

Federal Court



Cour fédérale

Date: 20240405

Docket: IMM-2975-23

Citation: 2024 FC 533

Toronto, Ontario, April 5, 2024

PRESENT: The Honourable Mr. Justice A. Grant

Docket: IMM-2975-23

BETWEEN:

**KAMINIBEN VIPULKUMAR PATEL
PRISHA VIPULKUMAR PATEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Kaminiben Vipulkumar Patel, and her minor daughter, Prisha Vipulkumar Patel, are citizens of India. They are seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated February 7, 2023 [Decision].

[2] The RAD dismissed the Applicants' appeals, as it concluded that the Refugee Protection Division [RPD] had correctly rejected their refugee claims based on concerns related to the Principal Applicant's credibility. Of particular concern to both the RPD and the RAD was what appeared to be 'coaching' that the Principal Applicant had received during her hearing before the RPD.

[3] For the reasons that follow, I dismiss this application for judicial review. The reasons provided by the RAD demonstrate that it considered the evidence on the record. Its rejection of new evidence submitted on appeal was reasonable, as was its decision not to conduct an oral hearing. The RAD's findings regarding Ms. Patel's lack of credibility are justified in light of the facts and law. As such, the Applicants have not established that the RAD's decision was unreasonable.

II. Facts

A. *Background*

[4] The Applicants claim to fear harm at the hands of Ms. Patel's husband, Vipulkumar Ambalal Patel. The Principal Applicant alleges that her husband started an extramarital affair in January or February 2019, and became abusive. In May 2019, Ms. Patel and her daughter moved to her parents' home, where they stayed until December 2019.

[5] The Principal Applicant alleges that Mr. Patel started rumours about her having converted to Islam, and that she was spreading negative messages about Hinduism. She further

alleges that Mr. Patel wants to kill her because she has disgraced the family's honour and reputation due to the rumours he spread relating to her erroneously imputed religious faith.

[6] In September 2019, three unidentified men entered the home of Ms. Patel's parents and threatened to kill her. When her father attempted to file a police report, the police told him that there was a complaint filed against his daughter on the grounds she had converted to Islam, and was spreading negative messages about Hinduism. This was the moment when Ms. Patel became aware of the rumours surrounding her faith. The police then further advised that the only reason she was not arrested was because the police were friendly with Mr. Patel. In December 2019, the home was raided again by three unidentified men who claimed Ms. Patel had dishonoured their god. Ms. Patel's father chased the men away by shooting at them.

[7] After the second incident, Ms. Patel and her daughter fled to Canada on temporary resident visas that they had earlier obtained in April 2019. The Applicants made a claim for refugee protection shortly after arriving in Canada.

B. *The RPD Decision*

[8] The hearing into the Applicants' claims was heard by the RPD on August 8, 2022. At one point in the proceedings the Principal Applicant muted her microphone and, when asked to unmute herself, she immediately asked to take a break. When she returned from the break, she was asked a follow-up question. She paused after the question was interpreted and during that pause the RPD heard a whispering sound coming from the Principal Applicant's microphone.

When asked to explain the whispering, the Principal Applicant said it had come from her daughter's iPad in another room.

[9] Following the hearing, the RPD rejected the Applicants' claims. In arriving at this determination, the Member found that, contrary to what the Principal Applicant had stated, the whispering sounds that could be discerned in the hearing were not merely from the minor Applicant's iPad, but on a balance of probabilities, came from someone else in the room who was coaching the Principal Applicant in her testimony. This, the RPD found, undermined the overall credibility of the Applicants' claims. Additionally, the RPD found that the Principal Applicant's testimony with respect to her marital status and separation from her husband was inconsistent, evolving and contradictory.

C. The RAD Decision

[10] The Applicants appealed the RPD decision to the RAD. In support of their appeals, they requested to submit new evidence, consisting of an affidavit in which the Principal Applicant sought to explain the 'whispering' sounds that took place during the virtual hearing. The Applicants also requested an oral hearing. The RAD denied both requests and dismissed the Applicants' appeals.

