

Federal Court



Cour fédérale

Date: 20241101

Docket: IMM-12306-23

Citation: 2024 FC 1737

Ottawa, Ontario, November 1, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

RUCHIKA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Ruchika, the Applicant, seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated September 6, 2023 [Decision]. The RAD dismissed Ms. Ruchika's appeal of the Refugee Protection Division [RPD]'s decision and agreed with the RPD that she was not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The RAD determined that the RPD correctly concluded that Ms. Ruchika had failed to demonstrate any ongoing interest from her friend's ex-partner, Rajbir Singh [RS], or the police on his behalf or independently. As a result, Ms. Ruchika could not establish she had a well-founded fear of persecution or, based on a balance of probabilities, a future risk under section 97 of the Act.

[3] In reaching its conclusion, the RAD found (1) inconsistencies and contradictions in Ms. Ruchika's evidence; (2) that Ms. Ruchika had not established with sufficient evidence that the police continued to have an interest in her; (3) that Ms. Ruchika had not established she faced a serious possibility of persecution in India due to her relation to her mother; and (4) Ms. Ruchika did not face a serious possibility of persecution based on gender.

[4] Before the Court, Ms. Ruchika's arguments are aimed at the RAD's first two findings. Hence, Ms. Ruchika submits that the RAD erred in (1) confirming there was a discrepancy between her testimony and the narrative included in her Basis of Claim [BOC] form as to whether or not she had been accused by the police of being involved with militants; (2) agreeing with the RPD decision to dismiss her father's affidavit because of the same discrepancy; and (3) concluding that the police in India was not interested in her.

[5] Ms. Ruchika also submits that the RPD breached procedural fairness by limiting its questioning, failing to identify its concerns in relation to the discrepancy between her BOC narrative and her testimony at the hearing, and denying her the opportunity to explain the discrepancy.

[6] The Minister of Citizenship and Immigration [Minister] responds that Ms. Ruchika has failed to identify any error in law or finding of fact, and that the RAD Decision is reasonable. The Minister asserts that Ms. Ruchika essentially disagrees with the RAD's Decision and asks this Court to re-weigh the evidence, which is not a basis for judicial review. The Minister adds that the RAD did not err in its credibility analysis and that it was reasonable for the RAD to find that there was insufficient evidence that the police and RS continue to be interested in Ms. Ruchika.

[7] On the issue of procedural fairness, the Minister responds that it is well established in the jurisprudence that decision makers do not require to confront a claimant with each of its credibility concerns.

[8] For the reasons that follow, I will dismiss Ms. Ruchika's application for judicial review. The Decision has not been shown to be unreasonable and the intervention of the Court is not required.

II. Context

[9] On April 22, 2015, Ms. Ruchika, a citizen of India, arrived in Canada and received a study permit. Ms. Ruchika completed two programs and in 2016, she obtained a postgraduate work permit which expired in November 2019. Ms. Ruchika remained in Canada after her status expired and in October 2020, she claimed refugee protection. In September 2019, Ms. Ruchika's mother, Ms. Rani, arrived in Canada as a visitor. In February 2020, Ms. Rani signed her BOC form and subsequently claimed protection at the same time as her daughter.

[10] Ms. Rani and Ms. Ruchika signed separate BOC forms and each relied on their respective narrative. They both supported their claim with the affidavit of Mr. Rajinder Kumar, Ms. Ruchika's father and Ms. Rani's husband, sworn on May 11, 2023.

[11] On May 15, 2023, the RPD heard Ms. Ruchika and Ms. Rani's case during which Ms. Ruchika testified. On June 20, 2023, the RPD accepted Ms. Rani's claim, but denied Ms. Ruchika's claim. The RPD made negative credibility findings with regards, *inter alia*, to discrepancies between Ms. Ruchika's BOC narrative and her testimony regarding the threats the police made to her. The RPD also considered her father's affidavit vague and lacking details and gave it no weight because of the afore mentioned discrepancy, The RPD concluded that the police was not interested in Ms. Ruchika.

[12] On August 29, 2023, the RAD dismissed Ms. Ruchika's appeal and confirmed the RPD's findings. The RAD Decision is the subject of this application for judicial review.

III. Analysis

A. *Arguments raised*

[13] Before the Court, Ms. Ruchika submits that the RAD erred in (1) confirming there was a discrepancy between her testimony and the narrative included in her BOC form as to whether or not she had been accused by the police of being involved with militants, which comprises an additional argument of breach of procedural fairness; (2) agreeing with the RPD's decision to dismiss her father's affidavit because of the same alleged discrepancy; and (3) concluding that the police in India was still not interested in her.

B. *Standard of review*

[14] The presumption of reasonableness as the standard of review for an administrative decision was confirmed by the Supreme Court of Canada. None of the situations warranting a rebuttal of this presumption arises in the present judicial review as it relates to the merits of the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 33, 53 [*Vavilov*]; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27). 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).

[15] As the Minister highlights, in respecting the decision maker’s role and “specialized expertise”, this Court should focus on whether the Applicant met her onus to demonstrate the decision is unreasonable. This involves adopting “a posture of restraint” when considering the merits of the decision, including “credibility and the assessment of evidence” (citing *Vavilov* at paras 24, 75; *Calce v Canada (Minister of Citizenship and Immigration)*, 2020 FC 713 at para 7).

[16] Furthermore, the Court is mindful of the particulars when credibility findings are at play. As stated in *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at paragraph 11, “... the credibility finding is a question of fact that deserves deference and ought to be reviewed under the reasonableness standard”. Moreover, these credibility issues are the heartland of the RPD’s jurisdiction and expertise (*Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938 at para 13), and have been described as lying within “the heartland” of its jurisdiction (*Siad v Canada (Secretary of State)*, 1996 CanLII 4099 (FCA), [1997] 1 FC 608 (FCA) at para 24; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 7, 8);

(*Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 36). In *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at paragraph 23, the Court stated that “... the assessment of an applicant’s testimony and their credibility is owed deference” (*Alexander v Canada (Citizenship and Immigration)*, 2023 FC 438 at para 17).

[17] In regards to the breach of procedural fairness allegation, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 56). The burden is on the Applicant to demonstrate that the requirements of procedural fairness were not met.

(1) The RAD’s finding of a contradiction or discrepancy regarding accusations of being linked with militants

(a) *There was a discrepancy between Ms. Ruchika’s BOC narrative and her testimony*

[18] Ms. Ruchika submits that the RAD erred in concluding that she denied at the hearing that she was accused by the police of being involved with drug dealers and militants. Referring to an excerpt of the RPD hearing, Ms. Ruchika asserts that she testified that she was taken to an interrogation cell intended for people like her and militants, and that she was accused of being linked with drug mafia and anti-national elements only after being tortured and sexually abused by the police. Ms. Ruchika faults the RPD for only asking her about the first part of her detention, never asking her about the second part, thus never giving her a chance to answer if she was accused of militancy.

[19] In response, the Minister submits that contrary to Ms. Ruchika's argument, the RPD did not misunderstand the evidence when it found she testified that she was not accused of militancy by the police and that its conclusion is reasonable.

[20] I note that in her BOC narrative, Ms. Ruchika stated that the police threatened to kill her and to link her to drug mafia and anti-national element. However, the record reveals that during the hearing, the RPD did question Ms. Ruchika at least five times about the reasons why the police targeted her and inquired about what the police "say or allege" she did. The record shows Ms. Ruchika testified that she was arrested because the police thought she was helping her friend, SK, and she was "going against them". She later confirmed that "nothing else" was said when she was picked up by the police or when she was arrested. However, the transcript reveals, the RPD specifically asked her "[w]hat --- what did the police --- what did the police say to you there other than that you were going against the police by helping [SK] flee?" to which Ms. Ruchika responded: "That's all they said, nothing else."

[21] As such, I am satisfied it was reasonable for the RAD to find there was indeed a discrepancy between Ms. Ruchika's narrative and her testimony as she did not mention, in her testimony, the accusations she outlined in her narrative, despite being queried specifically on this subject by the RPD. Also, as the Minister points out, the RAD made its own credibility findings and did not draw a negative credibility inference regarding the accusations of collaborating with drug dealers, stating that it accepted that there was no contradiction between Ms. Ruchika's oral testimony and her narrative on this point.

[22] As previously mentioned, the RPD is owed great deference in its appreciation of an applicant's testimony and their credibility. Given the evidence on record, it was open to the RAD to find a discrepancy between Ms. Ruchika's narrative and her testimony on this issue. This finding has not been shown to be unreasonable.

[23] Ms. Ruchika raises additional arguments that are speculative in nature, that are unsupported by evidence, and in any event, that were not raised before the RAD although they could have been (*Khan v Canada (Citizenship and Immigration)*, 2020 FC 1101 at para 27 citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 23–26 [*Alberta Teachers*]; *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 at para 15). I will not consider them.

(2) Alleged breach of procedural fairness

[24] Relying on *Malala v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 94 at paragraph 24, Ms. Ruchika argues that according to the principle of procedural fairness, once the RPD identified a credibility issue regarding the perceived discrepancy between her narrative and her testimony about accusations of collaborating with militants, it had to do so in clear terms and provide her with an opportunity to explain this perceived discrepancy, which it did not do.

[25] Ms. Ruchika also faults the RPD for asking her only about the first part of her detention, never asking her about the second part, thus never giving her a chance to answer if she was accused of militancy.

[26] Ms. Ruchika highlights that, as the perceived inconsistency between her BOC narrative and her testimony regarding accusations of collaborating with militants was central to her claim, the RPD had an even bigger duty to provide her with an adequate opportunity to explain this perceived discrepancy (citing *Jurado Barillas v Canada (Citizenship and Immigration)*, 2019 FC 825 at paras 14-16; *Woolner v Canada (Citizenship and Immigration)*, 2015 FC 590 at paras 48-49; *Shmihelsky v Canada (Citizenship and Immigration)*, 2016 FC 123 at para 15).

[27] In his Further Memorandum, the Minister responds that it is well established in the jurisprudence that decision makers do not require to confront a claimant with each of their credibility concerns, citing *Azenabor v Canada*, 2020 FC 1160 at paras 38-40; *Mohamed v Canada*, 2015 FC 1379 at para 24.

[28] As highlighted during the hearing, Ms. Ruchika did not raise any procedural breach argument before the RAD and, as mentioned above, this argument cannot be made at the judicial review stage if it was not before the RAD (*Alberta Teachers* at paras 23-26).

[29] In addition, as the Federal Court of Appeal recently reiterated: “It is trite law that a party that knows of a procedural flaw, defect or irregularity with an administrative process must raise it with the administrative decision-maker as soon as reasonably possible. Failure to do so constitutes waiver of the flaw, defect or irregularity. It cannot be raised in a judicial review or a statutory appeal of the administrative decision.” (*Teksavvy Solutions Inc v Bell Canada*, 2024 FCA 121 at para 58). In this case, the alleged procedural fairness issue was not raised at the first opportunity.

C. *Father's affidavit given no weight*

[30] Second, Ms. Ruchika submits that the RAD also erred in agreeing with the RPD's decision to dismiss her father's affidavit because of the same discrepancy.

[31] This Court has previously highlighted that “the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts” (*Khakimov v Canada*, 2017 FC 18 at para 23 citing *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68). Absent a demonstration by the applicant that the decision maker made a reviewable error, the reviewing court should not interfere with the decision (*Vavilov* at paras 24, 100, 125).

[32] Given my comments above and the confirmation, in the record, that there was an inconsistency, or discrepancy, this argument cannot succeed.

D. *Ongoing interest of the police*

[33] At last, Ms. Ruchika argues that the RAD erred in confirming the RPD's decision regarding the police interest in her. First, she submits that she was not released from detention without any conditions as the RAD found. She further argues that, on the contrary, her written BOC narrative clearly indicates that the police gathered her personal data, including her fingerprints, photographs and signature prior to releasing her, that there were therefore clearly

conditions to her release and that the kind of personal data gathered demonstrates a high level of interest in her.

[34] Second, Ms. Ruchika adds that her father explicitly stated in his affidavit that the police continue to enquire about the whereabouts of both his wife and daughter since their respective departures from India. Therefore, she submits that there is clear and explicit evidence confirming that the police are still enquiring about her and that the RAD erred in confirming the RPD's decision in this regard.

[35] The Minister points to the RAD's indication that the total evidence of ongoing interest is a single statement in Ms. Ruchika's father affidavit, which lacked significant details since the police was also interested in Ms. Rani. The Minister adds that the RAD reasonably explained how this evidence was insufficient to establish the ongoing police interest in Ms. Ruchika.

[36] In response to Ms. Ruchika's argument that her father's affidavit regarding the continued interest of the police was not vague and contained details such as the police incident in February 2020, the Minister submits that the RAD explicitly noted this incident and highlighted that "the father was not detained until 2020, which is after the targeting of her mother and five years after the incidents involving [Ms. Ruchika] and RS". Furthermore, the Minister adds that Ms. Ruchika's mother testified before the RPD that it was because of herself that Ms. Ruchika's father was detained. In these circumstances, the Minister submits it was reasonable for the RAD to find this would suggest that any ongoing visits were directed to Ms. Ruchika's mother rather than Ms. Ruchika herself.

[37] I agree with the Minister's submissions. First, as mentioned above, it was reasonable for the RAD to give Ms. Ruchika's affidavit no weight given the inconsistency, or discrepancy, issue. Second, given the content of the affidavit, it was open to the RAD to find it was vague and insufficient to support her allegations. While Ms. Ruchika correctly points to *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC) at paragraph 11 and *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 49 to argue that the RAD must examine the evidence for what it did say rather than what it does not say, this jurisprudence is not applicable in this case. The RAD did not assess the father's affidavit for what it did not say: rather, the RAD found that a single statement was insufficient credible evidence to support Ms. Ruchika's allegation that the police continued to be interested in her, particularly in light of the discrepancy issue.

[38] In *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 640 [Adeleye], Mr. Justice Sébastien Grammond highlighted that the prohibition on discounting evidence for what it does not say "does not detract from the general requirement that there be sufficient evidence to ground a finding of a well-founded fear of persecution". Further, Justice Grammond added that "evidence may be insufficient 'where it does not contain enough detail to persuade the decision-maker of the existence of the facts necessary to trigger the application of a legal rule'" (*Adeleye* at para 10 citing *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 at para 33). This is what the RAD concluded in this case.

[39] Further, and in specific response to Ms. Ruchika's submission that contrary to the RAD's analysis, she was not released from detention without any conditions as her personal data, including her fingerprints, photographs and signature were taken prior to her release, I would

point to the RAD's conclusion that despite the passage of eight years, there is no evidence that police have done anything with her data, such as taking any formal steps against her.

Ms. Ruchika did not challenge this conclusion in her submissions.

IV. Conclusion

[40] Ms. Ruchika has not shown the Decision is unreasonable, and the application will be dismissed.

[41] No question of general importance was proposed and I agree that none arises.

JUDGMENT in IMM-12306-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Nilufar Sadeghi FOR THE APPLICANT

Jeanne Robert FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joseph W. Allen & Associates FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec