

Federal Court



Cour fédérale

Date: 20230802

Docket: IMM-5051-21

Citation: 2023 FC 1060

Ottawa, Ontario, August 2, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

SAIFULLAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, who is referred to in the documentation as Saifullah, is a citizen of Pakistan who claimed refugee status in Canada because he feared persecution at the hands of the family of a young woman he developed a relationship with while in Pakistan. The Refugee Protection Division (RPD) dismissed his claim, finding that he lacked credibility based on his testimony and that some of the documents he had submitted were not authentic. The RPD also found there was no credible basis for the claim.

[2] The Applicant seeks judicial review of the decision of the RPD, on the basis that its findings are unreasonable. He submits that the RPD's assessment of the evidence was flawed, and that it failed to provide an adequate explanation for its conclusions.

[3] For the reasons set out below, I find that the RPD's decision is reasonable. The decision rests on findings that the Applicant's testimony was not credible and that he had submitted medical records that were not authentic. The Applicant's arguments about the flaws in the decision are not persuasive, and although I find some weaknesses in the decision, I am not persuaded that they are sufficiently serious – when measured against the other findings that are not disturbed – to warrant overturning the decision.

I. Background

[4] The Applicant was born in Pakistan and his family are Sunni Muslim. He says that in 2010, he met a young woman while working in his father's internet café, and they developed a relationship over time. The woman's family were more orthodox; her father and brothers were members of the Lashkar-e-Taiyba [L-e-T].

[5] In October 2010, the Applicant says that two priests from the L-e-T entered the internet café and said that it had to close because it was forbidden for women and men to use the café together. His father refused to comply and the Applicant reported the matter to the police. He said the police told him not to cause trouble because the priests were very influential.

[6] In November 2010, the young woman's father entered the café together with two other men; they found the Applicant and young woman seated together. The two men attacked the Applicant, while the woman's father pulled her aside. After the men left, the Applicant called his father to tell him about the attack and went to the hospital to seek medical treatment. He and his father also filed a complaint with the police.

[7] The Applicant continued to communicate with the young woman via text messages, until December 2021 when the woman's brothers and four other men attacked and vandalized the internet café. The Applicant was hospitalized overnight and he and his father reported this attack to the police, but they refused to file a case against the attackers.

[8] The Applicant then left Karachi for Lahore, where he stayed in hiding until he fled to South Korea, where he had previously lived with an uncle who had adopted him. His father advised him that in January 2021, the young woman's brothers came to the family home to ask where the Applicant was, and attacked him when he refused to disclose the Applicant's location. His father told him that the brothers said they would kill the Applicant if they found him.

[9] In October 2015, the Applicant came to Canada and claimed refugee status. Following his arrival, his step-father in South Korea told him that he had arranged a marriage for the Applicant, but the Applicant refused to comply. The Applicant says that his step-father then cancelled his visa to South Korea, so he could not return to that country.

[10] In regard to the Applicant's refugee claim, the Minister sent the Applicant a Procedural Fairness letter in January 2016, indicating an intention to participate in his refugee hearing. Following this there were a number of delays in scheduling the hearing which were caused by several unrelated factors, including the untimely death of the Applicant's counsel and then certain difficulties regarding the documentation. The hearing was eventually scheduled for August 29, 2019.

[11] In May 2019, the Minister provided a Notice of Intention to Intervene as well as certain additional documents. The hearing was subsequently re-scheduled for November 29, 2019. On November 27, 2019, just two days prior to the hearing, the Applicant received additional documents from the Minister, raising concerns about the authenticity of documents he had submitted. His counsel was granted an adjournment to allow them to consider the impact of this late disclosure, and counsel subsequently withdrew from representing him. A new counsel was retained, and the hearing was held on June 2, 2021.

[12] The RPD dismissed the Applicant's refugee claim in July 2021, finding that his evidence was not credible. The RPD also declared that there was no credible basis for the claim, under subsection 107(2) of *the Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*).

