

Federal Court



Cour fédérale

Date: 20240503

Docket: IMM-9848-22

Citation: 2024 FC 681

Ottawa, Ontario, May 3, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ALI SROUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This case is about credibility. The Applicant claims that the Refugee Appeal Division (“RAD”) erred when it found he had not established his refugee claim because some of his evidence was not credible. He also submits that the RAD erred when it failed to overturn the Refugee Protection Division’s (“RPD”) negative credibility findings.

[2] The Applicant raises three main grounds of review, arguing that: the RAD erred by making credibility findings not supported by the facts; the RAD breached procedural fairness by failing to put new issues to him so that he could respond; and the RAD unreasonably dismissed corroborative evidence based on alleged contradictions in the evidence.

[3] I am not persuaded that the RAD's decision is unreasonable. While it is acknowledged by all sides that the RAD made an error in regard to one specific finding made by the RPD, discussed below, this in itself is not a basis to reverse the decision. I disagree with the Applicant's assertion that the RAD raised new issues, and I find its assessment of his credibility to be reasonable. For the reasons set out below, the application for judicial review will be dismissed.

I. Background

[4] The Applicant is a citizen of Lebanon, who says he fled that country because he fears persecution by Hezbollah, Haraket Amal (a Hezbollah-allied militia) and pro-government forces (for ease of reference, I will simply refer to the agents of persecution as Hezbollah). In October 2019, the Applicant participated in protests against the government, and he says he was beaten during some of these demonstrations.

[5] The Applicant claimed that as a consequence of his participation in the protests, he and his family members were threatened, and in particular that Hezbollah threatened to deny him and his family local services including security. On November 15, 2019, the Applicant fled Lebanon and claimed refugee status in Canada, using a visa he had obtained previously. Since his departure, the Applicant alleges that his family members have been denied COVID-19 economic assistance from the government because they have been branded “political opponents.”

[6] The RPD hearing occurred over four sittings. The first two hearings were adjourned because the Applicant had not requested an interpreter, and then because his Basis of Claim (“BOC”) form was not translated. During the third sitting, the Applicant indicated he was experiencing psychological or emotional difficulties and could not continue. The RPD accepted the Applicant’s request to be designated as a Vulnerable Person and made a number of procedural accommodations, and the fourth sitting completed the hearing.

[7] The RPD accepted that the Applicant had participated in the October 2019 protests in Lebanon and was injured by pro-government forces. However, it found that his evidence about the threats he said he experienced because of his participation lacked credibility. In summary, the RPD found the Applicant’s evidence about the threats was vague, and that he provided contradictory evidence about when he received his visa. The RPD noted that his visa indicated it was issued before he participated in the protests, but his BOC indicated that he got it after the

protests; when he was questioned about this discrepancy, he said he did not know when he received it. The RPD concluded he received the visa before the protests occurred.

[8] On the threats from Hezbollah, the RPD found the Applicant's evidence to be lacking in detail. For example, when asked how many times he was confronted by Hezbollah, the Applicant stated "at least one time" but could not provide more details. When the RPD noted that his previous testimony was that he had been threatened multiple times, the Applicant stated that some of these threats happened before the protests. The RPD found the Applicants' evidence on the number of threats harmed his credibility:

[28] Given that the claimant left Lebanon relatively shortly after the protests (about two weeks), the panel finds it unreasonable that the claimant would not be able to recall exactly how many times he interacted with Hezbollah or its allies after the protests. While the panel acknowledges the vulnerable status of the claimant, the panel finds it would not be unreasonable for the claimant to recall the amount of times rather than specific details, and to relay different incidents regarding a clear question.

[9] The Applicant had claimed that after he left Lebanon, Hezbollah threatened to kidnap him. The RPD found this was not supported by the evidence provided by his family members, and it gave little weight to his witness's evidence because it was lacking in credibility. The RPD also rejected his claim of online harassment while in Canada, finding that his evidence did not show that Hezbollah was connected to the online activity.

[10] The RPD did not find that the Applicant's Vulnerable Person status explained the difficulties with his evidence. Overall, it concluded that the Applicant had not met his burden to establish that there was a serious possibility of persecution or a risk to his life or security in Lebanon, and therefore rejected his claim.

[11] The Applicant appealed the RPD's decision to the RAD, arguing that the RPD's credibility assessments were incorrect. In particular, he submitted that the RPD erred in finding that his testimony about the threats he experienced in Lebanon and when he received his Canadian visa was not credible. He also said the RPD improperly dismissed the testimony of his witness as well as the evidence provided by his family members.

II. The decision under review

[12] The RAD agreed with the Applicant's argument that the RPD made several errors, but found these were not fatal. The RAD concluded that there was insufficient credible evidence to establish the Applicant's fundamental allegation that he and his family had been threatened or targeted by Hezbollah.

[13] The two errors identified by the RAD concerned the RPD's negative inference regarding the Applicant's testimony about when he received his Canadian visa, as well as the RPD's finding about his testimony about the number and nature of the threats from Hezbollah. On the

first point, the RPD had found that the Applicant had obtained his Canadian visa before the protests and this undermined his claim that he had not planned to leave Lebanon before the threats. The RAD accepted the Applicant's argument that he was not being evasive when he testified on this point, and that there was nothing implausible about him not actually obtaining his passport until several weeks after it was issued. The RAD found this error was on a peripheral point and was not fatal to the RPD's decision.

[14] The Applicant claimed that the RPD erred by drawing a negative inference from his inability to recall the exact number of times Hezbollah threatened him. On this point, the RAD stated:

[19] I agree with the Appellant that it would be an error to expect him to remember the exact number of interactions with [the agents of persecution], given that he regularly (*sic*) encountered members of the group(s), including on his way to and from the protests. Respectfully, in my independent assessment, the RPD did not impose such a requirement, and it was the Appellant's vague and shifting testimony about whether he was threatened more than once, and the details of any such encounters, and not his inability to give an exact number of interactions, that was the problem.

[15] The RAD reviewed the Applicant's testimony on the number of times he was threatened, and noted that when the RPD pointed to the differences in his evidence, he did not have an explanation for the inconsistency or shifting testimony. Given the Applicant's evidence that he stayed at his grandmother's house after the protests, and that the core of his claim was that he and his family were threatened due to his involvement in the protests, the RAD found he should have been able to provide consistent testimony on the number and timing of the threats.

[16] The RAD found that the Applicant's evidence on the threat that he and his family would be cut off from services was vague and equivocal, because he was unsure whether the threat occurred after he stopped protesting and also whether the threat was directed to himself or his father. Overall the RAD found that the Applicant was unable to describe clearly or in any detail the threats he had personally received, although he did describe verbal disagreements about the protests with members of Hezbollah.

[17] In addition, the RAD noted that the Applicant did not contest the RPD's finding that he had failed to establish that he was targeted for online harassment after he left Lebanon. The RAD conducted an independent analysis of the evidence, and agreed with the RPD's conclusion on this point. The RAD also agreed with the RPD's assessment that the Applicant's Vulnerable Person designation did not explain all of the problems with his evidence, and noted that he had not raised any issues of procedural fairness regarding the RPD hearing in light of his designation. The RAD noted that the RPD had accepted the procedural accommodations the Applicant requested, including being assisted by his friend and taking breaks during his testimony so that he could refresh his memory.

[18] In addition, the RAD found that the RPD erred by discounting the supporting letters of the Applicant's father, mother and sister. The RPD observed that these letters did not corroborate the Applicant's claim that Hezbollah had threatened to kidnap him, and therefore it gave them

little weight. The RAD found this to be an error because the RPD had focused on what the letters did not say instead of examining the probative weight of their actual contents.

[19] The RAD conducted its own independent review of these documents, and found that while the letters generally repeated the main allegations in the Applicant's BOC narrative, they contradicted his evidence in some respects. The mother said he was threatened by pro-Hezbollah neighbours, but the Applicant never claimed to face any threats from his local community. The father's letter said that Hezbollah's threat to cut off local services was made to him and the Applicant, but this differed from the Applicant's narrative. The RAD concluded that while the Applicant's family may have experienced some discrimination in being denied certain benefits, the evidence did not substantiate any link between these experiences and the Applicant's political activity.

[20] Like the RPD, the RAD gave little weight to the evidence of the Applicant's friend regarding his efforts to get the supporting letters translated into English. While the RAD was prepared to accept the friend's evidence as credible, it concluded that his difficulty getting the letters translated did not establish the truth of their contents and the friend did not witness any of the threats directly.

