

Federal Court



Cour fédérale

Date: 20231027

Docket: IMM-10210-22

Citation: 2023 FC 1434

Ottawa, Ontario, October 27, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

NAVJOT KAUR MANN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Navjot Kaur Maan, is a citizen of India. She seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated September 26, 2022, dismissing her appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting her claim for refugee protection [Decision]. The determinative issue for both the RPD and the RAD was credibility.

[2] The Applicant submits that the RAD's adverse credibility finding was unreasonable in that (i) the negative credibility findings were insufficient to intelligibly reach the conclusion that the alleged events did not occur; (ii) there was no logical and coherent reasoning, or even any explanation, as to why the RAD agreed with the RPD about the alleged errors of the interpreter; and (iii) it was based on microscopic findings for peripheral matters.

[3] The Respondent submits that the RAD reasonably concluded that the Applicant was not credible given the accumulation of contradictions, omissions, and discrepancies. The Respondent pleads that the Applicant failed to provide reasonable justifications for the discrepancies, and instead blamed the interpreter.

[4] For the reasons that follow, this application for judicial review is allowed.

II. Analysis

[5] The parties agree that a reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 85).

[6] In the present matter, the determinative issue is credibility. Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of

judicial deference and should only be overturned “in the clearest of cases” (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12).

[7] While I do find that the RAD reasonably dealt with a number of issues, and blaming the interpreter is certainly not a cure-all, I find the Decision to be unreasonable on the following basis. The Applicant had testified before the RPD that she was released from prison following the payment of a “bribe”. In her Basic of Claim form narrative, it stated her parents had managed to arrange “Rs. 50,000 for my bail” (emphasis added). In her father’s affidavit, he states that he “paid 50000 as a bribe to the police to secure my daughter’s release” (emphasis added). The RPD questioned the Applicant as to why in her narrative she “wrote that [her] parents paid bail instead of a bribe?” The Applicant stated “I told the interpreter this, but I don’t know why.”

[8] The Applicant submits that the narrative was filled out by a volunteer interpreter and the word “bail” was used instead of the word “bribe”. The Applicant pleads that this is a minor discrepancy and that the word “bribe” is used everywhere else in the record. This is consistent with the Applicant’s story that this was an illegal detention and consistent with the practice of paying bribes in order to be released by corrupt police as detailed in the National Documentation Package.

[9] In the Decision, the RAD highlighted that the Applicant had time to amend her narrative to correct the word “bail” and that this was not a peripheral detail as it relates to the interactions she had with her agents of persecution. The RAD found, on this point that, “consequently she no longer benefits from the presumption of truth.”

[10] The Applicant argues that it was unreasonable for her to lose the presumption of truth solely on this basis because this was a trivial inconsistency that appears nowhere else in the record.

[11] The Respondent submits that she was found not credible on the basis of the accumulation of contradictions, omissions, and discrepancies.

[12] I agree with the Respondent that a refugee claimant can be found to be not credible on a cumulative basis – namely an accumulation of inconsistencies and contradictions – but this is not what the Decision states. The first inconsistency the RAD dealt with in the Decision was the issue of the money paid for the Applicant’s release (bribe vs bail). The RAD concluded on this issue, prior to dealing with the other issues, that the Applicant “no longer benefits from the presumption of truth.”

[13] Credibility findings are granted significant deference. I find, however, in the specific circumstances of this case, that the RAD’s conclusion as to credibility based solely on the use of the word “bail” in the Applicant’s narrative, given the record before it, fails to meet the standard of reasonableness as set out in *Vavilov*.

[14] Having found the Decision unreasonable, it is unnecessary to address the remaining issues raised by the Applicant.

III. Conclusion

[15] For the above reasons, this application for judicial review is allowed. The Decision is set aside and the matter is referred back to the RAD for redetermination by a differently constituted panel. No question of general importance was submitted for certification, and I agree that none arise.

JUDGMENT in IMM-10210-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is allowed;
2. The Decision is set aside and the matter is referred back to the Refugee Appeal Division for redetermination by a differently constituted panel; and
3. No question of general importance is certified.

"Vanessa Rochester"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10210-22

STYLE OF CAUSE: NAVJOT KAUR MAAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 26, 2023

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