Federal Court  Cour fédérale

Date: 20201113

Docket: IMM-1974-19

Citation: 2020 FC 1055

Ottawa, Ontario, November 13, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

AZHAR NAZIR CHEEMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Azhar Nazir Cheema's application for a Pre-Removal Risk Assessment (PRRA) was rejected because the PRRA officer found his claim that he was in danger from fundamentalists in Pakistan not to be credible or plausible. Such adverse credibility findings are entitled to considerable deference from this Court on judicial review given the PRRA officer's mandate to make the determination, the advantages they have in assessing the evidence, and the value of preventing re-litigation.

[2] However, credibility findings are not immune from review. Where they are unexplained, not supported by the evidentiary record, fail to consider relevant information, rely on insignificant or non-existent inconsistencies, or unreasonably discount explanations, they may be set aside as unreasonable. I conclude that the credibility determinations made by the PRRA officer are of this nature. The unreasonable credibility findings in this case were central to the PRRA officer's decision, and render the decision as a whole unreasonable.

[3] The application for judicial review is therefore granted. While Mr. Cheema asked that I substitute my decision and direct that Mr. Cheema's PRRA application be granted, I do not consider that this matter falls in the rare category of cases justifying that remedy. The PRRA officer's decision is therefore set aside and Mr. Cheema's PRRA application is remitted for determination by another officer.

II. Issues and Standard of Review

[4] Mr. Cheema raised a variety of grounds to challenge the PRRA officer's decision, including a failure to consider evidence of conditions in Pakistan, a failure to expressly consider two decisions of the United Nations Human Rights Committee (UNHRC), and allegations of unfairness in the process. At the end of these reasons, I will briefly address these issues, which I find unpersuasive. Rather, I find that the determinative issue on this application is the following:

Were the PRRA officer's adverse credibility findings reasonable?

[5] The parties agree that a PRRA officer's decision is subject to review on the reasonableness standard: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at

para 11; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Findings of fact, and credibility findings in particular, are similarly subject to reasonableness review: *Vavilov* at paras 125–126; *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 941 at paras 17–18.

[6] Credibility findings are often described as being entitled to "significant deference," a "high degree of deference," or "considerable deference": see, *e.g.*, *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22; *Su v Canada (Citizenship and Immigration)*, 2019 FC 1052 at para 19; *Rahman* at para 17. As I have noted before, this does not change the standard of review, which remains the single reasonableness standard, but it underscores that decision makers are given considerable latitude in their credibility findings, and that credibility determinations should not be disturbed lightly: *George v Canada (Citizenship and Immigration)*, 2019 FC 1385 at paras 27–28; *Amador Ordonez v Canada (Citizenship and Immigration)*, 2019 FC 1216 at para 6; *Vavilov* at paras 88–90. This is part of the "context" that the single reasonableness standard accounts for: *Vavilov* at paras 88–90.

[7] While *Vavilov* does not address credibility findings in particular, credibility assessments are part of the fact-finding process. The Supreme Court emphasized the role of decision makers in assessing and evaluating the evidence, noting that a reviewing court should not reweigh or reassess evidence: *Vavilov* at para 125. Like other factual findings, credibility findings must be justified in light of the facts and the evidentiary record: *Vavilov* at para 126. A misapprehension or failure to take that evidence into account, or findings not based on the evidence, may render a decision unreasonable: *Vavilov* at para 126.

III. Analysis

A. *Mr. Cheema's PRRA Application*

[8] Mr. Cheema's PRRA application is based on an asserted fear of Islamic extremists in Islamabad, Pakistan. His wife, Azra Azhar, was a social worker in Islamabad, who ran hostels for girls and was an outspoken proponent of the rights of women and a critic of religious extremism. In 2014, after Ms. Azhar made some speeches, she was faced with extortion, threats, and a shooting attack. The two people identified as primarily behind these incidents were Zubair Safdar and Mian Mohammad Aslam. Mr. Safdar was identified as an Islamabad leader of Jamaat-e-Islami, an Islamic political party, and the initial instigator of the persecution. Mr. Aslam was identified as a former Member of the National Assembly (MNA) and as a leader of Jamaat-e-Islami, to whom Mr. Cheema and Ms. Azhar had originally turned in hopes that he could help them, but who sided with Mr. Safdar.

