

Federal Court



Cour fédérale

**Date: 20240904**

**Docket: IMM-6903-22**

**Citation: 2024 FC 1382**

**Ottawa, Ontario, September 4, 2024**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**KHALID AYUB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Khalid Ayub [Applicant], a Pakistani citizen, seeks judicial review of a June 30, 2022 decision [Decision] of the Refugee Appeal Division [RAD], dismissing the Applicant's appeal of a decision of the Refugee Protection Decision [RPD], which found that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issues for the RAD were credibility and whether the Applicant had a fair hearing.

[2] The application for judicial review is dismissed.

## II. Background

[3] The Applicant's Basis of Claim [BOC] form states that he feared the Sipah-e-Sahaba [SSP]. A member of the SSP overheard the Applicant make blasphemous religious statements in a coffee shop. On January 19, 2019, the same member and other SSP members went to the Applicant's house to speak with his parents about the accusation. The next day, the police spoke to the Applicant's parents about the Applicant, asked for a bribe and informed them that they should ask for forgiveness and leave the city. The Applicant's parents met with a local leader of the SSP to apologize but the apology was refused.

[4] On January 26, 2019, members of the SSP and Tehreek Labaik Ya Rasool Allah went to the Applicant's house while he was away informing his parents to present him within one week. The SSP members went to the Applicant's house twice and removed him forcibly while threatening him until community members intervened. The Applicant's parents spoke to the police on two other occasions but they requested another bribe. Afterward, the Applicant stayed at a family friend's house in Islamabad for two weeks and the Applicant's father informed him that SSP members were coming to the Applicant's house looking for him. The Applicant left to stay with a family friend in Karachi but the SSP soon learned he was staying there. The Applicant's father contacted an agent to arrange for the Applicant to depart Pakistan from Lahore. The Applicant arrived in Canada on April 28, 2019.

[5] On January 5, 2022, the RPD held a hearing to assess whether the Applicant was a Convention refugee. There were several instances of technical difficulties but ultimately the hearing proceeded. The RPD refused the Applicant's refugee application on January 7, 2022. The determinative issue for the RPD was credibility, as the RPD found that the Applicant's evidence was not credible or trustworthy. In particular, the RPD examined discrepancies related to whether the police harmed the Applicant and whether he had been detained.

### III. The RAD Decision

[6] The Applicant raised several procedural fairness concerns related to interpretation issues, his lack of legal representation, and his hearing impairment. He also challenged the RPD's credibility findings. Ultimately, the RAD found that the RPD was correct in finding that the Applicant was neither a Convention refugee nor a person in need of protection.

#### A. *Procedural Fairness*

[7] The RAD found that the Applicant had not established that he was denied a fair hearing due to interpretation issues. First, the Applicant had submitted that the interpreter was speaking Punjabi with a Gurmukhi dialect when the Applicant speaks Urdu and the Shahmukhi dialect of Punjabi, which interfered with him having a fair hearing. However, the Applicant had not established that the interpreter was speaking Punjabi and not Urdu and, at the hearing, the Applicant had opportunities to confirm whether he understood the interpreter but only raised concerns about being interrupted while speaking to allow the interpreter an opportunity to interpret. Second, the Applicant also submitted that the quality of the audio of the hearing was

not sufficient, which interfered with him having a fair hearing, however, the RAD found that the RPD took steps to ensure that testimony was heard when audio quality was poor, such as repeating testimony back to the Applicant to ensure he understood. Third, the Applicant was able to identify one issue with translation where the word “you” was not included in the interpretation of the phrase “if anything happened with police after that with your family or you”. However, this one error was not sufficient as the RPD asked more questions on the issue throughout the hearing. Lastly, the Applicant had not demonstrated how his lack of legal representation at the RPD led to a breach of procedural fairness.

B. *Credibility*

[8] The RAD determined that the RPD was correct in its finding that the Applicant had not explained the inconsistency in his evidence relating to whether the police harmed him. The Applicant submitted that the RPD erred because it never specifically asked whether he was beaten by police and that the Applicant had admitted he was pushed to the floor and restrained by police. The RAD found the evidence did not support that the RPD did not use the word “beaten”. The Applicant also did not provide a reasonable explanation for the inconsistencies in the testimony.

[9] The RAD noted one flaw in the RPD’s analysis when it drew a negative inference from the Appellant’s failure to mention in his BOC that the police had beaten him, but this did not affect the RPD’s central findings on the inconsistency of the testimony.

[10] The RAD also determined that the RPD was correct in its finding that the Applicant's evidence was inconsistent and evolving with respect to his detention. The Applicant submitted that he was unfamiliar with the word "detention" and that it was his understanding that detention required criminal charges. The RAD noted various points in the BOC where the Applicant stated he had been detained but that he denied it during his testimony. The Applicant provided insufficient explanations for the discrepancy, including that he was subject to a restraining order when asked about his Schedule A form, which stated he was detained for two days. The RAD found that the RPD did not err by drawing a negative credibility inference from the Applicant's evolving testimony and inconsistencies. However, the RAD noted one error where the RPD drew a negative inference from the Applicant writing "unknown reasons" in question 8 of his Schedule 12 form as to why he was detained by the police, as the Applicant gave the reasonable explanation that he was not charged and the police were corrupt and looking for bribes.

