

Federal Court



Cour fédérale

Date: 20241016

Docket: IMM-13793-23

Citation: 2024 FC 1638

Ottawa, Ontario, October 16, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

**NARINDER SINGH, NIRMALGTIT KAUR
and HARMINDER SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Naringer Singh [Principal Applicant], his spouse and son [collectively, the Applicants], seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The RAD upheld the decision from the Refugee Protection Division [RPD] and found that the Applicants failed to provide sufficient credible

evidence to establish their allegations. In its decision dated October 13, 2023, the RAD dismissed the Applicants' appeal [Decision]. The issue of credibility was the determinative factor.

[2] The Applicants challenge the Decision on the basis that the RAD failed to justify, in particular, its findings that the Applicants submitted fraudulent medical certificates. The Applicants also challenge the RAD's other credibility findings.

[3] For the reasons set out below, this application for judicial review is granted. The Applicants have demonstrated that the Decision is unreasonable.

II. Background and Decision at Issue

[4] The Applicants sought refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act, SC 2001, c. 27 [IRPA] arising from incidents that took place in 2019, leading them to flee to Canada on May 30, 2019.

[5] On April 13, 2019, after giving a ride to a couple who were allegedly in the possession of drugs, the Principal Applicant and his spouse were apprehended, detained and tortured by the police until April 15, 2019. They were released with the help of the village council and sarpanch. They submitted a letter from a Dr. Anil Kumar Gupta [Dr. Gupta] confirming that they had attended Dr. Gupta's clinic with injuries on April 15, 2019 that he treated.

[6] The RPD conducted an online search of the Indian Medical Register [IMR] website and did not find Dr. Gupta listed in the IMR. As a result, the RPD asked the Principal Applicant at his hearing why Dr. Gupta was not registered with the IMR. The Principal Applicant could not answer this question, and the RPD drew a negative inference on the genuineness of the letters. Post-hearing submissions were allowed and the Applicants provided a letter from their immigration consultant dated March 29, 2023 and a letter from Dr. Gupta dated March 27, 2023 who provided information on his registration and contact information.

[7] Based on the Applicants' documents, taken together with the objective information indicating that fraudulent medical documents are widely available in India, the RPD found on a balance of probabilities that the medical certificates disclosed are fraudulent. As well, the RPD drew a global adverse credibility inference arising from the claimants' submission of fraudulent evidence. Given that the RPD found that the medical certificates were fraudulent, it "impacts the reliability of the remaining two affidavits in the application." The RPD also found the affidavit from the Principal Applicant's mother and the affidavit from the current sarpanch to be unreliable. Additionally, the RPD found that the Principal Applicant's testimony at the hearing to be contradictory. Given that the Applicants' allegations of fearing the authorities due to past targeting were not credible, the RPD concluded that the claimants are not Convention refugees nor persons in need of protection.

[8] On appeal, the RAD acknowledged that the RPD undertook independent Internet research on the websites for the National Medical Commission of India, a registry for all physicians registered in the country, and the IMR. They searched the name and registration for Dr. Gupta,

who signed the medical certificates and did not find Dr. Gupta listed in either registry. The RAD noted that Dr. Gupta's March 27, 2023 letter clarified that he is a member of the Para Medical Council Mohail (Chandigarh). However, this letter gave no information about this organization and did not respond to the RPD's questions on Dr. Gupta not being listed with the other two registries.

[9] The RAD also noted that it had reason to believe that a "para medical" organization would not allow one of its members to provide medical care such as those described in the certificates including injections of intravenous medication. It mentioned that in the absence of any reasonable explanation from the Applicants on the doctor's credentials, it could only also arrive at the conclusion that the medical documents submitted were fraudulent.

[10] The RAD also found that the RPD's conclusion relating to the Principal Applicant's evidence from the sarpanch was contradictory and that the Principal Applicant modified his testimony. The sarpanch did not identify how she came to know the facts that were related in her affidavit or if she was personally involved with the incidents in question. As such, the RAD found that the sarpanch only repeated the allegations that were in the Applicants' basis of claim forms. This contradictory testimony affected the Applicants' credibility.

[11] Finally, the RAD found that the affidavit from the Principal Applicant's mother contradicted the Applicants' testimony. However, the RAD found that this inconsistency on its own was not sufficiently fatal. Based on the other credibility findings, the RAD also gave no probative value to the brother of the Principal Applicant's spouse, who was not a witness and

also repeated the facts set out in the Basis of Claim forms. The RAD upheld the RPD's decision. The RAD's Decision is the subject of this application for judicial review.