[9] After the shooting, Mr. Safdar and an imam convened Mr. Cheema to a jirga, described as a form of religious council. Ms. Azhar was falsely accused of adultery and running a brothel. Mr. Cheema defended his wife, but after a further meeting, Mr. Safdar and an imam had a fatwa issued against Ms. Azhar claiming she was adulterous and calling for her death.

[10] Ms. Azhar left Pakistan in September 2014 with two of their four sons, the other two being at school in England. Mr. Cheema remained behind, hoping he could resolve the situation with Mr. Safdar and Mr. Aslam, and believing that as a man he was safe. While he remained in Pakistan, police inquired about his wife and called him in for questioning. He moved a number

of times, ultimately to Rawalpindi, a “twin city” adjacent to Islamabad. His resolution efforts failed, and the situation escalated, culminating in a threatening incident near a travel agency, and a physical attack in June 2016 that sent Mr. Cheema to the hospital. Mr. Cheema left Pakistan by air in July 2016, about 22 months after his wife’s departure. After he left, Mr. Safdar and an imam announced that Mr. Cheema deserved the same punishment as his wife for being an accomplice.

[11] In the interim, Ms. Azhar and her sons had made a claim for refugee protection in Canada. That claim was granted in January 2015 and the Court understands that they are now permanent residents of Canada. In late 2016, Mr. Cheema also tried to make a claim for refugee protection. However, he was ineligible to do so since he had made a failed claim in the late 1990s in the name of his brother, which had resulted in his arrest and removal to Pakistan in the early 2000s. A further deportation order was issued against him in late December 2016, and he was held in immigration detention until March 2017.

[12] Facing deportation, Mr. Cheema filed a PRRA application. The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] permits an individual in Canada who is subject to a removal order to apply for protection through a PRRA: *IRPA*, s 112. A PRRA is the “last formal risk assessment given to qualifying individuals before they are removed from Canada”: *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1 at para 1. It seeks to ensure that individuals are not removed to a country where they would be at risk of persecution on a Convention ground, or are in need of protection from risks of death, torture, or other cruel and

unusual treatment or punishment, in accordance with Canada's international obligation of *non-refoulement*: *Valencia Martinez* at para 1; *IRPA*, ss 96–97, 112–113.

[13] I will mention two other aspects of Mr. Cheema's immigration history, although neither bears directly on this application. First, shortly before Mr. Cheema applied for refugee protection, Mr. Cheema and Ms. Azhar submitted an application for him to obtain permanent resident status under the spouse or common-law partner class. That application was outstanding at the time of the PRRA decision, and the Court was advised that it remained outstanding at the time of the hearing of this judicial review. The Court has not been subsequently advised of any change in the status of the spousal sponsorship application that might potentially render this application moot.

[14] Second, Mr. Cheema's PRRA application was initially refused in May 2017. Mr. Cheema sought leave to judicially review this refusal. On a consent motion by the Minister, this Court quashed that first refusal, resulting in the redetermination that is the subject of this application. Mr. Cheema asks that this Court draw conclusions from this prior application, and refers to it in requesting special remedial relief. However, while the Minister clearly recognized that the prior decision should be quashed, I cannot draw any conclusions as to the reason for that conclusion. In particular, I cannot infer that it was in any way related to the strength of the PRRA application, as Mr. Cheema argues.

B. *The PRRA Officer's Credibility Determinations*

[15] The PRRA officer concluded that Mr. Cheema was not a Convention refugee as described in section 96 of the *IRPA*, or a person in need of protection as described in section 97 of the *IRPA*, and therefore rejected his PRRA application. The PRRA officer's conclusion was based on their assessment that Mr. Cheema was not credible given a "number of inconsistencies and implausibilities" arising from his testimony at an oral hearing.

[16] In the course of their reasons, the PRRA officer identified five grounds for the credibility finding: (1) Mr. Cheema's decision to remain in Pakistan until July 2016, which the PRRA officer found was not reasonable or plausible; (2) identified contradictions in Mr. Cheema's evidence regarding whether he was included on the fatwa issued against his wife; (3) identified contradictions in Mr. Cheema's account of the incident at the travel agency; (4) implausibility in Mr. Cheema's assertion that he was attacked in Rawalpindi but was taken to a hospital in Islamabad; and (5) Mr. Cheema's ability to renew his passport and leave Pakistan from the Islamabad airport.