[11] In arriving at this conclusion, the RAD agreed with the RPD that the Principal Applicant had been coached during her hearing. The RAD also found that the RPD had correctly identified inconsistencies in the Principal Applicant's testimony that, taken collectively, undermined the credibility of her claim.

[12] With respect to the inconsistencies in the evidence surrounding the Principal Applicant's marital status, the RAD did not agree with one aspect of the RPD's determination, namely the conclusion that the Principal Applicant provided contradictory information about her marital status in alternately listing herself as "married" in some places and "separated" in others. Given that the Principal Applicant has remained married to her husband, it was not contradictory to state this fact, while also noting in other places that they were separated.

[13] However, the RAD found that other aspects of the Principal Applicant's testimony before the RPD contained irreconcilable, internal conflicts. For example, the RAD noted that the Principal Applicant testified that she never considered getting a divorce in India because her life was in danger. Later, when the RPD member asked if she sought to obtain a divorce after coming to Canada, the Principal Applicant stated that she had not because when she earlier tried to obtain one in India, her husband had not cooperated. The RAD noted that, despite several efforts to have her explain this discrepancy, the Principal Applicant could not clarify her conflicting answers.

[14] Given the foundational nature of the Principal Applicant's marital status to her claim, and the concerns related to the coaching that she had received during the hearing, the RAD concluded that the RPD decision was correct, and it correspondingly dismissed the appeal.

III. Issues

[15] This matter raises the following issue:

1. Was the Decision reasonable?

IV. Submissions of the Parties

A. *Submissions of the Applicants*

[16] The Applicants submit that the Decision under review is unreasonable as the RAD erred in: i) rejecting the new evidence they had submitted in support of the appeal; ii) refusing to conduct an oral hearing; and iii) concluding that the RPD's credibility concerns, and ultimate rejection of their claims, were correct. In oral argument, counsel for the Applicants focused his submissions on the discretion that the RPD had to adjourn the proceedings at the moment it identified concerns related to the conduct of the hearing. While acknowledging both that the Applicants made no request to adjourn the proceeding, and that the RPD was not under an obligation to adjourn, counsel argued that this would have been the better approach.

B. *Submissions of the respondent*

[17] The Respondent [Minister] submits that the RAD decision is reasonable. The RAD's rejection of the new evidence submitted in support of the appeal and its decision not to conduct an oral hearing were both based on reasonable interpretations of the applicable statutory provisions. Moreover, the RAD appropriately assessed the RPD's findings with respect to the Principal Applicant's credibility and reasonably concluded that the RPD had correctly arrived at its conclusions.

V. Standard of Review

[18] The parties agree that the standard of review with respect to the issues raised by the Applicants is reasonableness. While the Applicants have raised passing concerns about the fairness of the RPD decision, their central arguments focus on the RAD's determinations related to new evidence and the oral hearing, and the RAD's upholding of the RPD's credibility findings. This being the case, I am satisfied that reasonableness is the applicable standard of review.

[19] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 64).

[20] The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136). This is the approach I have used in my assessment of the decision under review.

[21] The onus is on the party challenging the decision to establish that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative

decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

VI. Analysis

[22] As noted above, the Applicants submit that the Decision is unreasonable for three main reasons. First, the RAD erred in failing to admit the new evidence that was tendered on appeal. Second, it was unreasonable for the RAD to have rejected the Applicants’ request to hold an oral hearing. Third, the RAD’s credibility findings are unreasonable. With respect, I do not find that any of these arguments establish that the RAD’s decision was unreasonable.

A. *It was reasonable for the RAD to refuse to admit the new evidence*

[23] Subsection 110(4) of the *IRPA* states:

(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.

[24] In support of their appeals, the Appellants produced an affidavit from the Principal Appellant, in which she sought to explain and contextualize the whispering sounds that the RPD found to constitute coaching. As noted above, at the RPD hearing, the Principal Applicant stated that the whispering sounds had come from her daughter’s iPad. However, in her affidavit, the Principal Applicant essentially retracted this statement and asserted for the first time that her son was also present, and that the whispering sound was her son talking with her daughter.

