

Federal Court



Cour fédérale

Date: 20240927

Docket: IMM-11202-23

Citation: 2024 FC 1526

Ottawa, Ontario, September 27, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Singh's application for refugee protection was refused because both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board found him not credible. He is now seeking judicial review. I am granting his application, because two of the grounds for the negative credibility finding were unreasonable. In both cases, the RAD adopted an overly microscopic view of the evidence and put too much emphasis on statements Mr. Singh made at the port of entry.

I. Background

[2] Mr. Singh is a citizen of India. He alleges that he joined the Bharatiya Janata Party [BJP] in June 2018 and that he worked with youth struggling with drug addictions. This attracted the negative attention of a man involved in drug trafficking who was politically opposed to Mr. Singh and was eventually elected to the position of village *sarpanch*.

[3] In the weeks leading to the December 2018 election, Mr. Singh was assaulted while he was putting up posters for the BJP candidate. The attack was perpetrated by a group of seven or eight individuals acting on behalf of the *sarpanch*, and required hospitalization.

[4] Mr. Singh came to Canada and claimed refugee protection. The RPD found him not credible and dismissed his claim, and the RAD dismissed his appeal. It agreed with the RPD that Mr. Singh's credibility was affected by inconsistencies between his testimony and other evidence with respect to four issues, two of which are relevant for the purposes of this application.

[5] First, the RAD found that Mr. Singh provided inconsistent information regarding the identity of his agents of persecution. At the port of entry [POE] interview, he only mentioned the Congress Party. However, in his basis of claim [BOC] form and at the hearing before the RPD, he mentioned the *sarpanch* and the police.

[6] Second, the RAD found that the evidence regarding the December 2018 assault was inconsistent in two respects: the weapons used by the attackers and the parts of Mr. Singh's body that were injured.

II. Analysis

[7] I am allowing Mr. Singh’s application, because the RAD engaged in a microscopic analysis of the evidence, which led to unreasonable credibility findings.

[8] Our Court shows considerable deference towards factual findings of the RPD and RAD and overturns such findings only “where the decision maker has fundamentally misapprehended or failed to account for the evidence before it”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653.

[9] Moreover, as I explained in *Olajide v Canada (Citizenship and Immigration)*, 2021 FC 197 at paragraph 11:

We assume that claimants who underwent difficult and sometimes traumatic events giving rise to a well-founded fear of persecution remember these facts accurately and are able to provide a complete and consistent account at several stages of the claim process. Thus, where claimants contradict themselves or testify about an event omitted from previous statements, their credibility is affected.

[10] Nevertheless, the RPD and RAD “cannot base a negative credibility finding on minor contradictions” and “must not conduct a too granular or overzealous analysis of the evidence”: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 23. This cautionary note is particularly apposite in the present case, as the transcript of the RPD hearing reveals significant difficulties with interpretation. The RPD and RAD must be sensitive to the difficulties of oral expression across the language barrier: see, for example, *Riche v Canada (Citizenship and Immigration)*, 2019 FC 1097 at paragraph 9; *Dong v Canada (Citizenship and Immigration)*, 2010 FC 55 at paragraph 28.

A. *Agents of Persecution*

[11] The RAD misapprehended the evidence when it found that Mr. Singh had been inconsistent when identifying his agents of persecution.

[12] This issue arises solely because, at his POE interview, Mr. Singh stated that he feared the Congress Party, without mentioning the *sarpanch* and the police, who were the focus of his BOC form and his testimony before the RPD. Yet, our Court has repeatedly cautioned against placing undue reliance on POE notes, which are not expected to provide a detailed basis for the claim. A POE interview is typically a claimant's first contact with Canadian authorities. Refugee claimants may have a well-founded distrust of persons in authority: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 13. Moreover, it is acknowledged that the circumstances of POE interviews are not ideal, as claimants may be exhausted after a long journey, may lack preparation and have not yet had the benefit of legal advice in Canada: *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 at paragraphs 39–42, citing *Wu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1102 at paragraph 16 and *Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8 at paragraph 51. Here, it should have been obvious to the RAD that Mr. Singh's reference to the Congress Party was really shorthand for his village's *sarpanch* and the police who acted at his behest. There was no inconsistency, only greater precision in Mr. Singh's subsequent statements. See, by way of analogy, *Khan v Canada (Citizenship and Immigration)*, 2021 FC 1177.

[13] The RAD nevertheless found that Mr. Singh's credibility was affected because he no longer mentioned the Congress party in his BOC form and only stated that the *sarpanch* was a political

opponent in the 2018 elections, without specifying the political party to which he was affiliated. It noted that there are many political parties in India other than the BJP and Congress. This focus on detail, however, is precisely the kind of overzealous analysis that does not do justice to the evidence and that decision-makers should avoid. Mr. Singh said two things that are not mutually incompatible: that he feared the Congress party and that he feared his political opponent. Anyone familiar with India will understand that if Mr. Singh adheres to the BJP, his political opponent is likely affiliated with the Congress party. It was unreasonable for the RAD to find an inconsistency where Mr. Singh's statements are most likely compatible, simply because there is a small possibility that they are not. The RAD should have attempted to understand the evidence, not undermine it.

B. *December 2018 Assault*

[14] The RAD's analysis of the 2018 assault was unreasonable because it drew negative credibility inferences from trivial contradictions.

[15] Mr. Singh described the December 2018 attack in his testimony and BOC form. He also provided affidavits from his father, his neighbour and an unsuccessful candidate for the position of *sarpanch* that describe the incident. When describing the weapons used by the attackers, these accounts referred to various combinations of sticks, hockey sticks, sharp-edge weapons, batons, and sharp knives. These descriptions are not inconsistent with one another, as they are all either knives or some form of stick.

[16] The RAD also appears to have shared the RPD's rejection of Mr. Singh's explanation that the attackers carried knives, but only used sticks. Yet, the distinction between the weapons carried and the weapons used is also found in the BOC form, which tends to confirm Mr. Singh's testimony.

[17] It was equally unreasonable to focus on the apparent inconsistency in the description of Mr. Singh's injuries found in the POE notes and in a letter issued by the hospital. In the POE notes, Mr. Singh describes his injuries as "shoulder, neck, back, etc.", whereas the hospital letter describes injuries on the "knee, thighs, legs, wrists and arms". Even though these lists of injuries are different, the RAD overlooked the fact that the first one is not exhaustive. When asked to explain his statement at the POE, Mr. Singh testified "I just said everywhere like legs and shoulders and hands". Again, POE notes may not be fully reliable. It was unreasonable to rely on a non-exhaustive list of injuries found in those notes to impugn Mr. Singh's credibility. There is no real inconsistency. Moreover, both descriptions are consistent with the injuries that would be sustained in a general beating, as they cover almost all of Mr. Singh's body.

[18] Two other aspects of the RAD's credibility finding are troublesome. First, the RAD relied on the description of Mr. Singh's injuries in the BOC form. Yet, the BOC form does not contain any such description. This factual mistake means that the POE notes were the only basis for the RAD's finding of inconsistency. Second, Mr. Singh's BOC form and his neighbour's affidavit state that he lost consciousness during the attack. The RAD did not consider that this may have affected Mr. Singh's recollection of the weapons used.

[19] Having found that two of the RAD's four negative credibility findings are unreasonable, it is unnecessary to address the remaining two, and I express no opinion on the subject. I am unable to say whether the RAD would have reached the same conclusion had it not made the errors described above. As a result, this application for judicial review must be granted.

III. Disposition

[20] For the foregoing reasons, Mr. Singh's application for judicial review will be granted.

JUDGMENT in IMM-11202-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision rendered by the Refugee Appeal Division on August 10, 2023 is set aside.
3. The matter is remitted for redetermination by a different member of the Refugee Appeal Division.
4. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET : IMM-11202-23

STYLE OF CAUSE : MANPREET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING HELD BY VIDEOCONFERENCE

DATE OF HEARING SEPTEMBER 24, 2024

JUDGMENT AND REASONS: GRAMMOND J.

DATED: SEPTEMBER 27, 2024

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