[17] Having reached these determinations, the PRRA officer gave the following conclusion:

> Overall, I find that the above-noted inconsistencies and implausibilities in the applicant's testimony cause me to find the applicant not to be credible. <u>As I have found the applicant not to be credible, I have given little weight to the documentary evidence that the applicant has submitted in support of this statement of risk</u>. Further, in light of my negative credibility finding with respect to the applicant, I do not find that the applicant would be at risk of harm in Pakistan from either religious extremists, or from several government officials, or from the authorities.
>
> [Emphasis added.]

C. *The Credibility Determinations were not Reasonable*

[18] As noted above, the Court's role on judicial review of credibility determinations is limited to assessing whether they were reasonable: *Rahal* at para 42. At the same time, while this Court adopts a deferential posture, credibility findings are not "immune from review": *N'kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 24; *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at paras 22–24 [*Sheikh (2000)*].

[19] Justice Rennie, then of this Court, helpfully summarized a number of the principles applicable to credibility findings in the immigration context in *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4; see also *N'kuly* at paras 20–26. These principles include:

- that credibility findings may be based on implausibility, common sense and rationality;
- that inferences must be reasonable and set out in clear and unmistakable terms;
- that credibility findings should not be based on microscopic examinations of irrelevant or peripheral issues; and
- that credibility findings based on inconsistencies may arise through either internal inconsistency or inconsistency with other evidence that is accepted.

[20] Examples of credibility findings that may be unreasonable include those that rely on insignificant inconsistencies or omissions; those that unreasonably discount explanations; those that do not consider relevant information; or those that ignore corroborative evidence: *N'kuly* at

para 24; *Sheikh (2000)* at paras 23–24; *Valdeblanquez Ortiz v Canada (Citizenship and Immigration)*, 2017 FC 410 at paras 66–68, quoting *Nkonka v Canada (Minister of Citizenship and Immigration)* (13 January 2016), Toronto IMM-2416-15 (FC) at paras 7–8.

[21] In my view, the credibility findings of the PRRA officer cannot be considered reasonable in light of the evidentiary record in this matter. I will consider them in the order found in the decision: (1) Mr. Cheema's decision to remain in Pakistan until July 2016; (2) identified contradictions regarding the fatwa; (3) identified contradictions regarding the travel agency incident; (4) the implausibility of being taken from Rawalpindi to a hospital in Islamabad; and (5) Mr. Cheema's ability to renew his passport and leave Pakistan. I will then consider (6) the PRRA officer's treatment of other documentary evidence in light of the credibility determination.

(1) Mr. Cheema's decision to remain in Pakistan until July 2016

[22] The PRRA officer referred a number of times to the fact that Mr. Cheema did not leave Pakistan when his wife did in September 2014, but rather waited until July 2016. Delay in leaving a country can indicate that a claimant did not in fact have a subjective fear of persecution or danger. However, an applicant's explanation for the delayed departure must be considered in its cultural context, and not rejected without reasonable justification: *Basaa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 201 at paras 9, 12; *Jones v Canada (Minister of Citizenship and Immigration)*, 2006 FC 405 at paras 26–28.

[23] Mr. Cheema said that he did not leave at the same time as his wife and children because there had been no threats directed against him at the time, he felt that he was safe as a man, and he hoped to be able to resolve the situation. He noted that he had a good monthly income, and that if he had been able to resolve the situation, his wife could have returned so they could continue their life.

[24] The PRRA officer did not accept this explanation, finding that it was not reasonable or plausible that (a) Mr. Cheema would not have feared for his own safety, given what had been said about what his wife experienced; (b) Mr. Cheema could have defended his wife in discussions with Mr. Aslam without angering the people who had attacked her, or that he would choose to remain in Pakistan; and (c) Mr. Cheema would remain knowing that Mr. Safdar was a very dangerous person, having been told this by both authorities in Pakistan and his wife's lawyer.

