Federal Court Cour fédérale

Date: 20241108

Docket: IMM-11302-23

Citation: 2024 FC 1794

Ottawa, Ontario, November 8, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

PARAMJIT SINGH
SIMRAN SAINI
HARJINDER SINGH
RESHAM KAUR MULTANI
AVTAR KAUR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD]. The RAD upheld the rejection of their refugee claim by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB].

[2] The Applicants are citizens of India and are from the state of Punjab. Their claim is based on the grounds of fear of the Punjab police. Their concerns arose after the Principal Applicant, Mr. Paramjit Singh, complained to the authorities that a police officer, known as LS, attempted to sexually harass the daughter of the family's housekeeper. The Applicants allege that even though LS was initially expelled from the village police, he returned later with a promotion. They also believed that LS poisoned their cattle, which drove the family out of dairy business, unleashed the Hindu fundamentalist groups against them, and had the police falsely accuse them of involvement with terrorists. After two days of hearings in July 2022 and January 2023, the RPD rejected the claim on credibility. Despite disagreeing with a number of RPD's credibility findings, the RAD ultimately upheld the RPD's conclusion and upheld the conclusion that the Applicants were not credible in establishing their claim.

[3] There is also some confusion about whether the RAD also rejected the case on the availability of an internal flight alternative [IFA]. Even though the RPD had questioned the Applicants on IFA, its reasons were silent on it and the RAD had not notified the Applicants that it would consider IFA as a potential determinative issue. The Respondents argue that the reference to the IFA in a heading in the RAD's reason is probably a typo and that the RAD's reasons, including the paragraphs following the IFA heading, are limited to credibility assessment. In any event, the RAD did not need to deal with multiple determinative issues, as long as it dealt with one reasonably.

II. Issues and Standard of Review

[4] The standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

III. Analysis

A. *Legal Framework: Credibility Findings*

[5] There is generally a great degree of deference given to the credibility findings of an expert administrative tribunal. Generally, this Court will not interfere with a decision if the evidence before the Board, taken as a whole, would support its negative assessment of credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences were drawn from that evidence (*Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426 at paras 33–35).

[6] However, a credibility assessment is a fact-finding exercise. The decision-maker can accept or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects are then linked to their rationally connected legal consequence. If the claimant's

testimony cannot be relied upon, and that there is no independent evidence to corroborate the facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find that the fact is established to support the claim. Therefore, the starting point is to understand and consistently use well-defined concepts such as credibility, probative value, relevance, materiality, weight and sufficiency. My colleague, Justice Grammond, offered guidance on this in *Magonza v Canada (Citizenship and Immigration),* 2019 FC 14 that I will not repeat here. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[7] When the decision-maker accepts certain material facts while they reject some others, it is important for the analysis to engage with both to explain how the evidence was weighed to support the ultimate conclusion.

[8] The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible to a court proceeding, do not apply to an administrative tribunal such as the IRB. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are equal. Even though nearly all evidence is admitted at the RPD, new evidence before the RAD is subject to the restrictions in section 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], relevance and materiality remain key to the weight of the evidence. Therefore, generally speaking, turning individual facts into a credibility assessment, irrespective of how they matter in the entire context of the refugee case, may not support the an overall reasonable decision. This is because a decision where the member refers to all facts as equal,

irrespective of their relevance and materiality in the context of the refugee claim, could lose the logical chain of reasoning contemplated by *Vavilov*:

> [85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a **whole is reasonable.** As we will explain in greater detail below, 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. The reasonableness standard requires that a reviewing court defer to such a decision [emphasis added].
>
> *Vavilov* at para 85.

[9] Putting it differently, likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive credibility assessment – may fail to reflect the true nature of the case. It underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. Without it, the chain of reasoning is lost and the reasons are no longer intelligible (*Patel v Canada (Citizenship and Immigration)*, 2024 FC 28 at para 24 [*Patel*]).

B. *Was the RAD decision reasonable?*

[10] At first glance, the RAD appears to focus on material evidence and the decision appears to be reasonable. However, on further scrutiny, it becomes clear that in reaching its decision, the RAD's credibility findings did not contribute to a finding of facts upon which rational conclusions could be made. Since the RAD's credibility assessment did not result in cohesive findings of facts, the RAD made a series of contradictory findings that did not support a bigger picture. This made the RAD's decision as a whole, unintelligible and unjustifiable. I rely on a number of examples to show what I mean by this.

(1) LS as the Foundation for the Applicants' Problems

[11] The Applicants answered the RPD's questions over a two-day hearing and the transcript shows details that are consistent with the rest of the materials. Throughout its reasons, the RAD did not point to material contradictions or omissions to bring the presumption of truthfulness set out in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248 (QL) into dispute [*Maldonado*].

[12] The RAD disagreed with a number of key credibility findings made by the RPD. One of such disagreements was on the Applicants' evidence about the originating dispute with LS. The RAD found that the RPD had engaged in an erroneous analysis to come to its conclusion. The original dispute with LS is material as the Applicants speak to how they believe it triggered their subsequent problems. The RAD rejection of the RPD's finding implies that the RAD accepted the dispute with LS.

[13] The RAD also found that the RPD engaged in circular reasoning in its assessment of other relevant documents that were material to its fact-finding. These included erroneous findings by the RPRD that rejected evidence from the Principal Applicant's brother and the ex-Sarpanch of the village that corroborated the Applicants' allegations. As such, the RAD engaged in its own independent assessment of the documents. It found that the Sarpanch's letter merited no weight because it had failed to identify the agent of harm by name, *i.e.*, LS. Yet, the Sarpanch letter provided details that were consistent with the Applicants' testimony about the disenchanted police officer and what followed, without mentioning LS. The brother's letter was also given no weight "as they are inconsistent with details given about these incidents in other evidence

(testimony and documents) that was before the RPD." It is not clear what these perceived inconsistencies were.

[14] Most importantly, the evidence from the brother and the Sarpanch included the links to LS and was provided to corroborate the Applicants' own evidence The RAD did not impeach the Applicants' evidence, and expressly found fault with the RPD's findings stating that the link to LS was not established. Therefore, it is unclear from the RAD decision whether it accepted or rejected the link to LS. It is unclear what facts the RAD rejected when it gave no weight to the corroborative evidence from the Sarpanch and the brother, since the RAD disagreed with the RPD's credibility finding and did not point to any material credibility concerns with the Applicant's evidence nor explain why the presumption of truthfulness was rebutted in the circumstances. The RAD's vague findings on a material fact goes to a lack of transparency and intelligibility.

(2) The Son was Drugged

[15] The RPD also had credibility concerns with the adult Associate Applicant's evidence on the identity of the threatening caller in October 2017 and the son's evidence explaining the treatment he received after being involuntarily drugged. The RAD found the RPD acted unfairly when determining these credibility concerns.

[16] The RAD determined that not giving the son a chance to explain further on the perceived contradiction on his treatment after being involuntarily drugged constituted a breach of procedural fairness. Despite this, the RAD agreed with the RPD that it needed to see

corroboration to accept that the son was drugged. On one hand, by finding that the RPD had breached its duty of procedural fairness to allow the son with the opportunity to deal with credibility concerns, the RAD agreed that the evidence on this conclusion was not reliable. Yet, despite the breach, the RAD must have implicitly agreed with the RPD's credibility conclusion when it expected to see corroboration. The RAD further based its need for corroboration on the instruction on the Basis of Claim [BOC] form, and rejected the Applicant's explanation that he "did not know that [they] need any such kind of document".). Nowhere in its reason did the RAD address how it reconciled its finding of the RPD's breach of procedural fairness in dealing with this information while accepting the ultimate conclusion that it was not credible and needed corroboration.

[17] In *Maldonado*, the Federal Court of Appeal established that when a claimant swears that certain facts are true, there is a presumption that they are true, unless there is valid reason to doubt their truthfulness. This presumption is not extended to everything the witness believes to be true, but about which they have no direct knowledge, such as inferences (*Maldonado* at para 5).

[18] Being involuntarily drugged was not an inference; it was the son's testimony that it had taken place. It was the RPD's finding that the son was not credible on being drugged that would reverse the presumption of truth and would trigger a need for corroboration. However, the RAD had rejected the RPD's finding on the basis it was unfair. In light of rejecting RPD's credibility finding, at no point did the RAD express or imply why the presumption of truthfulness about the son's testimony was rebutted. The RAD's dealing with a need for corroboration was

unreasonable in the circumstance (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 6 –7; *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737 at para 65).

(3) Microscopic Analysis

[19] The context of this case matters: Not only did the Applicants provide testimony over two days, some six months apart, they provided a number of key corroborative documents to substantiate their claim. The RAD made a negative credibility inference when the Principal Applicant had not provided the exact date of the visit from the police inspector in 2017 or the exact date of visiting his lawyer in India. It is unclear what facts were rejected as a result of this finding.

[20] While the RAD refers to the instruction on the BOC forms to substantiate its demand for the details, I agree with the Applicants that there is major difference between an omission of material facts and an omission of a detail. The BOC must "contain the significant events that give rise to an applicant's claim" (*Zhang v Canada* (*Citizenship and Immigration*), 2007 FC 665 at para 6). The Federal Court has repeatedly cautioned against conducting a "microscopic analysis" of BOC omissions and against relying on a technical omission rather than a contradiction to justify its adverse credibility finding, including in Li v Canada (*Minister of Citizenship and Immigration*), 2006 FC 868 at paras 31–32. The omission of "minor or elaborative details" from the BOC will not justify a negative credibility inference (*Karaoglan v Canada* (Minister of Citizenship and Immigration), 2008 FC 749 at para 16). As Justice Diner correctly stated in *Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paras 13 –14, discrepancies resulting from a failure to recall details that appear to resemble a

"trivia quiz", should not be a basis for undermining credibility. However, discrepancies of facts central to the basis of a refugee claim may support a negative credibility finding.

[21] I find that the above examples are sufficient to show a break in the RAD's reasonable chain of analysis on credibility.

(4) Internal Flight Alternative [IFA]

[22] The RAD questioned the Applicants on the possibility of IFA in four cities, including Mumbai and Kakota. However, the RPD solely based its reasons on credibility and did not deal with IFA as a determinative issue. I agree with the Applicants that it was not foreseeable for them to deal with an issue not raised by the RPD unless if the RAD had put them on notice. The RAD never notified the Applicants that it might deal with IFA.

[23] The Respondent does not dispute the need for a notice, however, it argues that the heading *"[t]*he remaining documentary evidence does not support a finding the Appellants would be at risk in the proposed IFA location" in the RAD's reason is probably a typo or something left over from a different reasons. The Respondent argues that the paragraphs that follow the heading largely deal with credibility issues and that the heading should be read out of the decision.

[24] I disagree. Despite the fact that the RAD dealt with certain credibility factors, including on the letters from the brother and the Sarpanch, under this heading, it also went further and provided reasons for why the Associate Applicant did not have the residual profile of someone at

risk as an HIV positive woman. Finally, many paragraphs after the heading, the RAD concluded, "Despite the errors in the RPD's analysis identified above, I find the RPD's ultimate determination that the Appellants had a viable IFA in either Mumbai or Kolkata was correct."

[25] There was no RPD analysis on IFA, there was no RAD notice of dealing with IFA, and the Respondent's speculation that all of these are typos do not bridge the gap and the confusion that the reasons contain.

IV. Conclusions

[26] I find that the decision of the RAD was unreasonable. I allow the judicial review. This matter will be remitted to the RAD to be decided by a differently constituted panel.

[27] The parties did not propose a certified question and I agree that none arises.

JUDGMENT IN IMM-11302-23

THIS COURT'S JUDGMENT is that:

1. The Judicial Review is granted.

2. This matter is returned to the RAD for determination by a different panel of the RAD.

3. There are no questions to be certified.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11302-23
STYLE OF CAUSE:	PARAMJIT SINGH ET AL. v MCI
PLACE OF HEARING:	VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 31, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	NOVEMBER 8, 2024

APPEARANCES:

Me Nilufar Sadeghi	FOR THE APPLICANTS
Me Patricial Nobl	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates Montréal (Quebec)	FOR THE APPLICANTS
Department of Justice Canada Montréal (Quebec)	FOR THE RESPONDENT