[25] The RAD Member refused to admit the affidavit as new evidence, as she found it did not meet the requirements of subsection 110(4) of the *IRPA*. Specifically, the Member stated that the Applicants had failed to establish that the affidavit either post-dated the rejection of their claims, or was not available to them at the time of the rejection.

[26] The above is a reasonable assessment of the admissibility of the Principal Applicant's affidavit. At the RPD hearing, the Principal Applicant was confronted with the Member's concern that someone was speaking to her during the hearing. Given that the RPD's decision was reserved, the Applicants had ample opportunity prior to the rejection of their claims to set the record straight with respect to who was present at the hearing, and to explain the whispering sounds. As such, while the affidavit itself was drafted after the rejection of the Applicants' claims, it was reasonable for the RAD to conclude that its contents pre-dated the RPD's decision. It was also reasonable for the RAD to conclude that the other criteria set out under subsection 110(4) of the *IRPA* were not met.

B. *It was reasonable for the RAD to reject the Applicants' request for an oral hearing*

[27] Having rejected the new evidence that was provided on appeal, the RAD reasonably determined that the statutory pre-conditions for conducting an oral hearing had not been met. The Appellant argues that the RAD's decision appears "unreasonable by not allowing the oral hearing since the determinative issue was credibility." However, as counsel for the Applicants likely knows, the mere fact that credibility may be at issue is not, in itself, sufficient to satisfy the legislative criteria for holding a hearing, as set out at subsection 110(6) of the *IRPA*. Were it otherwise, the RAD would be obligated to conduct an oral hearing in every case in which an

RPD credibility finding is at issue on appeal. This is neither the effect, nor the intent, of subsection 110(6) of the *IRPA (Mbouna v. Canada (Citizenship and Immigration), 2022 FC 941* at paras 10–15).

[28] In this case, given the RAD's rejection of the new evidence, it appropriately concluded that there was no information before it that raised a serious issue with respect to the Appellants' credibility, that was central to the decision, and that, if accepted, would justify allowing or rejecting the refugee protection claim. As such, the RAD reasonably denied the request for an oral hearing. In fact, in these circumstances, this was the only conclusion available to it.

[29] Moreover, as the Minister correctly notes, it is well established that the RAD may make credibility findings based on the record that was before the RPD without holding an oral hearing (*Oluwaseyi Adeoye v Canada (Citizenship and Immigration), 2018 FC 246* at para 13 [*Oluwaseyi*]; *Marin v Canada (Citizenship and Immigration), 2018 FC 243* at para 37).

[30] Consequently, I see nothing unreasonable in the RAD's rejection of the Applicants' request to conduct an oral hearing.

C. *The RAD's credibility findings are reasonable*

[31] The Principal Applicant argues that the RAD erred with respect to the assessment of her credibility in two ways. First, she submits that the RAD erroneously impugned her credibility with respect to her testimony concerning her marriage; and second, the RAD erred with respect to its conclusion that she was coached. With respect, neither of these arguments are persuasive.

[32] More broadly, the Applicants argue that it is settled law that when a claimant swears to the truth of their testimony, that testimony is presumed to be true unless there is a valid reason to doubt its truthfulness (*Chekroun v. Canada (Citizenship and Immigration)*, 2013 FC 737 at para 65, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at para 5). They argue that neither the RPD, nor the RAD, had a valid reason to find that this presumption was rebutted. I disagree.

[33] The RAD found that the presumption of truthfulness was, in this case, rebutted on two grounds. The first related to the inconsistencies in the evidence provided by the Principal Applicant as to whether she had ever sought a divorce. The second ground arose from the RAD's conclusion that the Principal Applicant had indeed been coached during her hearing. For the reasons set out below, I can find nothing unreasonable in these findings.

