

Federal Court



Cour fédérale

Date: 20240610

Docket: IMM-3480-23

Citation: 2024 FC 880

Ottawa, Ontario, June 10, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

USHA RANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review by Usha Rani [Applicant] of a decision by the Refugee Appeal Division [RAD], dated February 23, 2023 [Decision]. The RAD's Decision confirmed the conclusions of the Refugee Protection Division's [RPD], that the Applicant is neither a Convention refugee under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor a person in need of protection under s. 97 of the IRPA.

[2] The central issue was the Applicant's credibility. The RAD found that the Applicant had not been credible because of inconsistencies arising from her submissions and testimony on the identity of the agents of persecution as well as the individuals the Applicant identified for having reported the incidents. The Applicant contends that the RAD adopted a Canadian paradigm in finding inconsistencies, instead of considering factors such as her age, nervousness, and cultural differences.

[3] The Applicant did not demonstrate that the RAD's Decision was unreasonable. The application for judicial review is dismissed for the reasons set out below.

II. Issues

[4] The issue the Applicant raises is whether the RAD's Decision was reasonable in having made negative credibility findings.

III. Relevant Law

[5] The following provisions of the IRPA are applicable in this proceeding:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

IV. Standard of Review

[6] The parties agree the standard of review is reasonableness. The Supreme Court of Canada has established that when conducting a judicial review of the merits of an administrative

decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

[7] The reasonableness standard “requires that a reviewing court defer” to a decision that is based on “an internally coherent and rational chain of analysis” and be “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85 and 99). In assessing whether a decision is reasonable, the Court will examine the reasons given by the administrative decision maker and will assess whether the decision is appropriately justified, transparent and intelligible. 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).

[8] If there is no breach to the procedural fairness duty, the Court will apply *Vavilov*'s presumption to use the reasonableness standard of review. In that case, a Court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker. It is “an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers” (*Vavilov* at para 13).

[9] Such a review must include a rigorous and robust evaluation of administrative decisions. As part of its analysis, the reviewing court must take a “reasons first” approach by examining the

reasons provided with “respectful attention,” in which the Court seeks to understand the reasoning process followed by the decision maker for drawing its conclusion (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 58, 60; *Vavilov* at para 84). The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. “The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125).

[10] The onus is on the party challenging the decision to prove 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).

V. Background

[11] The Applicant was an Accredited Social and Health Worker in India, and at the material times, she was an employee at a hospital. The Applicant claims that she discovered an illegal business of organ trafficking at the hospital. After she reported this to the hospital’s leadership, she states that thugs and goons sent by the hospital came to her house and told her family that they would kill her. She alleged she was assaulted.

[12] On July 29, 2022, the RPD held a hearing virtually and on September 7, 2022, the RPD issued a decision rejecting the Applicant’s claim. The RPD found that the Applicant had not satisfied her burden of establishing that – upon returning to India – there was a serious possibility

of persecution on a Convention ground, or, that on a balance of probabilities, a risk of harm, a risk or torture, or a risk of cruel or unusual punishment.

[13] The determinative issue was credibility. The RPD found that the discrepancies in the Applicant's evidence were material to the core of her refugee claim, namely the genesis of the risk to the Applicant and the continued motivation of her alleged agents of harm.

[14] On appeal of the RPD's decision, the Applicant submitted that the RPD made errors when assessing her credibility, by engaging in a microscopic analysis of her evidence, and by failing to (i) take into account her personal circumstances, (ii) impeach her credibility as a whole, (iii) assess the remaining evidence, and (iv) apply the appropriate test. The Applicant argued that the RPD did not consider factors, such as her age, level of education, background, culture, and experience.

[15] The RAD disagreed with the Applicant, and found that the RPD took into account the Applicant's personal circumstances. While the RPD did not explicitly write about each factor, this did not mean that the RPD had not considered them. The RAD also found that the factors raised by the Applicant provided no explanation on the reasons her recollection significantly varied when describing the incident in her Basis of Claim [BOC], in comparison to her testimony before the RPD. Furthermore, the RAD considered the lack of evidence supporting the reasons that the Applicant submitted for her inability to recall personal experiences, such as a lack of evidence that the Applicant suffered from cognitive deficiencies, memory impairment, or conditions of a medical nature.

VI. Analysis

[16] At the hearing, the Applicant's counsel [Counsel] submitted that, the RPD and the RAD used a Canadian paradigm in making adverse credibility findings against the Applicant. Counsel argued that, individuals above the age of 60 years are considered old in the country and culture to which the Applicant is part of. Therefore, the RPD and RAD set too high a bar to expect the Applicant to remember everything. Counsel also submitted that the Applicant was not a sophisticated person and experienced nervousness during the hearing before the RPD, which may have affected her testimony.

[17] There is no dispute that the RPD, a specialized tribunal, has jurisdiction and is in a better position to determine the plausibility of a testimony (*Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC), [2000] FCJ No 568 (QL) at para 4 [*Sheikh*]). However, credibility findings are not "immune from review," and such findings must be clearly articulated and justified in light of the evidence (*Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Credibility findings are entitled to considerable deference on judicial review, and a decision should not be overturned unless the reasons are perverse, capricious, or without regard to the evidence (*Sheikh* at para 4; *Desir v Canada (Citizenship and Immigration)*, 2019 FC 1164 at para 25).

[18] Discrepancies resulting from a failure to recall details that appear to resemble a "trivia quiz," should not be a basis for undermining credibility. However, discrepancies of facts central to the basis of a refugee claim may support a negative credibility finding (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paras 13-14).

[19] The issue before the RAD was credibility. The RAD reviewed the RPD's decision and the evidence before it. The RAD articulated reasonable grounds for finding that the RPD had not erred in its assessment on the Applicant's credibility. The RAD noted all the instances in which the RPD had found inconsistencies and contradictions between the Applicant's BOC and testimony before the RPD.

[20] The RAD summarized the contradictions in the Applicant's evidence, which revealed the varying versions of her recollection regarding (i) how she discovered the organ trafficking scheme; (ii) how she came to hear the discussion; (iii) who was involved in that discussion; (iv) how and when she reported the incident; and (v) how she described the timeline of events.

[21] These differences were not insignificant. The inconsistencies between the Applicant's recollection in the BOC and those described in her testimony were material differences.

[22] Thus, I do not agree with the Applicant that the RAD engaged in an overly microscopic analysis of the evidence. It was open to the RAD to make a negative conclusion about an applicant's credibility based on an accumulation of contradictions, inconsistencies, and omissions regarding crucial elements of a refugee claim (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22).

[23] In conducting its analysis, the RAD considered the Applicant's arguments in support of her credibility. However, the RAD found that the Applicant did not adequately explain the inconsistencies, nor that the Applicant's personal circumstances were attributable to the

inconsistencies found in her testimony. The RAD found that the Applicant provided no medical evidence to demonstrate that the Applicant suffered from cognitive deficiencies or memory impairment, which could have affected her ability to recall personal experiences.

[24] The RAD was not satisfied that the submissions about the Applicant being a 60-year-old woman with a grade 10 education, were factors to find the Applicant as unsophisticated. The RAD also took notice that the Applicant had been gainfully employed as a social worker and came to Canada on her own. While the Applicant submitted that her memory lapse was attributable to her age and nervousness, among other things, the RAD acknowledged that, “age-related memory loss can be part of the normal aging process.” Moreover, in relying on the testimony provided during the RPD proceedings, the RAD found that the Applicant’s testimony made no mention of the fact that she was unable, or that her stress interfered with her ability, to recall the incident. I cannot find that the Decision was unreasonable in light of the record that was before the RAD.

[25] Finally, the RAD found no nexus to the Convention as the Applicant’s claim was centred on being “a victim of crime, corruption or personal vendetta,” rather than being targeted on convention grounds. Even if there had been a nexus, the RAD determined that the appeal had to be rejected on the issue of credibility.

VII. Conclusion

[26] Upon reviewing the record before the RAD, I cannot find that it was unreasonable for the RAD to conclude that the Applicant lacked credibility, dismissing the appeal and finding that the

Applicant is neither a Convention refugee nor a person in need of protection. While the Applicant disagrees with the RAD's conclusions, the Court cannot reweigh or reassess the evidence (*Vavilov* at para 125).

[27] The parties confirmed that there was no question to certify. I also agree that no certification question arises.

JUDGMENT in docket IMM-3480-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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