[13] The RPD's negative credibility finding was based on three elements: the Applicant's testimony, which the RPD found to be untrustworthy; medical reports that he submitted to corroborate his claim that he was attacked, which the RPD found to be fraudulent; and several affidavits, which the RPD determined to be not genuine. The RPD concluded while none of these

credibility findings may have been sufficient to negate the Applicant's claim, their cumulative effect was such that it did not have sufficient credible and trustworthy evidence to find him to be a refugee. The RPD went on to find that there was no credible basis for the claim, pursuant to subsection 107(2) of *IRPA*.

[14] The Applicant seeks judicial review of the RPD's decision.

II. Issue and Standard of Review

[15] The only issue in this case is whether the RPD's decision is reasonable. The standard of review that applies is reasonableness, in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] In summary, under the *Vavilov* framework, 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). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). It is only in exceptional circumstances that a reviewing court will interfere with the assessment and evaluation of the evidence by the administrative decision-maker (*Vavilov* at para 125).

III. Analysis

[17] The Applicant submits that the RPD's findings regarding the medical reports, the police reports, discrepancies in his narrative and the affidavits are unreasonable. Both parties agree that the RPD's treatment of the medical documents is key because they were so central to both the Applicant's claim and the RPD's credibility findings.

A. *The Hospital Records*

[18] To corroborate his claim that he had been attacked in November and December 2010, the Applicant submitted two medical reports, one from the Shamsi Hospital and the other from AI-Khidmat Hospital.

[19] Just prior to the hearing before the RPD, the Applicant was provided with documents from the Respondent regarding the document verification that had been requested by the CBSA Hearing Officer in this case. The request for document verification sent to the Respondent's Islamabad office indicated that the concern about the hospital records related to spelling mistakes evident on the face of two of the documents:

The major spelling mistakes for the AI-Khidmat Hospital (spelled Hospiatal) Emergency Form and the misspelling of the address of Shah Faisal colony (spelled Faisla) on the AI-Khidmat hospital discharge slip lead to suspicion that the forms are fraudulent.

[20] The reply stated that the hospital records "have been verified to be counterfeit by the competent persons/authority of the concerned Hospitals/Clinic." No other details are provided about the nature of the verification.

[21] During the hearing, the Respondent's Hearing Officer asked the Applicant about these documents, noting the spelling mistakes in the letterhead portion of the records. The RPD states that the Applicant "testified that there must have been errors when the letterhead was printed, and he did not know why the spelling errors were there." (RPD Decision, para 25).

[22] The RPD quotes from the Applicant's counsel's submissions on this point, noting that in reference to the accusation that the documents were fake, counsel stated "Maybe". The RPD also cited the following portions of the Applicant's submissions:

- [The Applicant] may have thought that [the falsified documents] were needed and have gone through the bothersome process of making them up and generously offer them to the court (sic)...
- The bad deed, if it happened, obviously ought to impact substantially on his credibility but is it enough to kill the claim?
- Lying, moreover, is no ground for refusal... Liars too need protection.

[23] The RPD preferred the Minister's submission that the documents were not authentic, citing the decision of this Court in *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160, where Justice McHaffie found at paragraph 31 that "there is a difference... 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."

[24] The Applicant had affirmed that he believed the documents were legitimate and that he had obtained them from the hospitals. The RPD rejected as speculative the Applicant's statement that the verification was questionable because the staff at the hospitals had likely changed given the passage of time. Although the Applicant had questioned when the verification was done, the RPD preferred to give more weight to the verifications done by Canadian officials because "(t)here is an expectation of bureaucratic regularity on the part of the authorities when conducting these verifications." (Decision, para 29).

[25] The Applicant submits that the RPD's findings are unreasonable. In particular, the Applicant points out that there are no details regarding the verification process including, for example: the absence of any indication of who did it, or when, or whom they contacted at the hospital and clinic and what those individual(s) may have said. The Applicant asserts that absent any such details, and in the face of his sworn testimony that he obtained these documents from the hospital and medical clinic and believed them to be true, the RPD acted unreasonably in relying on the vague, anonymous, unsworn documents that purported to confirm that the documents were not authentic.

[26] On this point, the Applicant relies on the decision in *Ali v Canada (Citizenship and Immigration)*, 2021 FC 731. In that case, Justice McHaffie found it was unreasonable for the Immigration Appeal Division [IAD] to rely on unexplained conclusions regarding the authenticity of key documents that supported the claimants' narrative, because there was no explanation as to how this conclusion was reached and it was contradicted by other evidence the claimants had brought forward in response.

[27] The Applicant also points to other decisions in which this Court has found that typographical or clerical errors in documents are not sufficient grounds to find them to be fraudulent (citing *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 at para 7; and *Ehamejewa v Canada (Citizenship and Immigration)*, 2021 FC 315 at para 29).

[28] In response, the Respondent contends that the Applicant was given notice of the specific issues of concern regarding the medical records, because the email setting out the Hearing Officer's concerns as well as the response indicating the documents were not authentic had been disclosed prior to the hearing. The Respondent notes that the Applicant was represented by counsel before the RPD, but did not ask for an adjournment, nor did counsel seek to challenge the assessment or introduce further evidence after the hearing. According to the Respondent, given that the Applicant bore the burden and that there was nothing to contradict the statement that the record was false, the RPD's finding is reasonable.

[29] I am not persuaded that the RPD's finding regarding the medical documents is unreasonable. Although it may have been preferable for more details about the verification process to have been disclosed, the Applicant's failure to challenge it at the hearing, or to seek an opportunity to provide further evidence to contradict the assessment weighs against his arguments before the Court.

[30] The record shows that the specific concerns about the documents as well as the authenticity assessment were disclosed to the Applicant shortly prior to the RPD hearing. It also shows that rather than trying to contradict the assessment by obtaining other information to

confirm that the documents were valid or challenging it directly, the Applicant testified that he believed the documents to be authentic and his counsel's submissions sought to minimize the damaging effect on his credibility caused by the filing of false documents. In the face of this, the RPD reasonably relied on the officials' assessment, despite the lack of details regarding how the verification was done.

[31] I note that in the *Ali* case, the IAD was found to have acted unreasonably in part because it relied on a document authentication that set out no details to support the conclusion, in the face of the detailed and specific further evidence on this point brought forward by the claimants. That stands in sharp contrast to the situation in the case before me, where the Applicant simply stated that he had obtained the documents from the hospital and clinic, and believed them to be authentic.

[32] In submissions before the Court, the Applicant argued that typographical errors should not be used to question the authenticity of documents, citing certain decisions of this Court. In my view, it is not appropriate for this Court on judicial review to attempt to set down hard and fast rules regarding the assessment of the authenticity of documents by administrative decision-makers. A careful reading of the cases relied on by the Applicant shows that the Court has not purported to set down such iron-clad rules. Instead, each of these decisions turns on their particular facts. It is true that some general principles may often guide the assessment (for example, the fact that document fraud may be common in a particular country cannot be relied on as evidence that every document from that place is not authentic). However, each case will

turn on its specific facts, with a particular focus on the evidence before the decision-maker and the analysis and explanation set out in the reasons.

[33] In the case at bar, the Applicant points out that Pakistan is a less-developed country and therefore Canadian standards should not be applied. While I agree with him on this point, I find that it does not apply here because the document verification was done by an official based in Pakistan, and the records show that the assessment was based on responses from the hospital and clinic there. There is no indication that the verification was based on anything other than information obtained in Pakistan, from officials employed by the hospital and clinic who would have been familiar with local circumstances pertinent to the question.