- (1) The RAD reasonably determined that the Principal Applicant's credibility was undermined by her inconsistent testimony

[34] I find that the RAD's assessment of the Principal Applicant's testimony was reasonable. The RAD appropriately engaged with the argument and evidence before it, concluding that it disagreed with some aspects of the RPD decision, but agreed with others.

[35] With respect to the Principal Applicant's marital status, the RAD found the RPD to have appropriately notified the Principal Applicant of its concerns and given her three different opportunities to explain the discrepancies in her testimony. Noting that the Principal Applicant failed to reconcile her statements, the RAD concluded that the RPD had not erred in drawing a negative inference. I see nothing in this approach or conclusion that is unreasonable. As the

Minister notes, the Principal Applicant's marital status and her attempts to obtain a divorce were not minor issues, given the premise of her refugee claim was her fear of her husband. As this Court has noted before, inconsistent evidence related to central issues of a claim may ground an adverse credibility finding (*Kaur v Minister of Citizenship and Immigration*), 2012 FC 1379 at para 34).

[36] The RAD's reasons are not perfect. However, given the inconsistencies concerning this important element of the Principal Applicant's testimony, it was reasonable for the RAD to find that her credibility was undermined. As Justice Gascon stated in *Paulo*, "the reasons for a decision do not need to be perfect or even comprehensive. They only need to be comprehensible and justified. The reasonableness standard does not concern a decision's degree of perfection, but only its reasonableness": *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 62, citing *Vavilov* at para 91. I find the RAD's decision meets this standard; its conclusions with respect to the Principal Applicant's testimony are coherent and flow logically from the record. There is no reason to intervene in this aspect of the RAD's decision.

- (2) The RAD reasonably determined that Ms. Patel was coached and that this further undermined her credibility

[37] The RAD's assessment of the RPD's handling of the coaching issue was also reasonable. The RAD appropriately engaged with the two questions that arose in respect of this issue: i) whether the RPD correctly found that the Principal Applicant had been coached by an undisclosed person during its hearing; and ii) assuming the Principal Applicant was coached, whether the RPD was correct in drawing a negative inference with respect to the Principal Applicant's credibility.

[38] As was important in the circumstances, the RAD Member listened to the recording of the RPD hearing and could also distinctly hear whispering sounds following the asking of a question by the RPD Member. The RAD stated: “[t]he RPD asked a question, the question was interpreted, whispering could be heard, and then the principal Appellant answered. Based on the timing of the question, the intervening whisper, and the principal Appellant’s eventual response, I find on a balance of probabilities that she was coached” (Decision at para 24). Given that the RAD had access to the audio recording of the RPD hearing, it was well-situated to assess the sequence of events as they unfolded at the RPD hearing. On a reasonableness standard of review, I see no basis on which to interfere with the RAD’s findings in this regard.

[39] The RAD’s conclusions on the impact of this coaching were also reasonable. Citing recent jurisprudence, the RAD noted that “interference in the fact-finding process by abusing or taking advantage of a virtual examination strikes at the integrity of fact-finding and may not be tolerated”: *Kaushal v. Vasudeva et al.*, 2021 ONSC 440 at para 65.

[40] The RAD (and the RPD) also referred to *Gjergo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 303 [*Gjergo*], where this Court upheld a negative credibility finding made by the RPD in an instance where one applicant whispered answers to another applicant (*Gjergo* at para 22). In light of the record and the jurisprudence, there is nothing unreasonable in the RAD’s approach to the coaching issue. Indeed, the RAD carefully assessed the RPD’s findings, it conducted its own assessment of the record, including listening to the recording of the hearing, and found the Principal Applicant’s actions and answers had undermined her credibility.

VII. Conclusion

[41] As a result of the above, I find that there is nothing in the RAD's analysis or conclusions that require this Court's intervention. The Decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker (*Vavilov* at para 85; *Mason* at para 64). The Decision is therefore reasonable.

[42] The request for judicial review should be dismissed. Neither of the parties to this proceeding proposed a question of general importance to be certified, and I agree that none arises.

JUDGMENT in IMM-2975-23

THIS COURT'S JUDGMENT is that:

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

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2975-23

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