III. Issues and Standard of Review

[12] The Applicants identify that the issue on judicial review is whether the RAD's Decision related to its credibility findings is unreasonable.

[13] The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25). I also agree that the applicable standard of review on the merits of the Decision is reasonableness.

[14] 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). The decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126).

[15] The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[16] The Applicants state that the RAD erred by failing to justify its finding that Dr. Gupta's medical certificates were fraudulent. The Applicants also argue that the Principal Applicant's lack of knowledge about his doctor's registration information was not sufficient justification to find that the medical certificates were fraudulent.

[17] The Respondent argues that the Applicants failed to meet their burden of proof and that the evidentiary record raised more questions than answers in support of their claim. The RPD gave the Applicants the opportunity to clarify the evidence about Dr. Gupta and they simply failed to assuage the concerns.

[18] The Applicants underline that a finding of fraudulent evidence must be undertaken very carefully (citing *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170, at para 9

[*Mohamud*]):

“Lastly, a finding that a false or irregular document detracts from a claimant's overall credibility must be "cautiously approached" (*Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 at para 7). Such implications are serious (*Agyemang v Canada (Citizenship and Immigration)*, 2016 FC 265 at paras 13-14). The RPD's unreasonable conclusion was thus compounded by the negative inference it then drew against Mr. Mohamud's general credibility for tendering a fraudulent document.”

[19] I agree with the Applicants' argument that the RAD's conclusion with respect to the medical certificates does not engage in any analysis that justifies the conclusion that the medical certificates were fraudulent.

[20] The RPD found that the medical certificates were not authentic because they could not corroborate the identity of the person who signed the certificates. The RPD's credibility finding was based on the RPD's internet search of two registries that failed to locate Dr. Gupta.

[21] After the RPD hearing, the Applicants' post-hearing submission sought to address the RPD's concern about the authenticity of the medical certificates and sought to confirm Dr. Gupta's identity. Indeed, the Applicants' immigration consultant stated in the post-hearing submissions: "Mr. Gupta is addressing this letter to Immigration and Refugee Board and at the same time requesting to the board to contact him if the board has any further questions in regard to the authenticity of this document."

[22] Dr. Gupta himself provided his registration information and specified: "for verification please see below." Dr. Gupta's letter lists his qualifications, registry number, date of registration, two email addresses and telephone number. He states that he has been registered with the Para Medical Council Mohail (Chandigarh) since 1979.

[23] In its Decision, the RAD concluded that the medical certificates were fraudulent for the same reasons as the RPD. The RAD further concludes that there is also reason to believe that a "para medical" organization would not permit one of its members to provide medical care such

as those mentioned in the certificates, notably injections of intravenous medications (*my translation*).

[24] However, there is no analysis or evidence in the record that supports the RAD's conclusion about the Para Medical Council Mohail (Chandigarh). The RPD also did not assess the organization or the information contained in the medical certificates, including the alleged treatment provided to the Applicants, among other things.

[25] While the Respondent sought to clarify the scope of this organization and what its members can do, the RAD did not undertake this analysis. The Respondent's justification and rationale cannot serve as a proxy for the RAD.

[26] The finding that a document is inauthentic cannot be made on the basis of speculation. It must be made on the basis of evidence (*Mohamud* at para 6). The record did not support the RAD's conclusions about the medical certificates. The RAD's conclusion that the medical certificates were fraudulent was therefore not justified, transparent or intelligible in light of the legal and factual constraints that bear on it.

V. Conclusion

[27] The RAD's credibility finding on the medical certificates lead to an adverse finding on the Applicants' credibility overall and of other evidence that they provided. As such, this error is sufficiently central and significant to render the Decision unreasonable. I need not address the other issues that the Applicants have raised on the RAD's findings of credibility.

[28] The application for judicial review is granted. The matter is to be remitted to a new panel for redetermination.

[29] The parties have not proposed any questions for certification and I agree that none arise in this case.

JUDGMENT in IMM-13793-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. There is no question to certify.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13793-23

STYLE OF CAUSE: NARINDER SINGH, ET AL. v THE MINISTER OF
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PLACE OF HEARING: VIDEOCONFERENCE

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