[25] The difficulty with these findings is that it is unclear what the PRRA officer's line of reasoning is, and in particular, what the PRRA officer finds not credible: *Vavilov* at para 85. The context here is important. The question the PRRA officer was looking to answer was whether there was sufficient credible evidence that Mr. Cheema would be in danger or at risk of persecution from Mr. Safdar, Mr. Aslam, or others if he returned to Pakistan. Mr. Cheema's evidence was that the threats were initially directed at his wife, but that he thought he was still safe to remain. Over time, he concluded that he was not safe and left the country. What did the PRRA officer find not to be credible?

[26] The first possibility is that the PRRA officer questioned the very fact that Ms. Azhar was at risk, *i.e.*, that they did not accept that Mr. Safdar and others were dangerous people who had threatened and attacked Ms. Azhar, and that she was subject to a fatwa. The Minister does not contend that the PRRA officer questioned these facts. Notably, the attack on Ms. Azhar was the basis of her successful refugee claim, to which the PRRA officer referred without questioning its correctness. While a PRRA officer is not bound to accept the conclusions of the Refugee Protection Division (RPD) regarding another person's successful claim for refugee protection, if the PRRA officer rejected the RPD's findings regarding Ms. Azhar, one would expect an express finding in this regard and an explanation for doing so: *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at paras 11–12.

[27] The second possibility is that while accepting that Mr. Safdar and Mr. Aslam were dangerous to Ms. Azhar, the PRRA officer did not accept the men were in fact a danger to Mr. Cheema, given that he did not immediately leave Pakistan. This again does not appear to have been the PRRA officer's determination. To the contrary, the PRRA officer appears to assume or conclude that Mr. Cheema would have been in danger as soon as the risks to his wife became apparent. Further, if this were the PRRA officer's determination, it would be *consistent* with Mr. Cheema's own account, which was that he did not consider Mr. Safdar dangerous to him until much later, after he had been in Pakistan for a period of time and tried to resolve the matter. This would not be a reasonable basis to find Mr. Cheema not credible.

[28] The third possibility is that the PRRA officer concluded that Mr. Safdar and Mr. Aslam cannot have been dangerous to Mr. Cheema unless they were dangerous to him starting in 2014.

In other words, the PRRA officer found that people such as Mr. Safdar and Mr. Aslam cannot have grown more dangerous to Mr. Cheema over time, as he contended. To some degree, this interpretation might be supported by the PRRA officer's statement that they found it implausible that Mr. Cheema could have defended his wife at the jirga in 2014 without angering them to the extent that they would be dangerous.

[29] The difficulty with this is that the PRRA officer neither expressly concludes that if the men were dangerous, they must have been dangerous at all times, nor points to any evidence to support such a conclusion. There is no inherent implausibility in an agent of persecution, including a religious extremist, becoming an increasingly greater threat or danger over time, to the extent that they become a risk to the life of an applicant. In any event, this Court has recognized the unreasonableness of making an implausibility finding based on speculation about how others in different cultural contexts would act: *Dinartes v Canada (Citizenship and Immigration)*, 2018 FC 986 at para 24; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. The PRRA officer gives no basis to conclude that the individuals in question would have reacted in a more dangerous or threatening way to Mr. Cheema's statements at the jirga than their reaction as described by Mr. Cheema.

[30] This leaves a fourth possibility, and the one that in my view best reflects the statements in the PRRA officer's reasons. This is that the PRRA officer simply found it "unreasonable and implausible" that Mr. Cheema remained in Pakistan in the face of the dangers that were actually posed by Mr. Safdar and Mr. Aslam. The PRRA officer stated, for example, that "[g]iven the extremely serious nature of what the applicant's PRRA materials indicate the applicant's wife

experienced in Pakistan, I do not find it either reasonable, or plausible that the applicant would not have feared for his own safety, but would rather choose to remain in Pakistan" [emphasis added]. In essence, this amounts to a finding that Mr. Cheema should have realized he was in danger sooner and left Pakistan to escape that danger. However, this may show Mr. Cheema to have been rash or foolhardy in remaining, but it does not show him not to be credible in his account.

[31] These difficulties become even more pronounced in the following passage, in which the PRRA officer states their expectations as to what would happen when Mr. Cheema learned of his wife's successful refugee claim:

> […] I find it likely that the applicant was aware that his wife and children had been granted refugee protection in Canada on January 30, 2015, which allowed them to remain in Canada permanently. As the applicant's PRRA materials indicate that the applicant had obtained a visa for Canada on July 10, 2013, that was valid until September 15, 2016, I do not find it reasonable that the applicant did not join his family in Canada when he learned of their successful refugee protection claim. Instead the applicant states that he chose to continue to reside in a dangerous and unstable situation in Pakistan, attempting to resolve his and his family's problems with dangerous individuals, despite having previously made several unsuccessful attempts to do so. As I do not find the above-noted actions of the applicant to be reasonable, I have drawn a negative inference about the applicant's credibility with respect to this.
>
> [Emphasis added.]

[32] Clearly, Mr. Cheema did not travel from Pakistan to Canada in 2015. The PRRA officer appears to simply be criticizing the reasonableness of his not having done so, and then concluding that this adversely impacts whether he should be believed. The PRRA officer simply appears to be criticizing Mr. Cheema's "actions" in not joining his family, which again might go

to his rashness, but not his credibility. Reading the passage generously, one might conclude that the PRRA officer implicitly reasoned that Mr. Cheema would have traveled to Canada in 2015 if he had truly been in danger, and that the fact that he did not indicated that he was in fact not in danger at that time. However, that would again be consistent with Mr. Cheema's testimony that he felt he was not yet in danger, and would not be a basis for an adverse credibility finding.

[33] The Minister argues that the credibility findings were not as specific as any one or more of these possibilities, but rather a broader finding that they did not believe Mr. Cheema's story. Recognizing that a credibility finding may not need to be specific or precise, it must still be possible to answer the question "what do you not believe, and why?" To put it in the language of *Vavilov*, there must be a "line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Vavilov* at para 102. The PRRA officer's analysis lacked transparency since it did not state a line of analysis in a way that would allow Mr. Cheema to understand why his story was not believed based on his remaining in Pakistan.

(2) Identified contradictions regarding the fatwa

[34] The PRRA officer concluded that Mr. Cheema's evidence was inconsistent with respect to his inclusion in the fatwa issued against his wife. The PRRA officer noted that in response to a first question about whether the fatwa against his wife included him as well, Mr. Cheema answered no. Later in his testimony, he said that he was included in the same fatwa because he was blamed for helping her leave the country. While inconsistent evidence can clearly form the

basis for a credibility finding, the evidence pointed to by the PRRA officer clearly shows no inconsistency: *Cooper* at para 4.

[35] The first question to Mr. Cheema was part of a series of questions related to the jirga and the fatwa in 2014. Mr. Cheema's statement that the fatwa did not apply to him was in the context of its issuance in 2014 and was consistent with his evidence that he was not initially included in the fatwa when it was issued, but rather became implicated later after helping his wife leave Pakistan. The second question the PRRA officer relied on, however, was clearly in the context of Mr. Cheema's potential return to Pakistan from Canada. His response that he was (by this time) included under the fatwa was consistent with his narrative, which was that the announcement that he deserved the same punishment as his wife came after he left Pakistan. Juxtaposing two statements about different situations at different times and suggesting that they are inconsistent is not reasonable.

[36] I am mindful of both the importance of a reviewing Court not undertaking a reassessment of evidence, and of the principle that an adverse credibility finding should not be made on a microscopic examination of issues. Had this been the only concern with the PRRA officer's credibility findings, it may not have rendered the decision as a whole unreasonable. However, given the concerns about the reasonableness of the other grounds given, the reliance on this identified inconsistency does little to support the overall adverse credibility conclusion.

(3) Identified contradictions regarding the travel agency incident

[37] As noted, Mr. Cheema said he was confronted by Mr. Safdar during a visit to a travel agency when he was seeking a ticket to Canada. The PRRA officer found that Mr. Cheema had presented three different versions of these events. Notably, the PRRA officer compared Mr. Cheema's version at the hearing with that set out in an earlier written narrative. While the written version stated that Mr. Cheema was approached and had words with Mr. Safdar or his followers, the PRRA officer noted that "the applicant did not indicate at the hearing that Zubair Safdar, or any other individuals, either spoke to him or had any interaction with him, at this time."

