

Federal Court



Cour fédérale

Date: 20241021

Docket: IMM-4333-23

Citation: 2024 FC 1648

Ottawa, Ontario, October 21, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

JASSIMRAN KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a citizen of India who sought refugee protection in Canada under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), on the basis of her fear of persecution at the hands of the police due to allegations that her family had ties to Sikh militants and the Khalistan movement.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada rejected the applicant's claim on credibility grounds. The RPD based its main adverse credibility finding on the fact that, in her Basis of Claim (BOC) form and related documents, the applicant had failed to mention several trips back to India from Canada during the time she claimed her immediate family had been targeted by the Indian police. The RPD found that the applicant had not provided a reasonable explanation for these omissions or for returning to India despite the alleged experiences of her immediate family. The RPD also found that the trips demonstrated a lack of subjective fear of the Indian police, which undermined a core element of the applicant's claim. Further, the RPD found that the applicant had deliberately withheld the fact that she had returned to India more often than she disclosed. In the RPD's view, this called the applicant's credibility into serious question. The RPD found the applicant's credibility was also undermined by additional omissions and inconsistencies in the applicant's evidence.

[3] On appeal to the Refugee Appeal Division (RAD), the applicant submitted that the RPD erred in finding that her claim was not credible and that she lacked a subjective fear of persecution. The RAD dismissed the appeal, providing its own analysis and reasons for agreeing with the RPD's findings and for confirming that the applicant is neither a Convention refugee nor a person in need of protection.

[4] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *IRPA*. Her principal argument is that the RAD's credibility analysis is unreasonable because the RAD erroneously relied on events preceding the event that crystallized her fear of Indian authorities to call that fear into question.

[5] As I will explain, the applicant has not established any basis to interfere with the RAD's decision. This application must, therefore, be dismissed.

II. BACKGROUND

[6] The applicant was born in Ferozepur, Punjab, in March 1996. She first came to Canada as a student in August 2015. She studied at Mohawk College until April 2017. Subsequently, the applicant remained in Canada on work permits. Her last work permit was set to expire on June 1, 2020.

[7] The applicant submitted her claim for refugee protection on April 27, 2020. Initially, the applicant's claim was joined with a claim for protection that her brother, Anmol Rattan Singh, had submitted in May 2018. Like the applicant, Anmol claimed that he had been persecuted in India and falsely accused by the police of working with Sikh militants. The two claims were severed at the outset of the applicant's hearing. Separately, in December 2017, the applicant's parents had also sought refugee protection in Canada on the same grounds.

[8] The applicant's BOC narrative simply states that her father, mother, and brother had "faced police problems" in India because of the alleged activities of members of their extended family. Anmol's narrative, which was made an exhibit at the applicant's hearing, provides more detail about these problems. The applicant confirmed that her parents and her brother had told her about their experiences with the Indian police, as recounted in Anmol's narrative.

[9] According to that narrative, the family's problems with the police began in June 2015, when their home was raided. Anmol was detained by the police and severely beaten. He was released after the family paid a bribe. At this time, the applicant was still living with her family in India. She would leave to study in Canada in August.

[10] The police raided the family home again in June 2016, looking for Anmol. He was not there. The police threatened the applicant's parents and told them to present Anmol at the police station. Anmol went into hiding. Unable to find him, the police continued to harass the family. In September 2016, the police detained and tortured the applicant's father. Anmol was eventually able to make his way to Canada, entering on a study permit in November 2016. Meanwhile, the applicant's parents were detained for a second time. They eventually left India for Canada. Once in Canada, they submitted claims for refugee protection in December 2017.

[11] In her BOC narrative, the applicant states that in November 2018 she returned to India from Canada for a "social visit" with relatives in Ferozepur. At the RPD hearing, the applicant explained that she had gone to visit her grandmother. She stayed with her aunt in Ferozepur. According to the applicant, her aunt warned her that the police were still looking for her father, her brother, and other family members suspected of involvement in Sikh militancy and that she should not stay in India long. The applicant returned to Canada at the end of November. The applicant testified that her parents had been very nervous about her returning to India.

