Federal Court  Cour fédérale

Date: 20240809

Docket: IMM-4301-23

Citation: 2024 FC 1249

Ottawa, Ontario, August 9, 2024 xx

PRESENT: Madam Justice Azmudeh

BETWEEN:

DAVINDER SINGH RANDHAWA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Davinder Singh Randhawa, has applied to this Court under s. 72(1) of the *Immigration and Refugee Protection Act* [IRPA] to judicially review the decision of the Refugee Appeal Division ["RAD"] upholding the rejection of their refugee claim by the Refugee Protection Division ["RPD"] of the Immigration and Refugee Board ["IRB"].

[2] The Applicant is a citizen of India and of the State of Punjab. He had alleged that a land dispute between members of his family and him led his family to unleash the authorities against

him and accuse him of illicit political activities. He alleged that he feared his family, his in-laws and the police in India.

[3] Both the RPD and the RAD rejected the claim on credibility. The following credibility findings were the subject of the parties' contention on this judicial review:

- The Applicant's failure to mention the name of a member of legislative assembly responsible for his problems, also known as "DSG" on his Basis of Claim form;
- The Applicant's failure to seek refugee protection in Canada on his previous trips in 2018 and 2019;
- The Applicant's allegations that he was detained by in India in May 2019 was not credible because the Applicant had also submitted hotel receipts for the same dates;
- The Applicant did not provide corroborative evidence to overcome the credibility findings.

II. Issues and Standard of Review

[4] The standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent

(*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

[5] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "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" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*], at para 54). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16).

III. Analysis

A. *Legal Framework: Credibility Findings*

[6] There is generally a great degree of deference given to the credibility findings of an expert administrative tribunal. 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).

[7] 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 claimant's testimony

cannot be relied upon, and that there is 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 this in *Magonza v Canada (Citizenship and Immigration),* 2019 FC 14 that I will not repeat here. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[8] When the decision-maker accepts certain material facts while they reject some others, it is important for the analysis to engage with both to explain how the evidence was weighed to support the ultimate conclusion.

[9] 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 IRB. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are created equal. Even though nearly all evidence is admitted at the RPD, and that new evidence before the RAD is subject to the restrictions in section 110(4) of the IRPA, 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 lose the 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.
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> **(My emphasis)**

[10] 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 and the reasons are no longer intelligible (*Patel v Canada (MCI)*, 2024 FC 28 [*Patel*] at para 24).

B. *Was the RAD decision reasonable?*

(1) Omission of DCG prior to the hearing

[11] I agree with the RAD that property rights are not a fundamental human right, and that a claimant must give up their property interest to avoid persecution or to save their life. However, in this particular case, there was evidence before the RAD that while the property dispute initiated the family feud, the family used its influence with the authorities to leverage its position against the Applicant. The Applicant stated that the family subjected him to criminal or political

allegations, such as beatings or involvement with Sikh radicals. It is in this context that exploring the credibility of those political connections was material to the RAD.

[12] The RAD agreed with the RPD that not mentioning DCG was a material omission that negated the Applicant's allegation on trump up charges due to the politician's involvement. It was the Applicant who had testified to the key role DCG played in his persecution. Therefore, it was reasonable for the RAD to agree with the RPD that his failure to mention him in any of his written materials prior to the hearing was unreasonable.

[13] The Applicant argued that in his BOC, even though he had not mentioned DCG by name, he had referred to politicians generally. I note that the Applicant had amended his BOC narrative and had even mentioned other names. Therefore, it was difficult for the RAD to understand why he would omit the one name that was so important in his persecution. I find that the RAD's emphasis of the omission was in the context of the materiality of this fact, and it was therefore reasonable. I disagree with the Applicant that his general reference to other individuals and a generic reference to politicians would render the RAD's finding unreasonable.

(2) Failure to make a refugee claim in Canada on a prior trip

[14] I find that the RAD engaged in a contextual analysis of the Applicant's lack of subjective fear and his credibility about his failure to make a refugee claim. The RPD had asked the Applicant why he had not made a refugee claim in Canada during a six month visit between September 2018 and March 19, 2019. The Applicant replied that at the time, his parents were alive and they thought that they could resolve the land dispute amongst family. However, when a

First Information Report (FIR) was issued against him shortly after his return on March 15, 2019, he knew that it became a more complex issue that involved the police. While this clearly demonstrates an escalation of the tensions with the police, the RAD analysed the evidence on how his brother had previously mobilized the police against him twice, and that the dispute had already exceeded the limits of a family dispute. It was in this context that the RAD agreed with the RPD and found that despite serious threats by his brother prior to the trip to Canada, and two previous arrests by the police when they threatened to accuse him of Sikh radicalism, he failed to seek refuge in Canada. I find that the RAD analysis on this point to be reasonable and responsive to the totality of the evidence before it.

[15] I find that the RAD's analysis on this issue was detailed and the member looked at the seriousness of his brother's previous threat against him and the fact that he had alleged that the brother had the police arrest him on two previous occasions and threatened him with accusing him to be a Sikh radical (RAD reasons at para. 11).

[16] While there no question that the FIR was issued against the Applicant after he returned from Canada to India, it was reasonable for the RAD to not see this further escalation as a reasonable explanation for why he had not taken the previous arrests and the threat by the police seriously enough to seek protection.

(3) Credibility of the detention in May 2019

[17] The Applicant had alleged that he was abducted and beaten by the police in May 2019. More specifically, he had alleged that he was abducted and abused by the police on May 27,

2019. According to a hospital record produced, he was admitted for medical treatment from May 28-31, 2019. The Applicant had stated that upon being released from the hospital, he relocated to Shimla and then Mohali. He had also produced hotel invoices in his name from a hotel in Shimla for a stay between May 23, 2019 and May 30, 2019, periods that supposedly included his abduction and subsequent hospital stay. There is no dispute between the parties that it was the Applicant who had supplied the RPD with the hotel invoice.

[18] The RAD member found that the Applicant could not have been simultaneously detained, at a hospital, and at hotel in Shimla and found that his allegations on being arrested in May 2019 to lack credibility. At Judicial Review, the Applicant argued that since the RPD had never questioned him to explain this potential discrepancy, and that the RAD also never requested an explanation, by relying on the contradiction, the RAD committed a breach of procedural fairness.

[19] I find that this should be analysed in the context of a number of reasonable and fair material credibility findings by the RAD. The RAD noted that the Applicant had produced the invoices from the hotel and that it contradicted his allegations of his dates of detention and hospitalization. The RAD then relied on *Konare v Canada (Citizenship and Immigration)*, 2016 FC 985 at paras. 15-16 (*Konare*) to find this contradiction to be material. In *Konare*, the Applicant had also criticized the RAD for not bringing to this attention a material discrepancy in his evidence and argued that the RAD must give him a chance to respond to its concerns. In support of his argument, Mr. Konare had cited *Malala v Canada (Minister of Citizenship and Immigration)*, 2001 FCT94. The Court agreed that in general, a tribunal must inform an applicant of material discrepancies in order to give them a chance to address it. However, it relied on *Azali*

v Canada (Citizenship and Immigration), 2008 FC 517 to find that "their duty of fairness does not require that the applicants be confronted with information which they themselves supplied" (*Konare* at para 16).

[20] This Court further reiterated this point in *Moïse v Canada (MCI), 2019 FC 93 (Moïse)* to argue that one must distinguish between when extrinsic evidence is used against the refugee claimant who is not confronted with the information, and when the contradiction exists in the claimant's own supplied evidence:

> [9] The respondent is correct. The case law of this Court is unambiguous: the rules of procedural fairness do not require refugee claimants to be confronted about information that they are aware of and which they have, in addition, provided themselves (*Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 29; *Aguilar v Canada (Citizenship and Immigration)*, 2012 FC 150 at para 31; *Mohamed Mahdoon v Canada (Citizenship and Immigration)*, 2011 FC 284 at para 22; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 17; *Azali v Canada (Citizenship and Immigration)*, 2008 FC 517 at para 26).

[21] The Applicant relies on *Bouchra v Canada (MCI)* 2020 FC 1063 at paras 25-29 to argue that the RPD, and then the RAD had a duty to put the contradiction to the Applicant and demand and explanation. *Bouchra* was decided in a different context, namely that the RAD had examined a new credibility issue not raised by the RPD, and one that was quite determinative. In this case, the contradiction between the dates was one of the material credibility issues. It was also something that the RPD had dealt with. Moreover, it was in the evidence directly provided by the Applicant. The Applicant was represented before both the RPD and the RAD and had the opportunity to ask any question or make submissions. In light of the totality of the record before me, I therefore prefer the line of cases in *Konare* and *Moïse* to conclude that the RAD did not

breach its duty of procedural fairness by relying on a blatant contradiction in the evidence the Applicant had provided.

[22] I also find that the RAD provided a clear chain of reasoning on why it thought the contradiction was material and why it led to disbelieving that the Applicant was probably detained during the alleged dates. To this end, the RAD turned its mind into the existence of all relevant evidence, including the injury photos. However, it concluded that since the photos were undated, they lacked the probative value necessary to support that the Applicant was detained on May 27, 2019. I find the RAD analysis to be reasonable.

(4) The Applicant did not provide corroborative evidence to overcome the credibility findings

[23] The Applicant argues that since the RAD's credibility findings were made unreasonably or unfairly, the presumption of truth was not rebutted, and it was therefore unreasonable for the RAD to have expected corroboration.

[24] I agree with the Applicant's general argument that in the absence of any reason to doubt the truthfulness of the Applicant, it would be unreasonable to expect corroboration (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at para 5). However, this was not the case here. For my reasons above, I disagree with the Applicant's characterization that the RAD made unreasonable or unfair credibility findings. The RAD relied on material omissions and contradictions to doubt the truthfulness of the Applicant's evidence, and then concluded that there was not sufficient credible independent evidence to overcome those concerns. This was reasonable.

[25] A point of contention was how the RAD dealt with the FIR as corroboration. The Applicant argued that because the FIR referred to the Applicant's vehicle, it could be traced to him, and that the country documents demonstrate that FIRs populate large national databases used by the police to locate individuals, such as the Crime and Criminal Tracking Network and Systems ("CCTNS").

[26] In light of the totality of the evidence, including the Minister's documents before the RPD on the authenticity of the FIR, I agree with the Applicant that the RAD's finding that the FIR may have been fraudulent was unreasonable. However, I disagree that this was a serious or material error. The RAD pointed out to the RPD finding that even if the FIR was authentic, and even if the reference to the vehicle would make the Applicant traceable by the authorities, the police was not interested in pursuing him as a result of the FIR registered in March 2019 (at para 22). In light of the RAD's other findings, including disbelieving his detention and hospitalization in May 2019, I find this to be a reasonable conclusion. I therefore find that the RAD dealt with the lack of corroboration in the context of the totality of the record and provided reasons that were justified, intelligible and transparent.

[27] I agree with the Respondent, and this Court's jurisprudence is clear, that this Court does not engage in reweighing the evidence.

IV. Conclusions

[28] I find that the decision of the RAD was reasonable. I therefore dismiss the judicial review.

[29] The parties did not propose a certified question and I agree that none arises.

JUDGMENT IN IMM-4301-23

THIS COURT'S JUDGMENT is that:

1. The Judicial Review is dismissed.

2. There are no questions to be certified.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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