[38] This conclusion is contradicted by the transcript of the hearing. Mr. Cheema began his account of the travel agency incident, and initially did not refer to any discussions. However, after a fifteen minute break taken at the suggestion of the PRRA officer, Mr. Cheema said that he had not finished his previous answer, and continued with the statement that "[w]hen I was going to the place where my bike was parked these people stopped me. And after that, they started asking '*Where is your wife?*', '*Where do you live now?*'…" followed by further description of the interaction with the men. The PRRA officer's finding that Mr. Cheema did not indicate at the hearing that he spoke to or had any interaction with the men apparently did not take his evidence after the break into account.

[39] The PRRA officer also found that the version of this incident provided by Mr. Cheema's friend in Pakistan, Gohar Ali, was inconsistent with Mr. Cheema's. The entirety of Mr. Ali's

account of the incident is that Mr. Cheema told him that Mr. Safdar "saw him in the travel agency and threatened him. He was terrified." From this, the PRRA officer purported to find two contradictions: first that it was Mr. Safdar himself rather than his followers (this was consistent with Mr. Cheema's evidence, although the written narrative refers to a follower); and second that Mr. Ali did not mention that Mr. Safdar was standing by Mr. Cheema's motorbike. In my view, it was clear that Mr. Ali's account was a brief recitation of what he had been told by Mr. Cheema. There is no reason to assume either that Mr. Cheema would have relayed where Mr. Safdar was standing in particular, or that Mr. Ali would have included this detail in his one sentence description of the event. In my view, this falls very much in the category of microscopic and unreasonable analysis, and appears to show an effort to look for contradictions where they do not exist in order to impugn Mr. Cheema's credibility: *Sheikh (2000)* at para 23.

(4) Implausibility of being taken from Rawalpindi to a hospital in Islamabad

[40] Shortly before Mr. Cheema's departure, he says he was attacked by men outside his home in Rawalpindi. He was beaten unconscious, and taken to a hospital in Islamabad by his friend Mr. Ali. At the hearing, the PRRA officer asked why he was taken to a hospital in Islamabad rather than Rawalpindi. Mr. Cheema answered that Mr. Ali told him the hospital in Rawalpindi was in a crowded area that was not possible to get to by car, and that since Islamabad and Rawalpindi are twin cities, you could get there "as fast as possible."

[41] The PRRA officer rejected this explanation, finding it not reasonable or plausible that Mr. Cheema would be attacked in Rawalpindi but taken to a hospital in Islamabad. He noted that Mr. Cheema had not submitted any documentary evidence concerning the location or

accessibility of the Rawalpindi hospital, and that it was neither "reasonable or plausible that Islamabad, as the capital of Pakistan, would not be just as crowded, if not more crowded, than Rawalpindi."

[42] In my view, these conclusions were again unreasonable. There is no reason Mr. Cheema should expect to have to provide documentary evidence of the location of a potential Rawalpindi hospital that the PRRA officer believed he should have been taken to. In any event, Mr. Cheema did provide information about the location of both his house and the Islamabad hospital, which the PRRA officer apparently took no effort to assess. Rawalpindi and Islamabad are, as Mr. Cheema described them, twin cities that abut each other. There is no reason that travel between a point in Rawalpindi and a point in Islamabad is necessarily longer (in distance or time) than between two points in Rawalpindi. Nor did the PRRA officer provide any basis for their speculation as to the ability to readily travel in Islamabad rather than Rawalpindi other than that Islamabad is the capital of Pakistan. Plausibility findings must be based on a more substantial foundation than such speculation.

(5) Ability to renew passport and leave Pakistan

[43] The PRRA officer also made an adverse credibility finding on the basis that Mr. Cheema was able to get a new passport and leave Pakistan through the airport despite the fact that he was "wanted by prominent government officials, and by the authorities in Pakistan." The PRRA officer further noted that if Mr. Cheema were wanted by the police as he claimed, it was more likely than not that the authority governing the police in Pakistan would also have wanted him, and would have taken measures to ensure the applicant was not able to leave.

[44] The difficulty with these conclusions is that they are again founded on both an incorrect understanding of the evidence, and mere speculation. As Mr. Cheema underscored in his submissions on this application, he did not allege that he was "wanted by prominent government officials." His allegations pertained primarily to Mr. Safdar, who was a local leader within a political party, and Mr. Aslam, who was a *former* MNA. There was no evidence to suggest that such individuals would have any authority to control the state apparatus in a way that would prevent Mr. Cheema from leaving the country.

[45] With respect to the possibility that the police might have prevented Mr. Cheema from departing, the PRRA officer referred to no evidence beyond their own speculation that police investigations, instigated by religious extremists rather than official channels, would have resulted in either an interest or an ability to engage a system that would prevent him from getting a passport or would stop him at the airport. I note that unlike in cases regarding, for example, the "Golden Shield" in China, the PRRA officer identified no evidence regarding the degree to which authorities in Pakistan use databases to identify and prevent the departure of individuals, or which people are put on such a list: see, *e.g.*, *Han v Canada (Citizenship and Immigration)*, 2019 FC 858 at paras 30–31; see also *Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 at paras 163–165 on the importance of making independent factual findings even where there is country condition evidence on the ability of someone sought by authorities to depart the country.

[46] The PRRA officer also made this credibility finding, which effectively questioned the credibility of Mr. Cheema's statements regarding his interactions with police, without any

assessment of the corroborative evidence filed regarding those interactions. This included evidence from lawyers speaking to the results of their inquiries at the local police office in Rawalpindi. Reaching a credibility finding without considering supporting corroborative evidence is not reasonable: *Karayel v Canada (Citizenship and Immigration)*, 2010 FC 1305 at paras 15–18.

[47] I therefore similarly conclude that the PRRA officer's reliance on Mr. Cheema's ability to leave Pakistan was unreasonable.

(6) Dismissal of corroborative evidence

[48] As set out in the passage reproduced above at paragraph [17], having made the foregoing credibility findings, the PRRA officer gave "little weight" to the entirety of the remaining corroborative documentary evidence since they found the applicant not to be credible.

[49] This Court has on a number of occasions confirmed that it is unreasonable to reach a finding of non-credibility without considering corroborative evidence, and then dismiss the corroborative evidence based on the applicant being found not credible: *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at paras 20–21; *Francois v Canada (Citizenship and Immigration)*, 2018 FC 687 at para 14; *John v Canada (Citizenship and Immigration)*, 2011 FC 387 at para 6. As Justice Gascon has put it, corroborative documentary evidence must be considered "before reaching a conclusion on the applicant's credibility;" conducting the analysis in the inverse "would circumvent the purpose of corroborating evidence, which is precisely to

support the story when there are doubts as to its credibility": *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at para 31.

[50] The Minister points to the Court of Appeal's decision in *Sheikh (1990)* for the proposition that "a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony" [emphasis added]: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA) [*Sheikh (1990)*]. However, this proposition does not mean that a decision maker can reach a "general finding of a lack of credibility" without considering corroborative evidence that comes from independent parties, and then dismiss evidence that does not emanate from the applicant's testimony on the basis of the credibility finding. To do so is to engage in the inverted reasoning this Court has found unreasonable: *Chen* at para 20.

[51] In the present case, the PRRA officer's wholesale discounting of the evidence included disregarding corroborative evidence from at least (a) Ms. Azhar, who had previously been found a credible witness by the RPD; (b) a lawyer in Rawalpindi who wrote two letters regarding his awareness of the situation and his inquiries of police in Rawalpindi; and (c) Mr. Cheema's employer, describing both the reasons for Mr. Cheema's departure and a subsequent visit from police. The PRRA officer unreasonably gave no consideration to this evidence, and no other ground for dismissing it other than the concerns about Mr. Cheema's credibility: *Cortes v Canada (Citizenship and Immigration)*, 2016 FC 684 at paras 23–24.

(7) Other issues

[52] Mr. Cheema raised a number of other challenges to the PRRA officer's decision. I do not find these allegations persuasive, but given my conclusions on the credibility issues, need only provide brief reasons for this assessment.

