived and worked in the city of Karnal from 2007 to 2016.

However, his temporary visa application specified that he worked in Karnal since 2005.

Moreover, during the hearing, the Principal Applicant testified that he had relocated his family from the village of Peont to Karnal in 2014. When given the opportunity to explain the apparent contradictions, the Principal Applicant first stated that there may have been an error on the part of the interpreter, and then explained that his mother was living in Karnal and had advised him to move there following the two “small incidents” in 2010 and 2014 respectively.

[11] Another issue raised before the RPD was the family travel outside of India. The Applicants’ passports reveal that they traveled for tourism purposes to France and Eastern Europe in 2016. When asked why he had not claimed asylum over the course of these touristic trips, the Principal Applicant responded that since he had not yet been physically attacked, he did not feel the need to seek asylum abroad. He added that he was living very cautiously in India and his friend Jatinder had assured him that the situation with Gogi would deescalate.

[12] More travel was planned. On April 9, 2017, the Applicants applied for temporary resident visas to visit Canada.

[13] It is around this time that the Principal Applicant says he got involved in building a Sikh temple (Gurdwara) in the village of Manchuri, near the city of Karnal. The RPD identified that the Principal Applicant had no links to the village of Manchuri and asked why the construction of this temple was so important to him. He did not respond to the question. Instead, he replied that the land had previously belonged to a Sikh person. He was also asked three times to explain specifically what his role was in the construction of the temple. The Principal Applicant ended

up stating that he and others “collected money” and that he had a supervisory role. He reiterated that the state of the Sikh community in his area was very poor and that he was “raising [his] voice” for the Sikhs without providing further details.

[14] According to the Principal Applicant's BOC, a local MLA intentionally neglected and delayed the construction of the temple, leading to a confrontation on April 28, 2017. This is when the third incident is alleged to have happened. In a subsequent amendment to his BOC, the Principal Applicant alleges that on that day, he attempted to access the construction site to begin building. However, when he arrived, he was met by 15-20 individuals and was physically obstructed from accessing the site. During the hearing, the Principal Applicant changed his narrative. He stated for the first time that Gogi was present and it was she who had invited the MLA to obstruct his passage. The RPD asked the Principal Applicant three times why he had omitted the fact that Gogi was present on the site in his original and later amended BOC form. Again, the Principal Applicant did not answer the question. He responded that Gogi was on the sidelines whereas members of the “Kasha Clan” and the MLA were in the forefront of the construction site.

[15] That same day, the Principal Applicant attended a nearby police station to file a complaint against the MLA. It is there that he claims he was “tortured” by the local police acting under Gogi’s orders. When prompted to provide further details on the incident, the Principal Applicant said that he was detained over night in police custody and was hit with belts and kicked in the stomach and on the back for over an hour. The officers allegedly demanded

information concerning Sikh terrorists, questioned him regarding his interest in the Manchuri village and advised him to stop getting involved in the family matters of Gogi and Jatinder.

[16] Later during the hearing, the Principal Applicant was asked questions related to a medical report he tendered as evidence that was issued by the Metro-Medic Clinic in Montreal on January 7, 2019. The Principal Applicant explained that he had fractured his leg in the past resulting in him receiving an implanted rod. He went on to explain that due to the torture he sustained at the hands of the police on April 28, 2017, the rod had moved and he required additional care in Montreal for his leg. When asked why he did not mention hurting his leg earlier when questioned about injuries related to the torture incident, the Principal Applicant responded that he only became aware of the severity of his injuries after arriving in Montreal.

[17] Having applied for visas on April 9, 2017, the Applicants obtained temporary resident visas to visit Canada on May 2, 2017, less than one week after the events of April 27 and 28. They arrived in Canada on June 25, 2017, and sought refugee protection six months later on December 28, 2017.

[18] In a subsequent amendment to his BOC, the Principal Applicant asserted that police had issued a “wanted notice” in his name and served it on his friend Neelam Notna on September 20, 2019, more than two years after having left India. This document contains a photograph of the Principal Applicant. However, the RPD identified blatant similarities between this photograph and the one submitted with his refugee protection claim forms in December 2017. The RPD noted that the original photograph associated with his protection claim stated it was taken at a

photography shop in Montreal on December 10, 2017. In particular, it noticed that the Principal Applicant was wearing the same clothes, had the same posture and facial expression, and that his collar was in the exact same position in both photographs. When asked about the identical nature of both photos, the Principal Applicant responded that he did not know where the police had found the photograph and that he must have been wearing the same clothes on April 28, 2017, when he was arrested.

[19] The RPD denied the Applicants' refugee protection claim for the deficiencies of the Principal Applicant's credibility. Based on a consideration of the Principal Applicant's BOC and its amendments, testimony, and the documentary evidence before it, the RPD determined that the Applicants had not established that they would face a serious possibility of persecution on a Convention ground or, on a balance of probabilities, that they were at risk should they return to India. The series of inconsistencies and contradictions the RPD found regarding the credibility of the Principal Applicant are summarized as follows:

- A. The reliance on a "warrant notice" issued by a local police station to support the Principal Applicant's claim of being pursued by the police acting under Gogi's orders was contradicted by objective evidence that such documents are issued by courts in India.
- B. His allegation that he received the "wanted notice" after it was served on his friend Neelam Notna upon leaving India goes against objective evidence of how documents are served in India.

- C. The Principal Applicant failed to provide an adequate explanation for why the photograph in his refugee protection claim was the same as the one taken at the police station on April 28, 2017.
- D. The Principal Applicant did not provide a reasonable explanation for why he had failed to mention that Gogi was present on the Sikh temple's construction site until he was questioned about it during the hearing.
- E. His explanation for omitting the fact that he suffered a leg fracture and that the rod implanted in his leg was displaced as a result of the "torture" was not satisfactory. In particular, it contradicted his earlier testimony concerning the injuries he sustained.
- F. The Applicants' travels to France and Eastern Europe in 2016 undermined their credibility given the Principal Applicant's contention that he began fearing for his life in 2010.
- G. Finally, the allegation that an incident in 2014 prompted the Principal Applicant to move to Karnal out of a concern for his safety lacked credibility because it was only raised during his testimony and contradicted his BOC which indicated that he had lived in Karnal since 2005.

[20] The Applicants appealed the RPD's decision on two grounds. First, the Applicants argued that they did not have a fair hearing before the RPD because the panel failed to consider the Principal Applicant's evidence or listen to his explanations. Second, it was contended that the RPD erred in its assessment of the Principal Applicant's credibility.

II. Decision Under Review

[21] The decision under review is that of the Refugee Appeal Division.

[22] To forward their argument on appeal before the RAD on the Principal Applicant's credibility, the Applicants attached eight additional exhibits to his affidavit as new evidence seeking to have it admitted in accordance with subsection 110(4) of the IRPA. Section 110(4), which governs the admissibility of new evidence on appeal before the RAD, provides the following:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[23] The new evidence consisted of five undated affidavits signed by the Applicants' neighbours (Exhibits A-E), an undated letter written by Jatinder Singh's son (Exhibit F), a medical certificate concerning Jatinder Singh dated February 9, 2021 (Exhibit G), as well as an excerpt from the *Indian Code of Criminal Procedure, 1973* (Exhibit H). I summarize the new evidence as follows:

- A. Exhibit A: An affidavit accompanied with a letter signed by Neelam Notna. Ms. Notna asserts that the Applicants left Canada due to illegal torture and harassment by the police and advises the Applicants not to return to India.
- B. Exhibit B: An affidavit by Amandeep Singh alleging that Gogi is well connected to influential individuals in the national army and politics.
- C. Exhibit C: An affidavit by Sauvinder Kaur warning the Principal Applicant against returning to India due to the ongoing search by local police.
- D. Exhibit D: An affidavit by Neelam Rani warning the Principal Applicant against returning to India due to the ongoing search by local police.
- E. Exhibit E: An affidavit by Gurbaj Singh warning the Principal Applicant against returning to India due to the ongoing search by local police.
- F. Exhibit F: A one-page letter by Akashdeep Singh describing how his father (Jatinder Singh) was shot in August 2017, while constructing the Gurudwara.
- G. Exhibit G: A medical certificate dated February 9, 2021 confirming the gunshot wound Jatinder Singh allegedly sustained on August 23, 2017.
- H. Exhibit H: An excerpt from the Indian *Code of Criminal Procedure*, 1973.

[24] It is important to note that three of the affidavits (Exhibits C, D and E) are identical, save for the addresses, signature and names appearing on the three affidavits. These exhibits are one-page in length and their text is identical. They were sworn by three of the Applicants' neighbours (Savinder Kaur, Neelam Rani, and Gurbaj Singh). For example, Savinder Kaur's affidavit states:

1. I have known to sahib Singh personally since 2014. Sahib Singh belongs to respected family. He left India with his wife and two kids because Haryana police detained and torture him illegally in

the pressure of Gogi (Davinder Kaur) because Gogi have good links with BJP leaders.

2. I do not wish Sahib Singh to return [*sic*] back to India as the police is still looking for him. Police often come to his neighbors including me (Savinder Kaur) for asking about him.

Verification:

It is verified that content of my above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

(Emphasis Added)

[25] At the outset, the RAD considered whether to admit the eight exhibits introduced by the Applicants as new evidence. The RAD applied the criteria established by two Federal Court of Appeal decisions (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230 [*Singh*], which applied *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]). The RAD ruled that it would only admit the excerpt from the *Indian Criminal Code* (Exhibit H). Since this evidence was not central to its decision, the RAD did not find cause to hold an oral hearing.

[26] The RAD did not admit the remaining seven exhibits (Exhibits A to G) on the basis that they lacked credibility, reliability, or were reasonably available before the rejection of the Applicants' claim under subsection 110(4) of the IRPA.

[27] The credibility of the first five exhibits (Exhibits A to E), which contained affidavits affirmed before a notary, and letters by neighbours of the Principal Applicant, were undermined in two ways. First, by the presence of a grammatical and a spelling error in the notary's official

wet seal. The RAD observed that the seals stated “the above was declare soleman affirmation...” as opposed to “declared” and “solemn affirmation” (emphasis added). Second, none of these documents were dated.

[28] The RAD noted that in any event (i.e. even if five exhibits were dated and did not contain spelling and grammatical errors on the seal), the new evidence did not meet the criteria required under subsection 110(4) of the IRPA, as interpreted under the *Singh/Raza* framework. In *Singh*, the Federal Court of Appeal held that a determination of the admissibility of evidence under section 110(4) must always ensure compliance with the explicit requirements of the provision, but can also be guided by the five “implied” conditions of admissibility identified by Justice Sharlow in *Raza (Singh, para 38)*. These are: credibility, relevance, newness, materiality, and express statutory conditions.

[29] The RAD held that Exhibit A did not meet any of the *Singh/Raza* criteria, but it did not provide a fuller explanation for why the criteria were not met (RAD decision, para 9, 14). The RAD did not admit the next five exhibits (Exhibits B to F) because it could not ascertain whether the events described in the documents had occurred after the Applicants’ claims were rejected by the RPD or why steps taken to secure such evidence could not have been taken with appropriate diligence. Moreover, that evidence could reasonably have been expected to have been presented before the RPD. As such, the evidence could not meet the requirements of s. 110(4).

[30] The next exhibit (Exhibit G) is a medical certificate dated February 9, 2021, which detailed treatment Jatinder Singh received in India for a gunshot wound in 2017. The certificate

was issued before the claim was rejected by the RPD. The RAD held this was inadmissible on the basis that it could have reasonably been put before the RPD (which took place on May 4, 2021), and therefore did not meet the criteria under subsection 110(4) of the *IRPA*.

[31] The RAD also declined to consider four new allegations presented by the Principal Applicant in his affidavit on the basis that they arose before the RPD hearing. The allegations were as follows:

- Gogi's husband and extended family are in the Indian army, which allows Gogi to act with complete impunity;
- Gogi's husband is dangerous and able to act on Gogi's behalf;
- In 2014, while riding his bicycle, the Principal Applicant was struck by a car in which Gogi was travelling; and
- The photograph on a wanted notice issued by the Indian police was likely obtained by the police searching for the Principal Applicant through his social media accounts.

[32] After making the determination that only one of the eight exhibits should be admitted into evidence, the RAD moved on to consider the merits of the appeal. It held that the Applicants had received a fair hearing and the RPD did not err in its assessment of the Principal Applicant's credibility.

[33] With respect to the first issue, the RAD noted that the Applicants had not explained how the RPD had failed to deliver a fair hearing. The RAD found no error in its review of the procedural steps:

[41] [...] In this case, the appellants had the opportunity to present their evidence to the RPD at the hearing, which lasted more than two hours. At the start of the hearing, the RPD informed the appellants of the determinative issues regarding their claims. It stated its concerns to the principal appellant and gave him the opportunity to give explanations. The appellants benefited from having an interpreter and were represented by counsel before the RPD. As it is required to do, the RPD gave counsel the opportunity to make submissions, which was done in writing following the hearing. When it rendered its decision rejecting the refugee protection claim, the RPD gave the appellants its reasons.

[34] Nor did the RAD find that the Applicants had established the existence of a reasonable apprehension of bias pursuant to the test in *Committee for Justice and Liberty et al v National Energy Board et al.*, [1978] 1 SCR 369.

[35] Next, the RAD conducted an independent analysis of the Principal Applicant's credibility. The RAD made an adverse credibility finding from how the Principal Applicant's testimony about the threats and incidents allegedly involving Gogi did not match the information set out in his BOC or its amendments. The Principal Applicant's credibility was further undermined by his decision not to leave India until 2017, despite claiming that he had received a death threat in 2010 and travelled abroad for tourism purposes in 2016. The RAD also found credibility issues with the Principal Applicant's testimony concerning his involvement with the construction of the Sikh temple and omissions related to the alleged incidents of torture on April 28, 2017. In particular, the Principal Applicant had initially testified that an MLA accompanied by 15 to 20 people prevented him from starting construction of the temple. Later

during his testimony, the Principal Applicant stated that Gogi was present at the construction site that day and had brought the MLA.

[36] Finally, the RAD upheld the RPD's finding that no weight should be given to a wanted notice that the Principal Applicant claimed was issued by Indian police. The wanted notice featured the same photograph of the Principal Applicant that he had submitted with his refugee protection claim form. This photograph was taken at a photography shop, on Jean-Talon Avenue in Montreal, on December 20, 2017. The RAD held that absent a satisfactory explanation for how this photograph came to be in the possession of the Indian police, the wanted notice was not a reliable document and the anomaly undermined the Principal Applicant's credibility overall.

III. Position of the Applicants

[37] The Applicants ask the Court to grant their judicial review application and remit the matter to another decision maker. Their central argument is that the RAD's refusal to admit new evidence was unreasonable. The Applicants argue that had this new evidence been admitted, they would have necessarily established an ongoing threat of danger faced by the Applicants from the agent of persecution (Gogi) and the Indian state.

[38] The Applicants rely on several cases that stand for the proposition that superficial or minor typographical errors in grammar and spelling ought not to be used as a scapegoat to otherwise discredit legitimate documents. In *Ali v Canada (Citizenship and Immigration)*, 2015 FC 814 [*Ali*] at paragraph 27, for instance, Justice Zinn set aside the decision of the RPD after finding that the Member "microscopically dissected the evidence and appears to have done so

with a presumption that it was fraudulent, instead of having an open-minded view to the veracity of the evidence.” The Applicants analogize to *Ali* and similar cases to argue that the spelling and grammatical error in the official wet seal was a minor typographical error (*Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 [the officer improperly highlighted syntax errors that fall within the range of typographical or inadvertent clerical errors], *Enamejewa v Canada (Citizenship and Immigration)*, 2021 FC 315 at para 29 [minor typographical mistakes in themselves do not establish that a document is fraudulent]).

[39] During the hearing, counsel to the Applicants clarified that even if the Court finds that it was reasonable for the RAD not to admit the new evidence, the RAD decision should still be set aside because the RAD’s assessment of the Principal Applicant’s credibility was unreasonable as a whole.

IV. Position of the Respondent

[40] The Respondent seeks the dismissal of this application for judicial review on the basis that the decision of the RAD was reasonable.

[41] The Respondent argues that the RAD reasonably rejected the admission of the affidavits and letters (Exhibits A to E) because these documents were not dated and the grammatical and the spelling error found on an official wet seal of an Indian Notary is no minor typographical error. On the latter argument, the Respondent refers the Court’s attention to *Mohamed v Canada (Citizenship and Immigration)*, 2022 FC 55, where Justice Bell was asked to determine whether it was reasonable for the RAD to draw adverse inferences against a claimant’s ability to establish

his identity based on errors in government and educational documents. Justice Bell wrote the following passage:

[24] I turn now to the Somali government documents and educational documents. I am satisfied the issues raised surrounding those documents are sufficient, in and of themselves, to dismiss this application for judicial review. Continued use of the name “Somali Democratic Republic” in official documents, long after the country changed its name to “Federal Republic of Somalia” constitutes an inconsistency impossible to overlook. I cannot say it was unreasonable for the RAD to take that factor into consideration. It was reasonably open for the RAD to find that the use of dated stamps cast doubt on the genuineness of these documents. (*Vavilov* at para 86). In any event, the documents also contain other major flaws, such as spelling mistakes on the government stamps. While the Applicant relies on *Oranye* to argue that the presence of spelling mistakes in a document is insufficient to justify a finding of fraud, that case is distinguishable. In *Oranye*, this Court was concerned about the RAD’s treatment of spelling errors in a personal affidavit. Here, the RAD addressed spelling mistakes on government stamps placed on allegedly official documents. In *Azenabor v. Canada (Citizenship and Immigration)*, 2020 FC 1160 [“*Azenabor*”], this Court stated:

[31] Again, I find the RAD’s reliance on these issues as one element of its assessment of the documents to be reasonable. The RAD raised a concern about one of the affidavits, consisting of two pages, having different fonts on the two different pages. It was not satisfied with the Azenabors’ response on this issue, which was limited to noting that the stamps and signatures on each page were the same, without further explanation for the notable difference in font between the pages. With respect to the typographical errors, there is a difference in my view between a clerical error in the body of a document and material errors in the printed portions of what is contended to be an official corporate identity card. One might, for example, distinguish between a typographical error appearing in this paragraph of this decision, and a misspelling of the words “Federal Court” in the letterhead of the Court: *Ali v Canada (Citizenship and Immigration)*, 2015 FC 814 at para 31. While either might be possible, the latter might reasonably raise greater

concerns about the genuineness of a document
purporting to be a judgment of this Court.
[Underline added]

Considering the presence of spelling mistakes on the government stamps of these documents, and the other inconsistencies noted by the RAD, I am of the opinion that it was reasonable to find these documents to be fraudulent.

[42] The Respondent also argues that the RAD reasonably refused to admit new evidence related to the gunshot wound allegedly suffered by the Principal Applicant's friend Jatinder Singh. This information was contained in Exhibit F, a one-page letter by Akashdeep Singh, and Exhibit G, a medical certificate from February 2021 detailing a gunshot wound Jatinder Singh allegedly sustained in August 2017. The Respondent contends that since the information was available prior to the RPD hearing, the RAD's decision to reject their admissibility was reasonable.

[43] In any event, the Respondent argues that the substance of the evidence at issue has little probative value. The Respondent relies on the RAD's concerns regarding the Applicants' lack of credibility as being the main hurdle to the Applicants' claim for refugee protection.

V. Standard of Review and Analysis

[44] The parties submit, and I agree, that the standard for reviewing this application is reasonableness, as established by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. A reasonable decision bears the hallmarks that are justification, transparency, and intelligibility, and the decision is justified in light of the relevant legal and factual constraints (para 99).

[45] The parties also agree on the issues, which can be framed as follows:

- A. Did the RAD reasonably refuse to accept the Applicants' evidence submitted on appeal?
- B. Even if the new evidence is not admissible, was the RAD's decision reasonable?

[46] Reasons must justify and explain how outcomes are reached, as stated in *Vavilov*, to ensure transparency and intelligibility to those affected (*Vavilov*, para 95). The rationale for the decision is as important as the outcome itself (*Vavilov*, para 96). Defective justifications fail to meet the transparency and intelligibility standard, although minor issues may not be fatal. However, if reasons are required for a key element of the decision, they must be provided (*Vavilov*, para 133). Decisions with significant personal impact or potential harm require reasons that reflect the stakes (*Vavilov*, para 133).

[47] Reviewing courts ensure understanding of the decision maker's reasoning but should not provide their own reasons. They operate from the starting point of the principle of restraint and "adopt an appropriate posture of respect" (*Vavilov*, paras 13-14, 75). A reviewing court does not substitute its view of the merits of an administrative decision; the democratic principle commands that the choice made by Parliament to delegate decision making to a tribunal, instead of a court, be respected. A court of review is not a court of first view. It controls the legality of the decision taken, that is whether it bears the hallmarks of reasonableness. It is not because a reviewing court starts from the principle of restraint and adopts a posture of respect that the review for reasonableness is meaningless. As the *Vavilov* Court points out "it is not a "rubber

stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review” (para 13).

A. *The RAD Reasonably Declined to Admit New Evidence*

[48] The Federal Court of Appeal in *Singh* confirmed that the reasonableness standard applies to decisions on the admissibility of new evidence (*Singh* para 29). Subsection 110(4) conditions are essential and must be met before considering other criteria like probative value or credibility (*Singh* para 35-36).

[49] According to section 110(4) of the IRPA, the RAD could only accept new evidence if: (a) it emerged after the RPD decision, (b) it was not reasonably available at the time of the decision, or (c) the applicant could not reasonably have been expected to present the evidence to the RPD before its decision. In determining the admissibility of new evidence under subsection 110(4), the RAD must also have regard to the implicit considerations of admissibility with respect to its credibility, relevance, newness, and materiality (see *Singh* at paras 38-49 citing *Raza* at paras 13-15).

[50] I pause here to note that an RAD appeal does not serve as an opportunity to submit additional evidence to address the vulnerabilities highlighted by the RPD (see: *Firooznam v. Canada (Citizenship and Immigration)*, 2023 FC 571 at para 27 citing to *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 15). In this case, the Applicants submitted new evidence to bolster their argument that they faced a credible threat in India.

[51] In my view, the RAD undertook a detailed analysis of each new piece of evidence presented before it (see paras 23-36 of my reasons). It reasonably concluded that it would only admit the passage of the *Indian Criminal Code* (Exhibit H), because the remaining evidence either could have been put to the RPD, or the evidence was neither credible nor relevant. I do not see any reviewable errors in how the RAD rejected the remaining evidence (i.e. the five undated affidavits signed by the Applicants' neighbours (Exhibits A-E), the undated letter written by Jatinder Singh's son (Exhibit F) and Jatinder Singh's medical certificate (Exhibit G)).

[52] It was reasonable for the RAD to conclude that the first five exhibits (i.e. the undated documents that had grammatical and spelling errors in the wet seals applied by a notary), lacked credibility. These were no mere typographical mistakes. The official seal of a notary is more akin to a misspelled government stamp placed on an allegedly official document (as was the case in *Mohamed v Canada (Citizenship and Immigration)* at para 24). Furthermore, with greater due diligence, these five affidavits could have been put before the RPD, as they contain information about events that occurred prior to the hearing. Consequently, this evidence doesn't meet the criteria in s. 110(4) as it could have been presented during the hearing.

[53] The RAD reasonably concluded that the remaining evidence (i.e. Akashdeep Singh's letter and Jatinder Singh's medical certificate) failed to meet any of the criteria specified under section 110(4) of the IRPA. This evidence could have been submitted prior to the RPD hearing, as both exhibits pertain to pre-hearing events. There was no adequate explanation for the failure of due diligence. Furthermore, the undated and unsworn typed letter, along with a medical

certificate from an unrelated individual, were appropriately considered lacking in credibility and relevance.

[54] Therefore, I have not been convinced that the RAD was not reasonable in finding that the new evidence was inadmissible but for the reference to the *Indian Criminal Code*.

B. *The RAD's Decision Was Reasonable*

[55] While the RAD did address the procedural fairness issues raised on appeal, the Applicants made a deliberate decision not to raise procedural fairness concerns on judicial review. Consequently, this issue is not currently before the Court.

[56] Given that the new evidence was found to be inadmissible by application of s. 110(4) and the *Raza* factors, the only issue to consider is whether the RAD was reasonable in concluding that the Principal Applicant lacked credibility. In my view, the RAD reasonably considered the Principal Applicant's credibility based on the series of inconsistencies and contradictions in the record before it. The Applicants did not discharge their burden challenging the decision to show that it was unreasonable.

[57] In particular, it was reasonable for the RAD to make an adverse credibility finding given the Principal Applicant's inability to provide an explanation for how the photograph he submitted for his refugee protection claim was the same as the "warrant notice" issued by a local police station. Nor did the Principal Applicant provide a plausible explanation for why he had

failed to mention that Gogi was present on the Sikh temple's construction site until the moment he was questioned about it during the hearing before the RPD.

[58] It was also open for the RAD to find that the Principal Applicant's credibility was undermined by him omitting the fact that he had suffered a leg fracture which required that a rod be implanted, the said rod being damaged as a result of the "torture". This directly contradicted his earlier testimony concerning the injuries he had sustained. Indeed, the further injury to the leg would have occurred in late April 2017, merely a few weeks before the Applicants' departure to Canada. It is hard to see how such an event could have been forgotten.

VI. Conclusion

[59] An applicant must on judicial review satisfy the Court "that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, para 100). The identified flaw must not be peripheral or superficial.

[60] The Applicants did not convince the Court that the credibility findings were not reasonable. *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, usefully summarized principles applicable to the review of decisions made on the basis of the credibility of an applicant. Not only is the administrative decision maker better positioned to make assessments of testimonies, but an accumulation of contradictions, inconsistencies and omissions can support negative conclusions about the credibility of witnesses as long as the said flaws are not with

respect to peripheral issues. An examination of a testimony in search of “microscopic” issues or peripheral issues might well constitute reviewable errors.

[61] However, credibility findings concerning important or critical elements of a claim can well extend to the evidence as a whole. Common sense and rationality are not excluded from the courtroom. Conclusions may be reached about a witness’ credibility based on implausibilities, common sense and human experience. I hasten to add that findings must be sensitive to cultural differences.

[62] The contradictions, omissions and, in effect, implausibilities in this case were significant. The Applicants could not make a case that there were shortcomings in the RAD decision that could make the decision unreasonable.

[63] The judicial review application is dismissed. No serious question of general importance was submitted by the parties, and therefore no question is certified by the Court.

JUDGMENT in IMM-4013-22

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.
2. There is no question to be certified pursuant to s 74 of the *Immigration and Refugee Protection Act*.

"Yvan Roy"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4013-22

STYLE OF CAUSE: SAHIB SINGH, JASWINDER KAUR, PARMEET KAUR, ARMAN SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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