[34] There is also no evidence to contradict the assessment that the documents are not authentic. The Applicant could have contacted the hospital or taken other steps to verify the authenticity of the records or to show how or why such basic typographical errors might have occurred in such documents (for example, that the hospital or clinic does not use a “standard form” letterhead). The Applicant did not do this when he had the opportunity before the RPD, and thus its decision cannot be challenged for failing to consider evidence that was never produced before it.

[35] I am also not persuaded that the RPD acted unreasonably in relying on the assessment conducted by officials in Pakistan, despite the absence of details regarding the process. The RPD quoted counsel for the Applicant’s submissions that raised questions about the lack of details, but went on to reject them because it found the documents “were verified by Canadian authorities

who have nothing to gain in conducting investigations to verify documents.” (Decision, para 35). The RPD cannot be faulted for this, given the record that was before it. While counsel had raised concerns about the lack of information about the verification process, nothing further was done to challenge it. The finding of the RPD is consistent with a long line of jurisprudence from this Court that is rooted in the idea that most officers have no vested interest in the outcome of a claim and their official records and actions can generally be relied upon. While this presumption can be rebutted, no evidence or argument was presented to support a finding that it did not apply. It was, therefore, reasonable for the RPD to apply it in this case.

[36] For all of these reasons, I find that the RPD’s assessment of the medical evidence is reasonable.

B. *The Police Reports*

[37] The RPD noted that the attempt to verify the police reports had been inconclusive. The Applicant submits that the RPD unreasonably questioned his credibility by drawing an inappropriate linkage between the medical records and the police reports, noting that while the former had been found to be not authentic, the officials’ assessment of the latter was not completed. He contends that the RPD used the police reports to bolster its finding about the medical records, noting that just after it summarized the inconclusive response about the police reports, the RPD stated:

It seems that the Minister clearly does these document authentications on a regular basis, and it substantiates that on a

balance of probabilities that the medical records are more likely to be fraudulent.

[38] I disagree with the Applicant's submission on this point. The RPD notes that the efforts to verify the police reports had not proven conclusive, but the only weight it placed on this was a confirmation that the Minister "does these document authentications on a regular basis..." The RPD's subsequent finding that the medical records "are more likely to be fraudulent" simply reflects its earlier determination that it accepted the officials' assessment of the documents despite a lack of details about how it was done, based on a presumption of bureaucratic regularity. I am not persuaded that the RPD's finding on this point was somehow tainted by a misapprehension regarding the inconclusive evaluation of the police reports, or that it drew an inappropriate linkage between the two assessments.

C. *The Affidavits*

[39] The Applicant submitted five affidavits in support of his claim and he was questioned regarding three of them. In particular, he was asked why the signatures on all three of these affidavits had the first letter circled in a particular way. The Applicant said he did not know, but that he also circles the first letter in his own signature. The RPD noted that the signature on his Basis of Claim form confirmed this statement.

[40] In addition, the Applicant was asked why his father's affidavit contained the statement: "Once again bad eyes targeted my son..." in light of the fact that he had also used the phrase "bad eyes targeted me" in his Basis of Claim form. The Applicant testified that he did not know why both documents used an identical expression.

[41] The Minister stated that the RPD should draw a negative inference from the similarity of the signatures and the identical wording in the father's affidavit and the Applicant's Basis of Claim form. The Minister contended that both of these suggested that the three affidavits were, in fact, produced by the same person and were thus not authentic.

[42] The RPD noted that other documents the Applicant submitted had been found to be fraudulent, and accepted the Respondent's arguments about the authenticity of the affidavits over those advanced by the Applicant's counsel. Based on the cumulative effect of the previous negative credibility finding, the RPD concluded that the affidavits are not genuine.

[43] The Applicant submits that this finding is unreasonable because the RPD failed to explain its findings about the authenticity of the affidavits, but rather it simply relied on the Minister's speculative assumption that the circling of the names and the use of similar language in two documents was proof that the affidavits had been prepared by the same person and were not authentic. In addition, he argues that the RPD's examination of the documents was microscopic in that it focused on one element of the records rather than taking the substance of their contents into account.