[53] Mr. Cheema alleged that the PRRA officer unreasonably failed to consider the country condition for Pakistan, particularly as it related to respect for human rights and the prevalence of violent religious militants. In my view, this argument is misplaced. Both Mr. Cheema's PRRA application and the PRRA officer's decision related not to the existence of human rights abuses or risks from terrorism generally in Pakistan. They related to allegations of specific incidents directed at Mr. Cheema in particular. Regardless of the general state of conditions in Pakistan, the PRRA officer was required to assess the particular factual allegations raised by Mr. Cheema with respect to his specific situation that formed the basis of his PRRA application.

[54] Mr. Cheema also argued that it was unreasonable for the PRRA officer not to expressly consider two decisions of the UNHRC, which he had submitted in argument. These decisions related to particular complaints against Canada arising from PRRA decisions made in 2007 and 2009 regarding Pakistani nationals represented by Mr. Cheema's counsel. They do not address the particular issues that the PRRA officer was required to address in assessing Mr. Cheema's claim, and the PRRA officer was under no obligation to make specific reference to them in the circumstances: *Vavilov* at para 128.

[55] Mr. Cheema also raised an allegation that the PRRA process as administered by Immigration, Refugees and Citizenship Canada does not respect the *Charter* or Canada's international obligations. Mr. Cheema withdrew these arguments at the hearing, noting that he had not provided notice of any constitutional questions to the Attorneys General. In any event, the Minister correctly notes that such arguments have been previously rejected by this Court: *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at paras 40–45.

[56] Finally, Mr. Cheema's allegation that there was unfairness arising from the failure to record the hearing is unsubstantiated. An unofficial transcript was produced with ample opportunity for Mr. Cheema to review it and raise any concerns. Mr. Cheema filed no evidence to suggest either that the transcript was wrong, or that there were any unrecorded occurrences at the hearing that might raise a fairness issue.

D. *Remedy*

[57] For the foregoing reasons, I conclude that the dismissal of Mr. Cheema's PRRA application must be quashed. Mr. Cheema asks that I go further, and direct that his PRRA application be granted. He argues that the circumstances of his first PRRA application refusal being quashed, combined with the strength of his application, support the Court's exercise of its discretion to effectively substitute its view of the correct outcome and require the approval of the PRRA.

[58] While Mr. Cheema refers to this as a "directed verdict," the Federal Court of Appeal has recently confirmed that it is incorrect to use this criminal law terminology to describe the

administrative law remedy of "indirect substitution": *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at para 74. Indirect substitution is a "recognized, albeit exceptional, power under the law of judicial review": *Tennant* at para 79. It is generally only available where, for example, returning the case would be pointless, where the decision maker has no jurisdiction, or where only one outcome is possible: *Tennant* at paras 80–82. The Supreme Court of Canada similarly confirmed in *Vavilov* that it will most often be appropriate to remit the matter to the decision maker for reconsideration, and that the remedial discretion ought to be exercised in "limited scenarios," such as where remitting would serve no useful purpose or where remitting would stymie the timely and effective resolution of matters in a manner no legislature could have intended: *Vavilov* at para 142.

[59] Despite Mr. Cheema's argument that this case falls within the category of "endless merry-go-round of judicial reviews and subsequent reconsiderations" described by the Supreme Court in *Vavilov*, I cannot conclude that this is an exceptional case that warrants a remedy of indirect substitution. It is certainly unfortunate that Mr. Cheema's PRRA application has now been refused twice on grounds that have been quashed. However, I cannot conclude either that this is sufficient to justify indirect substitution, or that there is only one reasonable outcome to his PRRA application such that remitting would serve no useful purpose.

IV. Conclusion

[60] The application for judicial review is therefore granted, and Mr. Cheema's PRRA application is again remitted to a different officer for redetermination.

[61] While Mr. Cheema initially proposed questions for certification, he withdrew that request at the conclusion of the hearing. In my view, no questions meeting the requirements for certification arise in this matter.

JUDGMENT IN IMM-1974-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted, the refusal of Mr. Cheema's application for a Pre-Removal Risk Assessment is quashed, and that application is remitted for redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Stewart Istvanffy Miguel Mendez	FOR THE APPLICANT
Andrea Shahin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Légal Stewart Istvanffy Montreal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT