

Federal Court



Cour fédérale

Date: 20240125

Docket: IMM-12535-22

Citation: 2024 FC 127

Ottawa, Ontario, January 25, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

**PARDEEP KUMAR
KAWALJEET KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, a married couple, are citizens of India. They sought refugee protection in Canada on the basis of their fear of persecution and other harms stemming from the disapproval of their marriage on the part of Ms. Kaur's family.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the claims on credibility grounds. The Refugee Appeal Division (RAD) of the IRB dismissed the applicants' appeals in a decision dated November 16, 2022.

[3] The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[4] As I explain in the reasons that follow, the applicants have not established any basis for interfering with the RAD's decision. Consequently, this application must be dismissed.

[5] The parties agree, as do I, that the RAD's decision is to be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. To set aside a decision 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" (*Vavilov*, at para 100).

[6] The applicants challenge the reasonableness of the RAD's decision in three respects:

(1) the refusal to admit new evidence on appeal; (2) the adverse inference drawn concerning the credibility of Mr. Kumar's account of a key incident in December 2009 based on the evolution of that account under questioning by the RPD; and (3) the adverse inference drawn concerning the applicants' credibility based on the omission of material facts from their Port of Entry interviews and related forms.

[7] Looking first at the new evidence, the RPD heard the applicants' claims on September 22, 2021. It rejected the claims in a decision dated October 1, 2021. As part of their appeal record before the RAD, the applicants provided two affidavits sworn on November 17, 2021 – one from Ram Kishan, the Sarpanch of the applicants' village; the other from Mr. Kumar's father. Both affidavits describe an incident on October 25, 2021, when police officers brought Mr. Kishan to Mr. Kumar's home and then "harassed and tortured" members of the Kumar family (apparently Mr. Kumar's parents). During the incident, the police asked Mr. Kumar's father about the applicants' whereabouts and directed him to inform the police when they returned from Canada.

[8] Despite Rule 3(3)(g)(iii) of the *Refugee Appeal Division Rules*, SOR/2012-257, which requires an appellant's memorandum of argument to include "full and detailed submissions" concerning how any new evidence tendered by the appellant meets the requirements of subsection 110(4) of the *IRPA*, counsel for the applicants (not Mr. Crane) provided only minimal submissions on the admissibility of the two affidavits. Nevertheless, and quite properly, the

RAD carefully considered whether the affidavits are admissible as new evidence: see *Benavides Quispe v Canada (Citizenship and Immigration)*, 2021 FC 791 at para 19.

[9] Since the event described in the affidavits occurred after the RPD's decision, there is no issue that this evidence meets the explicit requirements of subsection 110(4) of the *IRPA*. However, the RAD concluded that the affidavits did not meet one of the implied requirements of this provision – namely that, to be admissible, the evidence must be credible: see *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 44. The RAD found that neither affidavit was credible. The Kishan affidavit was not credible because of an obvious difference between the deponent's signature and the signatures on affidavits allegedly provided by the same deponent at earlier stages of the refugee claims. Furthermore, both the Kishan and the Kumar affidavits were not credible because of the suspiciously convenient timing of the event they described – that is, a visit by the police inquiring about the applicants less than a month after the negative RPD decision.

[10] The applicants challenge both of these determinations; however, they have not persuaded me that either is unreasonable.

[11] The RAD observed that the last letter in the deponent's signatures on the new affidavit looks more like a "z" than an "n", which was not the case in two affidavits sworn previously by the same deponent (one on June 11, 2019; the other on July 26, 2021). The RAD found this to be a "significant difference and represents a credibility concern." While the significance of the difference may be debatable (especially in the absence of any expert evidence on this point), it

was open to the RAD to make this finding. To hold otherwise would be to encroach improperly onto the RAD's fact-finding responsibilities.

[12] In any event, the RAD also found that both the Kishan affidavit and the affidavit from Mr. Kumar's father lacked credibility because of the suspiciously convenient timing of the event they described. The applicants have been married since 2007. They left India for Canada in November 2018. There was no evidence that the police had targeted or harassed Mr. Kumar's parents in any way prior to the incident that is alleged to have occurred on October 25, 2021. The RAD explained with transparent and intelligible reasons why, when viewed against this factual backdrop, it found the timing of the October 25, 2021, incident "to be so suspiciously convenient and extraordinarily coincidental as to undermine the credibility of the documents." It was open to the RAD to make this finding on the record before it.

[13] Turning to the RAD's credibility assessments, the applicants submit that the RAD unreasonably drew an adverse inference from how, under questioning by the RPD, Mr. Kumar had described an incident in December 2009.

[14] According to Mr. Kumar's narrative, five stick-wielding individuals had attacked and beaten him one day when he was on his way home from work. He stated in his narrative: "They attacked me like vulture and beat me mercilessly. I had injuries. The attackers warned me and told me to divorce Kawaljeet Kaur or else my days are numbered. They left me almost half dead when they saw one car coming and ran away." However, when he testified about this incident, Mr. Kumar stated: "A little bit later a car came from the opposite direction and when that driver

raised a noise then they left me in a half-dead state threatening me that [*sic*] stay away from Kawaljeet Kaur; otherwise, we will take your life.” When asked by the RPD member to clarify what had stopped the attack, Mr. Kumar testified that some of the attackers stopped when they saw the car approach while others stopped only when the driver got out and “made a noise for help.”

[15] The RPD drew an adverse inference regarding Mr. Kumar’s credibility from the evolving nature of his account of the attack, finding as follows:

I do not accept the principal claimant’s explanation for the discrepancy. Although it would be reasonable for the claimant to be somewhat confused about the sequence of events given the circumstances, the principal claimant did not suggest that his memory faltered. Instead, he provided a third scenario, one where half the attackers fled at the sight of the vehicle, and the other half fled when the driver approached on foot making noise. Instead of explaining the discrepancy, the principal claimant’s explanation cast further doubt on the credibility of the story. As a result, I find that this discrepancy undermines the credibility of the claimant having been attacked on December 23, 2009.

[16] The RAD agreed with this assessment. The applicants submit that the RAD’s analysis (like the RPD’s) focuses unduly on peripheral details but I am unable to agree. What ended the attack is not a peripheral detail. Most importantly, the RAD did not fault Mr. Kumar for failing to recall minor or peripheral details. Rather, it found his narrative lacked credibility because he failed to keep straight the details he himself claimed to recall. The RAD’s assessment of this issue was altogether reasonable.

[17] Turning, finally, to the omissions in the applicants’ narrative, some additional background is necessary to put this issue in context.

[18] Both applicants completed their Basis of Claim (BOC) forms on December 6, 2018. They attached the same narrative of their experiences in India to both forms. They reiterated this narrative before the RPD.

[19] According to the applicants, police summoned Mr. Kumar to a local station on May 2, 2018. He saw Ms. Kaur's father there. The police questioned Mr. Kumar about his connections to gangsters, militants and drug smugglers. They stripped him naked, beat him, hung him upside down, and beat him some more. Someone told Ms. Kaur what was happening so she went to the police station. By this point, her father had left. A police inspector slapped her and sexually abused her. The police released Ms. Kaur the same day but held Mr. Kumar until May 4, 2018. Because of this incident, the applicants immediately left their home with their children and went into hiding in New Delhi until an agent could arrange for them to obtain visitor visas for Canada. The applicants eventually left New Delhi for Canada on November 22, 2018, arriving here late the same day. Since the agent could not obtain visas for the children, they remained behind in India with their grandparents.

[20] A Canada Border Services Agency (CBSA) officer interviewed the applicants on November 24, 2018. Neither applicant mentioned the May 2018 incident despite the officer asking them whether they had ever gone to the police to report their difficulties with Ms. Kaur's family. The RPD found that this was a material omission for which the applicants had not provided an adequate explanation. The RPD also found that the significance of this omission "is reinforced by their failure to report having been detained in their Schedule A and Schedule 12

forms.” As a result, the RPD drew an adverse inference concerning the applicants’ credibility from these omissions, stating:

Given that the principal claimant is alleging that his life is in danger in India because of the police and his alleged experiences with them, I expect this information to be shared when asked about being detained, or even when asked about seeking police assistance against the in-laws. Similarly, the co-claimant’s explanation about being nervous and worried that they may be sent back for admitting to police problems runs counter to the idea of explaining what their fears are in India and why they cannot safely return.

[21] The RPD drew a similar adverse inference from the applicants’ failure to mention on their original Schedule A forms that they had been residing in New Delhi for six months before leaving for Canada. (In August 2021, the applicants informed the RPD of “modifications” to their Schedule A forms by adding this detail. They did not provide any explanation for the earlier omission.) The RPD stated:

Although I can appreciate that the claimants may have been nervous when they arrived in Canada, based on the narrative contained in their BOC, they arrived here having spent several months living in Delhi and the surrounding area. The fact that the claimants’ original forms overlooked their alleged most recent places of residence in India undermines the credibility of them having lived in Delhi before coming to Canada. The affidavit from the cousin [stating that the applicants had stayed with him in Delhi] is insufficient to overcome this credibility finding.

[22] The applicants challenged both of these findings in their appeals to the RAD. Regarding the significance of the omission of the events in May 2018, they merely asserted that the RPD’s inference was capricious. Regarding their time in Delhi, they simply pointed out that they had provided the correct information prior to the RPD hearing.

[23] The RAD was not persuaded that the RPD had erred in either respect. Regarding the applicants' failure to mention the events in May 2018 in their Port of Entry interviews and their denial on their Schedule A and Schedule 12 forms of ever having been detained, the RAD agreed that this warranted a negative inference concerning the applicants' credibility. The RAD states:

I find that the RPD was alert to considerations relating to Port of Entry interviews and notes and noted the Appellants' explanations for not disclosing police detention namely that of [*sic*] due to fear and nervousness. However, as correctly observed by the RPD, the Appellants' [*sic*] not only failed to disclose police detentions and fear of police at their port of entry interview, they also failed to report having been detained in their Schedule A and Schedule 12 forms. [. . .] Overall, while I could accept that nervousness or fear may have impacted the Appellants' initial responses in a port of entry interview, I find that these issues do not adequately explain why either Appellant did not document being detained by police in their Schedule A or Schedule 12 forms. Thus, I find that the Appellants' failure to report detention in Schedule A and 13 [*sic*] forms undermines the credibility of the allegation that the Appellants were detained by police in India.

[24] Regarding the omission of having lived in Delhi for several months on their original Schedule A forms, the RAD states:

The Appellants' original Schedule A, completed on November 24, 2018, lists only one residence spanning the time period from 2008 to 2018. The RPD properly asked the Principal Appellant to explain why he did not include a residence in Delhi on his immigration document. In response, the Appellant testified that: "when we got down at the airport we were very nervous. Whatever we could tell we told everything" [footnote omitted]. I agree with the RPD that this explanation does not adequately explain why the Principal Appellant would have been unable to document having resided in another location if this was the truth. If anything, if it were the case that the Appellants had found it necessary to flee their home to another location, it would be reasonable to expect that this would be top of mind and documented correctly in the Appellants' initial asylum documentation.

[25] The applicants submit that the RAD's reasoning concerning the omission of the police detentions rests on the assumption that they would not still have been fearful and nervous when they completed their Schedule A and Schedule 12 forms. Since they still omitted material information from those forms, fearfulness and nervousness cannot explain why they omitted the same information in the original Port of Entry interviews as well. Put another way, the RAD appears to have held that it would not have drawn an adverse inference from the applicants' failure to mention the May 2018 incident in their Port of Entry interview standing alone (since this could reasonably be explained by their fearfulness and nervousness) but this omission did not stand alone. The applicants also omitted material information from their Schedule A and Schedule 12 forms.

[26] If read in isolation, I agree with the applicants that the RAD's analysis quoted in paragraph 23, above, appears to overlook the fact that they completed their Schedule A and Schedule 12 forms with the assistance of the CBSA officer immediately after their interviews. This might suggest that the RAD failed to consider that the applicants could well have been just as fearful and nervous when they completed the forms, as they were when they were interviewed a short time earlier. Nevertheless, the applicants have not persuaded me that the RAD actually misapprehended the evidence.

[27] As reflected in the passage from the RAD's decision quoted in paragraph 24, above, the RAD recognized that the immigration forms were completed while the applicants were still at the airport and while they claimed to have been nervous. The RAD found that this was not an adequate explanation for the omission of a material fact – namely, that they had resided for

several months in Delhi after fleeing their home. It was open to the RAD to draw this conclusion. This finding would apply equally to the omission of the police detention from both Schedule A and Schedule 12. In other words, even if the applicants were still nervous when they completed their immigration forms, as they claimed, this did not adequately explain why they omitted other material facts as well – namely, the police detentions. While the RAD’s analysis of this issue could have been clearer, I am not persuaded that it is unreasonable.

[28] In any event, this was not the only ground on which the RAD found the applicants’ claims to lack credibility. That overall finding is reasonably supported by a number of other considerations, many of which the applicants have not challenged.

[29] For these reasons, the application for judicial review will be dismissed.

[30] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-12535-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12535-22

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