[12] The applicant's Indian passport, which had been seized by Immigration, Refugees and Citizenship Canada on February 23, 2021, in connection with the processing of an unspecified

immigration application, was in the record before the RPD. It confirmed that the applicant had arrived in India on November 9, 2018, and departed on November 29, 2018, arriving in Canada the next day.

[13] According to her narrative, the applicant returned to India again on August 24, 2019. She stayed with her aunt again. The applicant claims that, two days after she arrived, the police raided her aunt's home. The police were looking for her but she was not there.

[14] The applicant claims that the next day (August 27, 2019), she met with a lawyer at the district court to discuss taking legal action against the police for harassing her and her family. When she was returning from the meeting at the court, the applicant was apprehended by the police. They took her fingerprints, photos, and made her sign blank papers. They questioned her about her family's activities in Canada and their involvement with militants in Sikh temples in Canada. The applicant also alleges that the police physically and sexually assaulted her during her detention. The applicant was released the following day after her relatives intervened on her behalf and paid a bribe. The police warned the applicant that they were not finished with her.

[15] With the assistance of an agent, the applicant arranged for a "safe flight" from India back to Canada. At the RPD hearing, the applicant testified that she needed an agent to help her evade airport security when she left India because the police would be looking for her. This was why it took her so long to leave India after the incident with the police. The applicant's passport confirms that she departed from India on September 7, 2019, and arrived in Canada the next day.

[16] At the RPD hearing, the member asked the applicant when she was last in India prior to the incident at the end of August 2019. The applicant responded in November 2018. The member then noted that the applicant's passport revealed that she had taken several other trips to India besides the ones she described in her BOC narrative, in her testimony to that point, and in other documents she submitted in connection with her claim for refugee protection.

[17] First, the applicant was in India from February 28, 2016, until March 3, 2016, and then again from August 22, 2016, until September 8, 2016. The applicant explained that she had omitted these trips from her documents because she had been told to include only important events that formed the basis of her claim. The RPD rejected this explanation. The RPD found it significant that the applicant had spent two weeks visiting her family in India during the time she alleges her family was being targeted by the police (as set out above, the police had first raided the family home in June 2015 – when the applicant was still in India – and then returned for a second time in June 2016). The RPD found that these trips were inconsistent with the applicant's professed subjective fear of Indian authorities.

[18] The applicant was also in India from July 4, 2018, until July 10, 2018. She testified that she had returned with her sister to collect the family's belongings that her parents had left behind when they fled to Canada. When asked why she had gone to Mumbai, which was far from her hometown where the family's belongings were, the applicant responded that she had taken the cheapest flight she could find. The applicant admitted, however, that she had stayed in Mumbai the entire time. The RPD did not accept her explanation for why she took this trip. It drew a

negative inference concerning the applicant's credibility from her evolving account of the reason for the trip.

[19] The RPD also rejected the applicant's explanation that she had omitted all these trips because they were only of short duration. The RPD found that this explanation was inconsistent with the fact that the applicant had included a short trip to Dubai (from May 15 to 22, 2018) in her narrative and that she had included the November 2018 trip, which was of roughly similar length as some of the trips she had omitted.

[20] The applicant also did not mention that she had been in India from July 23, 2019, until August 6, 2019, until specifically prompted about this trip by the RPD member. The applicant confirmed that she had visited her aunt at her home, the same aunt she stayed with again later that month. The RPD found that this trip was also inconsistent with the applicant's claimed subjective fear of Indian authorities. The RPD also found that the fact that the applicant had been able to visit Ferozepur without incident this time raised doubts about the credibility of her claim of ongoing police interest in her family and about her account of events that happened less than a month later, when she claims to have been apprehended by the police shortly after arriving there.

[21] When asked why she had returned to India on five occasions since 2015 and, on four of those trips, had stayed in the city where her family had been targeted by police and from which they eventually had had to flee, the applicant testified that she believed that, because she is female, she would not be subjected to mistreatment by the police. The applicant also explained

that her experiences in Canada had made her more trusting of the police. The RPD rejected this explanation, noting that the applicant had testified that she believed that India is a corrupt country. The RPD also noted that, according to her own narrative, relatives had warned the applicant during her November 2018 trip that the police were looking for her family and that she was not safe there yet she continued to return to India. Likewise, according to the applicant, her parents were also concerned about her returning to India. The applicant acknowledged that, even when she returned to India in November 2018, she knew what had happened to her immediate family, that they had had to flee India, and that they had submitted claims for refugee protection in Canada.