[11] Finally, the RAD concluded that the RPD did not err in drawing a negative credibility inference from the Applicant's failure to provide corroborative evidence in support of the allegations.

#### IV. Issues and Standard of Review

[12] After considering the submissions of the parties, the issues to be determined are:

1. Were the RAD's procedural fairness findings reasonable?
2. Did the RAD reasonably assess the evidence?

[13] The Applicant and Respondent agree that the merits of the Decision are reviewable on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[14] The RAD's findings in relation to the alleged breaches of procedural fairness by the RPD are reviewable on a reasonable standard (*Rodriguez v Canada (Citizenship and Immigration)*, 2022 FC 774 at paras 14-20).

[15] The presumption of reasonableness is also not rebutted both issues (*Vavilov* at paras 16-17). A reasonableness review is a robust form of review that requires the Court to consider both the administrator's decision-making process and the outcome of the decision (*Vavilov* at paras 83, 87; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 58 [*Mason*]). A reviewing court must take a "reasons first" approach to assess whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justifiable in relation to the relevant factual and legal constraints (*Vavilov* at paras 15, 99; *Mason* at paras 59-61). The onus is on the Applicant to demonstrate the unreasonableness of the decision (*Vavilov* at para 100). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). If the reasons of the decision-maker allow a reviewing court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Were the RAD's procedural fairness findings reasonable?*

(1) Applicant's Position

[16] The interpretation at the hearing before the RPD resulted in the denial of the Applicant's right to a full hearing. Rule 19 of the *Refugee Protection Division Rules*, SOR/2012-256 provides that a refugee claimant may request the RPD to provide an interpreter in a language or dialect specified by the claimant. Interpretation should also be continuous, precise, impartial, competent, and contemporaneous. However, there were a number of issues with interpretation related to the different dialects of Punjabi. The Applicant raised concerns about the quality of interpretation throughout the RPD hearing and his difficulty in understanding the interpreter, including the translation of the word "detention". The Applicant was also unaware until after the hearing after speaking to the Applicant's lawyer that the interpreter was making errors in translating both questions and answers. For example, in translating the RAD member's question "[o]k, so I am asking, anything else happen with the police after that with your family or you?" but the interpreter omitted the word "you" while translating.

(2) Respondent's Position

[17] The Applicant has failed to identify a specific error in the RAD's decision about the interpretation and instead, the Applicant seeks a reassessment of the evidence, which is not the function of judicial review.

[18] The parties agree with the principles of interpretation before the RPD but the standard is not perfection (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 6; *Guerrero Jimenez v Canada (Citizenship and Immigration)*, 2021 FC 175 at para 25). An alleged interpretation error must be serious, non-trivial, and affect a “central aspect of the RPD’s conclusions” (*Haggar v Canada (Citizenship and Immigration)*, 2018 FC 388 at para 22). Where interpretation errors arise, the question is whether the communication issues with the interpreter were of such a nature to have prevented an applicant from telling their story (*Sherpa v Canada (Citizenship and Immigration)*, 2009 FC 267).

[19] The RAD’s analysis was reasonable. If the interpreter has difficulty speaking in an applicant’s language and being understood by him, this is a matter that should be raised at the first opportunity (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17118 (FC) at para 28). The Applicant decided to proceed without raising any objections during the hearing. The RAD also extensively reviewed the Applicant’s evidence regarding the quality and dialect of the interpretations. The RAD considered the Applicant’s concerns about the language or dialect spoken by the interpreter, the omission of the word “you” from a question, and the quality of the interpretation and audio. The RAD also reviewed the transcript from the RPD hearing and determined that the issues at the hearing were mostly technical glitches or the Applicant being interrupted to allow the interpreter to interpret, as well as that the RPD was sensitive to the Applicant’s concerns about these issues. None of the errors in interpretation was of such a nature to prevent the Applicant from telling his story.



(3) Conclusion

[20] The RAD's procedural fairness findings were reasonable. The RAD's reasons allow the Court to understand why the Decision was made and determine whether the Decision falls within a range of acceptable outcomes (*Vavilov* at paras 85-86).

[21] The Applicant's submissions are similar to the submissions made to the RAD. The Applicant does not challenge aspects of the RAD's Decision but rather focuses on alleged errors present at the RPD hearing. The RAD has already thoroughly assessed these arguments on the adequacy of interpretation at the RPD hearing and the evidence. It is not the role of a reviewing court to reweigh evidence (*Vavilov* at para 125). The decision under review is the RAD's Decision and not the RPD's decision, but the Applicant does not point to flaws in the RAD's Decision.

[22] As the Respondent noted, while a different decision-maker may have looked at the evidence and came to a different conclusion than the RAD member in this case, the only issue for this Court is to assess the reasonability of the RAD's findings on the procedural fairness before the RPD. The RAD's findings are intelligible and justified.

B. *Did the RAD reasonably assess the evidence?*

(1) Applicant's Position

[23] The RPD erred by finding that the presumption of truth was rebutted in his case, as he was not credible or trustworthy on a balance of probabilities. On the alleged inconsistencies

about whether the Applicant had been detained, the Applicant submits that he answered that he had not been detained, as he was not subject to any lawful criminal charges or identified as being detained under any legal provision. On the alleged inconsistencies about whether the police used violence against the Applicant, the Applicant had identified that the police pushed him on the floor and restrained him during his testimony. He was also not specifically asked whether the police beat him. Omissions must be sufficiently serious to justify a finding of a lack of credibility (*X (Re)*, 2015 CanLII 43727 (CA IRB) at para 24). However, the omission here is a single omission that cannot be the full basis for an adverse credibility concern.

[24] Furthermore, the RAD committed errors by reaching findings of fact that are based on insignificant omissions. The RAD reached a conclusion of implausibility in that the Applicant was expected to narrate all incidents involving police violence and detention with complete accuracy, as it was not possible. The role of the RAD is to come to an independent assessment of whether the claimant is a Convention refugee or a person in need of protection (*Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799). Except in cases where the credibility of a witness is critical or determinative or when the RPD has a particular benefit from the RAD to draw a specific conclusion, the RAD must not give any deference to the analysis of the evidence made by the RPD (*Njeukam v Canada (Citizenship and Immigration)*, 2014 FC 859 at para 14). The particular omission in this case is not serious enough for the RAD not to understand the omissions and the first-level tribunal exaggerated the significance of the omissions to justify its finding of lack of credibility.

[25] The RAD and RPD ignored country condition evidence with regard to risks in relation to blasphemy from Pakistan.

(2) Respondent's Position

[26] Significant deference is owed to the RPD on findings of credibility, given its ability to observe the demeanour of witnesses, its expertise, and its role as a fact-finder (*Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 9; *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 14).

[27] The presumption of truth of an applicant's testimony is rebuttable (*Bustamante v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 499 at para 10). Here, the presumption of truth was eroded by contradictory, inconsistent, and evolving testimony. Contrary to the Applicant's assertion that there was a single omission, there were multiple unresolved inconsistencies with respect to whether the police harmed or detained the Applicant. The RAD undertook an extensive review of the evidence before formulating a decision on credibility and found that despite distinct errors, the central finding remained that the Applicant was inconsistent in his testimony. In conducting this review, the RAD compared the Applicant's BOC with his testimony, which is one of the primary means for the RAD to test an applicant's credibility (*Kaleja v Canada (Citizenship and Immigration)*, 2011 FC 668 at para 18).

(3) Conclusion

[28] The RAD reasonably assessed the evidence. The Applicant's credibility submissions suffer the same flaw as the procedural fairness submissions in that the Applicant challenges the RPD's decision, rather than the RAD's decision. In my view, the RAD thoroughly reviewed the credibility assessments and the concerns identified by the Applicant regarding whether the police detained and harmed the Applicant.

[29] Concerning the Applicant's submissions that the RAD focused on insignificant omissions, the RAD acknowledged that the RPD erred by drawing a negative inference from the Applicant omitting information about the police harming him in the BOC form. Despite this, the RAD was still entitled to make credibility findings about inconsistencies between the testimony and the BOC in relation to a crucial element of the Applicant's claim (*Baloch v Canada (Citizenship and Immigration)*, 2022 FC 1373 at paras 52-56). The RAD explained that the issue of whether the police harmed the Applicant was significant because "it goes to the heart of the [Applicant's] claim that the reason he fled Pakistan was due, in part, to the treatment by police." I agree with the Respondent that the police's treatment of the Applicant was a crucial element to the Applicant's claim, and it was open to the RAD to make a credibility finding in light of any inconsistencies. The BOC form identified that the police and SSP had beaten him, and that he tried to register a case against the SSP but the police detained and tortured him instead.

[30] The Applicant further points to country condition evidence regarding the risks of blasphemy in Pakistan, but does not identify how exactly the RPD and RAD failed to consider it.

[31] I also note that the Applicant suggests that there was an apprehension of bias at the RPD hearing in how it assessed credibility but does not properly raise this issue before this Court.

VI. Conclusion

[32] For the above reasons, this application for judicial review is dismissed.

[33] The parties do not propose a question for certification and I agree that none arises.

**JUDGMENT in IMM-6903-22**

**THIS COURT'S JUDGMENT is that**

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

"Paul Favel"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6903-22

**STYLE OF CAUSE:** KHALID AYUB v THE MINISTER OF CITIZENSHIP  
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