[44] In reply, the Respondent contends that the RPD did not make any specific credibility finding about the affidavits, but rather it relied on the cumulative effect of the negative findings about the medical reports to cast doubt on the validity of the affidavits.

[45] The problem with the RPD's treatment of the affidavit evidence is that it did not analyze them independently of its other credibility findings, before finding that they were not authentic. This is precisely what this Court has repeatedly cautioned against. The RPD summarized the Minister's submissions about these documents, namely that the similarity of the signatures on the three affidavits and the use of the identical phrase "bad eyes targeted me" gave rise to a concern that one individual had created all three of them. It went on to find that the Applicant's counsel's submissions were without merit and speculative. What the RPD did not do, however, is state whether it adopted the Respondent's arguments as its basis for finding the affidavits were not authentic.

[46] The RPD bases its conclusion that the affidavits were fraudulent on two statements; it reiterated its earlier finding that the medical records were not authentic, and it relied on the statement from *Azenabor* that even if individual credibility findings do not undermine a claim, a decision-maker may make an adverse credibility finding based on their cumulative effect. The problem here is that there is no explicit credibility finding made about the three affidavits. It is unclear whether or how they contributed to the RPD's overall assessment, and it is not the role of the reviewing Court to speculate or to fill in the blanks where the analysis is absent (*Vavilov* at para 97).

[47] For these reasons, I have significant doubts about the RPD's treatment of the affidavit evidence. This leads to the question whether this finding is sufficient to find that the decision as a whole is unreasonable.

[48] Under the *Vavilov* framework, the burden is on the challenging party to show that the decision is unreasonable, and not every mistake will lead to such a finding. The Supreme Court of Canada specifies the test in the following passage at paragraph 100:

Before a decision can be set aside on this basis, the reviewing court must be satisfied 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[49] The parties in this case both took the position that the RPD's assessment of the medical records was a crucial element in its decision. I agree with that assessment, both because that evidence was so central to the Applicant's claim and to the RPD's credibility assessment. As mentioned earlier, the RPD's credibility findings rested on three pillars: its assessment of the Applicant's testimony, the medical records and the police reports. It is not necessary to repeat the discussion of the medical records; I have already found the RPD's finding on that point to be reasonable. I have also rejected the Applicant's argument regarding the police reports.

[50] Turning to the RPD's assessment of the Applicant's testimony, I note that he did not challenge this particular aspect of the decision. The RPD's finding regarding his testimony is summarized in the following passage: "I found the claimant's testimony to be untrustworthy in that he could not keep his story straight and on occasion his responses were reactive and manufactured." (Decision at para 21).

[51] The RPD's discussion of the Applicant's testimony focused on the discrepancies between the details of his narrative set out in the Psychologist's Report he had submitted as corroborative evidence, and other documents or testimony he had provided. It is not necessary to discuss these findings in detail; it is sufficient to note that they relate to core elements of the Applicant's narrative regarding the dates and nature of the attacks he says that he and his father experienced.

[52] The Applicant did not challenge these findings, and I have already rejected his arguments regarding the RPD's assessment of the medical reports and the verification of the police reports. In light of this, I am not persuaded that the weakness in the decision relating to the RPD's treatment of the three affidavits is sufficient to warrant quashing the decision. The RPD's decision rests on other foundations that have not been disturbed, and the affidavits in themselves are not sufficient to overcome the credibility issues relating to the other evidence. The RPD had valid reasons to find the Applicant's narrative about the attacks was not credible, and it mentioned reasons to doubt the affidavits that purported to corroborate these events. The failure to make specific credibility findings about the affidavits is not a sufficiently serious error to find the entire decision to be unreasonable.

[53] For all of these reasons, the application for judicial review will be dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-5051-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5051-21

STYLE OF CAUSE: SAIFULLAH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MAY 25, 2022

**REASONS FOR JUDGMENT
AND JUDGMENT:** PENTNEY J.

DATED: AUGUST 2, 2023

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