[22] Regarding the undisclosed trips, the RPD found that the applicant had omitted them deliberately because they were inconsistent with the subjective fear claimed in her narrative. The RPD found that this was seriously damaging to the applicant's overall credibility.

[23] The RPD also found that all of the applicant's trips to India, coupled with the absence of any reasonable explanation for why the applicant had taken them, seriously undermined the applicant's credibility with respect to her narrative of targeting of her family by the police in India and with respect to her claim of subjective fear of the police.

[24] Further, the RPD found that several inconsistencies in the applicant's account also undermined her credibility. As well, while the applicant claimed to have fled India in fear for her personal safety in September 2019, she did not submit a claim for refugee protection until April 2020. When asked why she waited, the applicant said that she had hoped that she would

simply forget what had happened to her. She also said she was delayed by the COVID-19 pandemic. The RPD did not find the applicant's explanations for her delay in submitting a claim for protection credible. The RPD found that, while not determinative, the applicant's delay in claiming protection was inconsistent with her subjective fear and this provided further support for a negative credibility finding.

[25] In sum, the RPD's negative credibility findings went to the core elements of the applicant's claim. They left the RPD with serious doubts about the veracity of the applicant's evidence, including with respect to her central allegation that the police had targeted and harmed her in India in August 2019. The RPD also noted that the applicant had not provided any corroborative evidence to support her allegation that she and her family had been targeted by the police. On the whole of the evidence, the RPD concluded that the applicant had not established, on a balance of probabilities, that she had been targeted and harmed by the police, or that she would be targeted upon return to India.

[26] The applicant's appeal to the RAD was framed largely in conclusory terms. For the most part, the applicant's counsel (not Mr. Steven) simply reiterated the applicant's claim and submitted that, since there were no inconsistencies between the BOC narrative and the applicant's testimony before the RPD, the RPD's adverse credibility findings were unreasonable.

[27] In dismissing the appeal, the RAD found that the RPD correctly concluded that the applicant's numerous trips to India seriously undermined her credibility and her alleged subjective fear of the Indian police. It agreed with the RPD that the applicant's failure to

disclose several of these trips stemmed from the applicant's effort to conceal unhelpful information. The RAD also agreed with the RPD that several inconsistencies between the applicant's narrative and her testimony before the RPD raised further concerns about her credibility. Finally, the RAD agreed with the RPD that the applicant had not provided a sufficient explanation for her delay in seeking refugee protection and that this had an adverse impact on her credibility (although, like the RPD, the RAD did not find this determinative). Accordingly, the RAD confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

III. ANALYSIS

[28] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[29] As noted earlier, the applicant's principal argument is that the RAD erred in relying on the applicant's conduct prior to the events in late August 2019, when she alleges she was apprehended and abused by the police, to question the credibility of her claim of subjective fear of the police. In particular, the applicant submits that it was unreasonable for the RAD to rely on her trips to India between February 2016 and early August 2019 to impugn the credibility of her claim of subjective fear when that fear was based on events that only happened in late August 2019.

[30] I am unable to agree that the applicant's narrative can be parsed as finely as the applicant suggests or that the RAD's reasoning is flawed in the way the applicant alleges.

[31] The applicant contends that it was only her experiences in late August 2019 that gave her a reason to fear the police in India; however, these events did not occur in a vacuum. On the applicant's own account, the motive for the police to target her was the same as the one that had led them to target members of her immediate family. That targeting was allegedly so serious as to cause the applicant's parents and her brother to flee India and seek refugee protection in Canada. Despite this, the applicant returned to her home town several times and admittedly did so without incident. The applicant explained that she returned to India despite the targeting of her immediate family by the police and despite the misgivings of her parents because she did not consider herself at risk. She only came to consider herself at risk after what happened to her in late August 2019.