[21] The RAD concluded that it was entitled to identify additional credibility concerns and to make independent credibility findings, because the Applicant had put credibility into issue on his appeal. Based on this, the RAD determined it was entitled to make the additional findings.

[22] Overall, the RAD accepted that the Applicant had some disagreements with local Hezbollah members, and that he may have been criticized and harassed because of his political stance. However, the RAD found his claim that he and his family faced threats was substantially embellished and concluded that he had not demonstrated, on a balance of probabilities, that the threats or targeting had occurred. The RAD dismissed the appeal and confirmed the RPD decision that the Applicant was neither a Convention refugee nor a person in need of protection.

[23] The Applicant seeks judicial review of the RAD decision.

III. Issues and Standard of Review

[24] The Applicant submits that the RAD decision is unreasonable and that it breached procedural fairness. He argues that the decision is unreasonable on three grounds: the RAD's credibility findings are not supported by the evidence; it erred by departing from the RPD's finding about the impact of the Vulnerable Person designation; and it unreasonably dismissed his corroborative evidence. The Applicant also contends that the RAD breached procedural fairness by failing to give him an opportunity to address the new issues it dealt with in the decision.

[25] The first three issues raised by the Applicant are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[26] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2 [*Canada Post*]). The reviewing court must look for any “fatal flaws” in the reasons’ overarching logic (*Vavilov* at paragraph 102).

[27] Questions of procedural fairness require an approach resembling the correctness standard of review that inquires “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at paragraph 107). As noted in *Canadian Pacific* at paragraph 56, “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond”, and at paragraph 54, “[a] reviewing court... asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed”.

IV. Analysis

A. *The RAD's credibility findings are not unreasonable*

[28] The Applicant submits that the RAD's assessment of his credibility and supporting evidence is fatally flawed. He points to several errors, and argues that any one of these is sufficiently serious to make the entire decision unreasonable.

[29] First, the Applicant notes the RAD's erroneous finding that the RPD had not drawn a negative inference from his inability to remember the exact number of times he was threatened by Hezbollah. Although the RAD found that the RPD had not required him to specify the number of occasions he faced threats, the Applicant submits that this is contradicted by the following passage from the RPD's decision: "...the panel finds it would not be unreasonable for the claimant to recall the amount of times rather than specific details, and to relay different incidents regarding a clear question."

[30] The Applicant argues that this finding relates to a core element of the credibility assessment, and therefore the RAD's error is sufficiently serious to call into question the entire decision. The Respondent acknowledges that this statement by the RAD is mistaken, but submits that it was only one of several reasons the RAD questioned the Applicant's credibility.

[31] I am not persuaded that this obvious mis-statement by the RAD is enough to call into question its reasoning on the other credibility findings that underpin the decision. Moreover, while the RAD erred in saying that the RPD did not require the Applicant to specify the number of times he was threatened, the remainder of its description of the RPD's credibility finding was correct: namely, that the Applicant's "vague and shifting testimony" and the lack of details of his encounters with Hezbollah undermined the credibility of a core element of his refugee claim. This is an accurate description of the RPD's conclusion, and it is not undermined by the RAD's earlier mis-statement.

[32] A careful review of both the RPD's and the RAD's decisions makes it clear that they identified a number of credibility issues with the Applicant's evidence as well as the supporting evidence he brought forward. The finding regarding the number of times he was threatened by Hezbollah is only one of several points that cast doubt over the Applicant's credibility. Both decisions give equal or more emphasis to the Applicant's inability to provide details regarding the threats he received, as well as his inconsistent and shifting testimony on certain key events, including the threat to cut off services (discussed below).

[33] Because this was one of several findings, and neither the RPD nor the RAD identified it as an important basis for their conclusions, I am unable to conclude that the RAD's mis-statement meets the standard set out in *Vavilov* at paragraph 100:

[100] The burden is on the party challenging the decision to show that it is unreasonable. 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.

[34] Turning next to the Applicant's argument that the RAD erred by finding inconsistencies in the supportive evidence, and its treatment of his corroborative evidence, I am not persuaded that the RAD's findings on these points are unreasonable. The Applicant argues that the RAD's statement that he was unable to describe "any threats he had personally received" is contradicted by his testimony, in which he describes in specific terms some of the threats. He argues that he testified in detail during two different sittings before the RPD about the threat that he and his father received after participating in protests. The Applicant says the RAD failed to examine this evidence, and therefore its criticism of his testimony is without foundation.

[35] In addition, the Applicant challenges the RAD's findings that there were contradictions between his evidence and his family member's corroborative letters. For example, the Applicant refers to specific passages in his testimony about the circumstances of the Hezbollah threat to cut off services, which he submits are consistent with his father's description of this event. Based on this, the Applicant contends that the RAD unreasonably rejected his corroborative evidence.

[36] The Respondent submits that the Applicant is presenting a distorted version of the RAD's actual findings regarding the vagueness of his testimony about the threats. The Respondent also says that the RAD's findings that there were contradictions in the evidence is well supported on the record.

[37] I am not persuaded by the Applicant's argument about the RAD's finding that he was unable to provide details regarding "any threats". His claim on this point rests on one part of one sentence in the RAD's reasons, specifically that "he was unable to identify... any threats that he received." Reading the paragraph as a whole, the RAD is describing and explaining its overall assessment of the Applicant's evidence regarding the threats, which it finds to be vague and lacking in detail (and I note this is consistent with the RPD's conclusions on this point). The RAD observes that while the Applicant was able to describe disagreements with Hezbollah about the protests, "he was unable to clearly identify or describe any threats he received". The RAD is not saying that the Applicant did not try to describe the threats; instead, it is commenting on his inconsistent and shifting testimony on the central facts that he says prompted him to flee Lebanon and claim refugee status in Canada.

[38] This finding is grounded in the evidence, as discussed in the previous section of the RAD's analysis. The RAD summarized the Applicant's difficulty remembering whether he was threatened before or after the protests, as well as the differences between his BOC narrative and his testimony on the threat to cut off services. His narrative said this happened after the protests

and he was threatened directly. His testimony on this point was equivocal, and it was not clear whether he alone was threatened or whether his father was also present. The RAD found these problems to be significant because this incident was a central pillar of his refugee claim.

Following this description of the Applicant's evidence, the RAD made the statement, regarding his inability to describe "any threats".

[39] Based on the RAD's analysis of the Applicant's evidence, and its consideration of his supporting evidence discussed below, I am not persuaded that the RAD's finding is unreasonable.

[40] My conclusion on this point is reinforced by the following statement by the RAD at an earlier part of its decision, which explains the basis for its credibility findings in clear terms:

[18] I find that the Appellant's testimony that he and his family members were threatened by [agents of persecution and harm] because of his participation in anti-government protests contained inconsistencies, evolved during the Hearing, and lacked the level of detail one would reasonably expect under the circumstances. Overall, the Appellant's testimony about this matter was not credible.

[41] The RAD's credibility findings are supported by the evidence and are reasonably explained in the decision. RAD findings on credibility deserve deference. I can find no basis to conclude that this statement by the RAD is unreasonable or taints its decision.

[42] As for the Applicant's argument that the RAD unreasonably rejected his corroborative evidence, I disagree. It is not necessary to review all of the details on this point; the evidence in the record is accurately summarized in the RAD decision. It is sufficient for me to note that the Applicant seeks to downplay the equivocal statements he made while testifying about the threat to cut off services, and the inconsistencies between his various accounts of this pivotal incident, as compared with his father's letter. The RAD reasonably found that the inconsistent and shifting evidence on such an important element in the Applicant's refugee claim diminished his credibility. There is no basis to disturb this finding.

[43] Overall, I am not persuaded that the RAD's credibility assessment or its treatment of the Applicant's corroborative evidence was unreasonable.

B. *There was no breach of procedural fairness*

[44] The Applicant claims that the RAD breached procedural fairness by failing to put two new issues to him so that he could provide a response: (a) the RAD's findings regarding his memory problems based on its assessment of the psychotherapy report; and (b) the RAD's finding that he had not proven that he continued to post about the political situation in Lebanon after his arrival in Canada.

[45] The Applicant says that the RPD had not asked him to elaborate on the memory difficulties he faces. He argues that the RAD's statement that his medical report indicates his symptoms are "moderate" but "does not elaborate further on [his memory problems]" amounts to a new issue. The Applicant argues that this amounts to a new credibility finding, and based on *Isapourkhoramdehi v Canada (Citizenship and Immigration)*, 2018 FC 819 and *Sarker v Canada (Citizenship and Immigration)*, 2014 FC 1168, he argues that the RAD's failure to give him notice and an opportunity to respond amounts to a breach of procedural fairness.

[46] In addition, the Applicant also submits that the RAD raised a new issue by finding that he had not established that he continued to post social media messages about Lebanon. He says that if he had been asked by the RPD about this, he could have testified about his social media posts after his arrival in Canada and his intention to continue to use this platform to express his political beliefs.

[47] The Respondent argues that far from being new issues, the evidence about the Applicant's memory problems and social media posts was submitted by him and he was on notice that they were live issues. The Respondent argues that the Applicant cannot complain that the RAD discussed either subject, because he introduced them into the RPD hearing.

[48] I do not find any breach of procedural fairness. The RAD's discussion of the Applicant's memory was part of its assessment of whether his Vulnerable Person designation could explain the issues with his testimony. He had introduced a Psychotherapy Assessment Report in the context of his application for designation, and thus it formed part of the record. The RAD noted that "[a]ccording to the report, [the Applicant's] symptoms include difficulty focusing, and remembering things." The RAD then noted that the RPD had acquiesced to the Applicant's procedural accommodation requests, and that he had raised no issue on the appeal with regard to the procedural fairness of the RPD hearing. The RAD's conclusion mirrored that of the RPD, namely that the credibility issues with his testimony were not adequately explained by the evidence of his medical or psychological condition. This is not a "new issue" as that term is understood in the case-law, and the RAD did not treat the Applicant unfairly by considering whether to excuse some or all of his credibility issues because of his Vulnerable Person status.

[49] As for the social media posts, I am also not persuaded this constitutes a new issue. The Applicant had claimed to be targeted and harassed on social media by Hezbollah after his arrival in Canada. The RPD had found his evidence to be equivocal, and in particular that he failed to demonstrate any link demonstrating that Hezbollah was involved in the online activity. The RAD examined this issue, and came to the same conclusion. It also noted that while his posts appeared to show that the Applicant had participated in the October 2019 demonstrations, there was no evidence that these posts had come to the attention of Hezbollah or pro-government forces. Furthermore, the RAD noted that the Applicant's posts were generic in nature and he had not established that these would provoke persecution if he returned to Lebanon.

[50] The Applicant objects to the RAD's statement that "there is no evidence that the [Applicant] has continued to post messages on social media."

[51] As the Respondent points out, the RAD's conclusion is reasonable because it is based on the evidence in the record and the conclusion is explained in the decision.

[52] I am not persuaded that the RAD's discussion of the Applicant's social media posts is unreasonable. The first and most important point is that the Applicant did not contest the RPD's finding that there was insufficient credible evidence to establish that he was targeted online or subjected to harassment through social media after he left Lebanon. The RAD specifically notes this in its decision.

[53] Second, although I accept that the RAD's statement that there was no evidence that the Applicant continued to post on social media is contradicted by his evidence, that mis-statement does not undermine the RAD's analysis of the key question about whether his posts created a forward-facing risk for him. The Applicant points out that his BOC states "... [Now] in Canada, I still post stuff against the corruption from these political parties and the government...". He is right that this contradicts the RAD's statement that there was no evidence that he continued to post.

[54] However, the main thrust of this aspect of his case is that he had been subject to online targeting and harassment, and by implication that his posts would make him a target upon his return to Lebanon. The RPD and RAD both found his evidence on this point to be lacking. I can find no basis to conclude that this is unreasonable.

[55] The Applicant is responsible for providing evidence in support of all of his claims. The fact that he says he could have provided further evidence on this point if he was asked is not a basis to criticize the RAD's decision. The Applicant raised the issue of social media posts and online harassment and targeting, and he made choices about the evidence he put forward in support of that claim. The RAD cannot be faulted for failing to allow the Applicant to supplement the record he put before the RPD on this issue, both because that is not its role in general, and he did not ask to submit further evidence.

[56] For all of the reasons set out above, I find there was no breach of procedural fairness, because the issues discussed by the RAD were not new.

V. Conclusion

[57] For the reasons set out above, I find the RAD's credibility findings and its treatment of the Applicant's supporting evidence to be reasonable. I also find there was no breach of procedural fairness. The application for judicial review will be dismissed.

[58] There is no question of general importance for certification.

JUDGMENT in IMM-9848-22

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

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