Federal Court  Cour fédérale

Date:20231215

Docket: IMM-12120-22

Citation: 2023 FC 1709

Ottawa, Ontario, December 15, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

HARJEEVAN KAJAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicant, Harjeevan Kajal [the "Applicant"], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division ["RAD"] of the Immigration and Refugee Board of Canada ["IRB"]. The Judicial Review is dismissed for the following reasons.

[2] The Appellant is a citizen of India. He alleges that he left his wife, JK, because she had an affair. JK's father, who has influence with the police, insisted that he reconciled with her

against his wish. After the Applicant refused to reconcile, he was allegedly threatened by goons, sent by JK's father, and arrested and tortured by the police at his demand. The Applicant alleges that JK's boyfriend also arranged an attack on him. According to the Applicant, the police continues to look for him and JK's father wishes to have him killed. He fears being harmed or killed by JK's father, the police, and JK's boyfriend. The Applicant came to Canada in July 2019 and made a refugee claim in October 2019.

[3] The RPD rejected the case on credibility. After conducting its own independent assessment of the evidence, the RAD upheld the RPD decision on October 14, 2022. The Applicant then applied to this Court to judicially review the RAD's decision.

II. Decision

[4] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Preliminary Issue

[5] At the time prescribed for the start of the judicial review, the Applicant or his counsel were absent. At no time had counsel communicated with the Court to signal any potential problems with their presence. The Court's attempts to reach counsel were also unsuccessful. Finally, counsel for the Respondent got a hold of counsel who advised that he was under the impression the hearing was set for the next day. He also advised that the earliest he could be present was nearly an hour later, a time when this Court's operations could not reasonably accommodate. Counsel conceded that if this could not be accommodated, the hearing could proceed with his written representation.

[6] Rule 38 of the *Federal Courts Rules*, SOR/98-106 provides:

> 38. Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules.

[7] In this case, the Court had provided the parties with a notice of the hearing for December 13, 2023, at 9:30 a.m. If counsel by mistake placed it on his calendar for December 14, 2023, the Court's proceeding cannot come to a halt. I therefore decided to proceed with the Applicant's written representations only.

IV. Standard of Review and Issues

[8] The only issue before this Court is whether the RAD decision is reasonable.

[9] I find that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [Vavilov]).

V. Analysis

A. *Legal Framework: Credibility*

[10] There is usually a great degree of deference given to the credibility findings of an expert administrative tribunal such as the RPD. Generally, this Court will not interfere with a decision if the evidence before the Board, taken as a whole would support its negative assessment of credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences were drawn from that evidence (*Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426 at paras 33-35).

[11] Where the necessary preconditions are satisfied based on the facts, subsection 107(2) of IRPA does not grant any discretion to decision-makers as it "shall state" in its reasons for the decision that the claim has no credible basis (NCB) *Yared Belay v* Canada (Citizenship and Immigration), 2016 FC 1387 at para. 16.

[12] However, credibility assessment is a fact-finding exercise. The decision-maker can accept or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects are then linked to their rationally connected legal consequence. If the claimants testimony cannot be relied upon, and that there are no independent evidence to corroborate the facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find that the fact is established to support the claim. Therefore, the starting point is to understand and consistently use well-defined concepts such as credibility, probative value, relevance, materiality, weight and sufficiency. My colleague Justice Grammond has offered guidance on these concepts at *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[13] The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible to a court proceeding, do not apply to an administrative tribunal such as the RPD. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are created equal. Even when the evidence is admitted, relevance and materiality remain key to the weight of the evidence. Therefore, generally speaking, an exercise in making credibility assessment of individual facts, irrespective of how they matter in the context of the refugee case, in and of itself may not support an overall reasonable decision. This is because a decision where

the member refers to all facts as equal, irrespective of their relevance and materiality in the context of the refugee claim, could loose a logical chain of reasoning contemplated by *Vavilov*:

> [85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a **whole is reasonable**. As we will explain in greater detail below, 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. The reasonableness standard requires that a reviewing court defer to such a decision. (my emphasis)

[14] Putting it differently, likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive credibility assessment – may fail to reflect the true nature of the case. It underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. Without it, the chain of reasoning is lost.

B. *Was the RAD analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA reasonable?*

[15] The central fact of this case was the Applicant's marriage to JK in 2018. All of the alleged problems started after JK started a new relationship with her boyfriend and her father unsuccessfully attempted to pressure the Applicant into reconciling with her. The Applicant had alleged that they married in February 2018, and approximately two months later, i.e. in April 2018, his problems started. Therefore, the RPD's focus on the credibility and the timing of the marriage was material, which makes it reasonable. The RAD also identified the marriage to be a central issue and agreed with the RPD's analysis. I find this to be reasonable.

[16] It was the Applicant who had testified that prior to his problems caused by his wife's affair and his father-in-law's pressures in 2018, he had never applied for any visas. It was in that context that the RAD found his omission to disclose a 2017 work permit application to be material. This was a reasonable conclusion. The RAD provided a reasonable analysis for rejecting the Appellant's response for the omission. The Appellant had stated an agent had told him he could get him a tourist visa and he did not know it was for a work permit, but the RAD did not find this to provide a satisfactory answer as to why he had applied for any visa prior to the start of his problem. I find the RAD reasoning on this point to be reasonable.

[17] Marriage to JK in February 2018 was a material fact. The Applicant had given evidence that her affair started two months later, i.e. in April 2018 at which time his problems with the father started. Therefore, how and when the Applicant and JK met and got married is relevant. Both the RPD and the RAD also took issue with how JK was named as the Applicant's wife in the 2017 Work Permit application with a date of marriage of February 20, 2017, when the Applicant had earlier stated he had not yet met his wife in 2017. The RAD also agreed with the RPD to reject his explanation that it was in February 2017 that he had proposed to JK through a mediator, and that the agent must have put her as his wife on the application. I find that it was open to the RPD and the RAD to find this explanation to be unreasonable and to reject it.

[18] The Applicant's evidence on his marriage, including when they met, was contradictory. In light of the credibility issues surrounding the marriage (including on the inconsistencies with the work permit application below), the RPD reached that conclusion that it did not accept the marriage in the manner alleged, and the RAD agreed.

[19] The Applicant had produced a marriage certificate dated February 17, 2018, which the RPD and the RAD rejected. I agree with the Applicant that the rejection of an independent document was unreasonable. However, the marriage certificate, in and of itself, amounted to insufficient credible evidence to the quality of marriage, one that had allegedly triggered the Applicant's persecution by JK's father. It was in this context that not assigning the marriage certificate any weight, or expecting to see further corroboration of the marriage, did not render the decision as a whole unreasonable. In fact, the RAD emphasized problems with the evidence on the qualitative elements of the marriage, which was reasonable for a case solely based on the nature of the marriage. These included lack of credible evidence on when the couple met (at para 22 of the RAD decision), why JK was named to be his wife prior to the marriage on the Work Permit application or credible evidence of the breakdown of the relationship (at para 23) including any potential divorce (para 24).

[20] Once the RAD reasonably focused on the evidence related to the marriage, it agreed with the RPD that the presumption of truth set out in *MalDonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 was rebutted, and that it remained insufficient credible evidence to establish the Applicant's central allegations. This shows a clear and reasonable chain of reasoning.

[21] For example, the RAD found that medical documents speaking to injuries do not establish that the police as a source of those injuries or that a letter from a lawyer or unsigned or undated affidavits re-stating what the Applicant told them to amount to sufficient credible evidence to overcome previous concerns. I find these to be reasonable conclusions.

[22] Having rejected the allegations on the marriage to JK, the RAD looked at the relevant country documents on honour killing in India and reasonably concluded that the Applicant would not face a serious possibility of persecution or a personal risk of harm. I find the RAD's conclusion to discount any influence over the police by the JK's father when it had rejected the allegations surrounding the marriage to be reasonable.

[23] Once the RAD had rejected the factual foundation of the case, it was reasonable for them to find that they need not engage with the country conditions related to those unestablished facts.

[24] I agree with the Respondent's argument that in effect, the Applicant is expecting this Court to reweigh the evidence and come to a different conclusion, which is not the role of the judge on a judicial review application. For all these reasons, I find that the RAD's decision was reasonable.

VI. Conclusion

[25] For the foregoing reasons the Application for Judicial Review is dismissed.

[26] There is no question to be certified.

JUDGMENT IN IMM-12120-22

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Margarita Tzavelakos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sibomana Emmanuel Kamonyo Montréal, QC	FOR THE APPLICANT
Department of Justice Canada Montréal, QC	FOR THE RESPONDENT