[32] In my view, it was open to the RAD to reject the applicant's evidence in this regard as lacking credibility because it was inconsistent with other aspects of the applicant's narrative, including the alleged experiences of her immediate family members. It is a reasonable inference that the applicant's willingness to return to India repeatedly prior to August 2019 undermined the foundation of her narrative – namely that, beginning in June 2015, her family had been targeted for harassment and abuse by the police. The applicant did not present any other evidence to establish that these events had occurred. It was open to the RAD to reason that the absence of fear demonstrated by the applicant suggested that the foundational events in her narrative did not occur. In the absence of credible evidence establishing that the police had a history of targeting the applicant's family, it was then open to the RAD to find that the applicant's account of events in late August 2019, which she claimed to stem from the same motive, was not credible.

[33] Contrary to the applicant's argument, this is not circular reasoning on the part of the RAD. Rather, it is a matter of tracing the logical implications of doubts about the credibility of core elements of her narrative. In short, the applicant's own actions gave rise to reasonable concerns about the credibility of her account of the targeting of her family by the police. These concerns then reasonably grounded concerns about the credibility of the applicant's account of events in late August 2019, the events from which the applicant claimed her fear of the police had stemmed.

[34] On a related point, the applicant submits that it was unreasonable for the RAD to find that she had attempted to conceal the trips to India that were not mentioned in her BOC narrative because those trips were clearly documented in her passport, which was before the RPD. In

other words, according to the applicant, she did not attempt to conceal anything, and the RAD erred in concluding otherwise and then drawing an adverse inference with respect to her credibility.

[35] This issue was not raised in the applicant's appeal of the RPD's decision, even though that decision rested in part on the same line of reasoning concerning the omission of several trips. It is being raised for the first time now. For well-established reasons, generally the RAD cannot be faulted for failing to consider an argument or issue that was not raised before it: see my discussion of this principle in *Guzman v Canada (Citizenship and Immigration)*, 2024 FC 433 at paragraphs 32 to 34, along with the authorities cited therein. As well, I am inclined to agree with the respondent that the Court should not even entertain this issue now. Where an issue could have been raised in an appeal to the RAD but it was not, normally this means it cannot be raised on judicial review (*Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at para 10; see also *Ndiaye v Canada (Citizenship and Immigration)*, 2022 FC 656 at para 16).

[36] In any event, the applicant's argument lacks the necessary factual foundation: the applicant never said that she did not consider it necessary to include all her trips because she believed that a complete account of her travels could be found in her passport. Without such evidence, even if all the applicant's trips are recorded in her passport, this does not explain why the applicant mentioned only some of them in the documents she submitted in support of her claim for refugee protection or why, when asked directly when she was last in India prior to the events in late August 2019, the applicant replied November 2018.

[37] For these reasons, the applicant's challenge to the reasonableness of the RAD's reliance on her incomplete account of her travels in her refugee claim documents fails.

[38] Finally, the applicant submits that it was unreasonable for the RAD to find that her delay in submitting her claim for refugee protection was inconsistent with her claim of subjective fear on returning to Canada without taking into account that the applicant's status in Canada was secure at least until June 2020, when her existing work permit was set to expire.

[39] As with the issue I just discussed, this issue is being raised for the first time on judicial review. In any event, while I agree that, in theory, this could explain why someone delayed seeking protection, once again, the difficulty for the applicant is the lack of an evidentiary foundation for her argument: she never offered her temporarily secure status in Canada as a reason why she waited to seek refugee protection.

[40] When it comes to the applicant's subjective fear, the salient issue is why, on her own account, the applicant did not submit her claim for protection at the earliest available opportunity. While it is true that, when she returned to Canada in September 2019, the applicant's status in Canada would be secure for some 10 more months, this would explain why the applicant delayed submitting her claim for protection until shortly before her status was to expire only if the applicant herself said this was why she delayed. Instead, she offered other reasons for why she waited as long as she did. Absent evidence from the applicant that the fact that she had secure temporary status in Canada was one of the reasons she waited to claim refugee protection, the fact that she had such status is simply irrelevant. On the evidence before

it, there was, therefore, no reason for the RAD to consider the applicant's secure temporary status as a potential explanation for her delay in seeking protection. This ground for review must also be rejected.

IV. CONCLUSION

[41] For these reasons, the applicant has failed to establish any basis on which to interfere with the RAD's decision. This application for judicial review must, therefore, be dismissed.

[42] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-4333-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4333-23

STYLE OF CAUSE: JASSIMRAN KAUR v THE MINISTER OF
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