

Federal Court



Cour fédérale

**Date: 20210615**

**Docket: IMM-4467-20**

**Citation: 2021 FC 612**

[ENGLISH TRANSLATION]

**Toronto, Ontario, June 15, 2021**

**Present: The Honourable Mr. Justice Diner**

**BETWEEN:**

**BINDER SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicant filed an application for leave and judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dated August 28, 2020 [Decision].

[2] In the Decision, the RAD dismissed the applicant's appeal against a decision of the Refugee Protection Division [RPD] rejecting his refugee protection claim on the ground that he was not credible. The RAD found that the RPD's decision was correct and that the claimant's credibility was undermined with respect to central elements of his refugee protection claim.

[3] In this case, the applicant submits before this Court that the Decision is incorrect and unreasonable. I am not persuaded by the applicant's position, and I find that the Decision is reasonable.

## II. Facts and proceedings

### A. *Facts*

[4] The applicant is a citizen of India and comes from a Sikh family. He lived in a small village and worked in agriculture. In his spare time, he volunteered at the Sikh temple in his village. The central facts stated by the applicant in his account are as follows.

[5] The applicant's brother is a Sikh religious preacher accused of being affiliated with a Sikh militant group. He was repeatedly arrested, tortured and then released by the police. Because of his ties to his brother, the applicant was also allegedly arrested, charged and tortured by the police.

[6] Since April 2017, when his brother went missing, the applicant has repeatedly sought the help of police authorities to find his brother, but they turned him away on the grounds that his

brother must have joined the Sikh militants. The police tried to get the applicant to collaborate and agree to turn his brother in if he was found.

[7] On June 1, 2017, the applicant and his nephew were detained by police. The police interrogated both men about the applicant's brother, as well as the Sikh militants. The applicant was tortured and further interrogated about his involvement with Sikh militants.

[8] On June 3, 2017, both men were released by the police, through the assistance of influential people and the payment of bribes. The police imposed several conditions of release on the applicant and threatened to kill him if he refused to co-operate. The nephew was told not to come back to the region. The two men then saw a doctor to treat the injuries that the police had inflicted on them.

[9] Following this incident, the applicant began to fear for his safety because he was unable to comply with the conditions imposed by the police. He therefore fled his village and took refuge with relatives in Chandigarh. The applicant states that he was told the police were looking for him and harassing his family.

[10] With the help of his friends and family, the applicant left India and came to Canada.

[11] The applicant states that his nephew was again arrested by the police, tortured and interrogated about the applicant's brother and the Sikh militants, and that he died from the injuries inflicted during this arrest.

B. *Decision subject to judicial review*

[12] Applying the standard of correctness, the RAD confirmed the RPD's determination and concluded that the RPD did not err in relying on contradictions, improbabilities, omissions and the applicant's behaviour that was inconsistent with a risk to his life to make an adverse credibility finding. The RAD conducted an independent analysis of the evidence, including listening to the recording of the hearing held by the RPD, and concluded that the RPD had correctly explained in its reasons why it drew negative inferences.

[13] The RAD, like the RPD, noted implausibilities in the applicant's account, including the fact that the police allegedly released the applicant and his nephew on several occasions, even though they were suspected of being militants. Moreover, the reasons for these releases are not stated in the Basis of Claim Form [BOC Form], and the RAD was not satisfied with the explanation given by the applicant.

[14] The RAD also identified a number of inconsistencies between the applicant's BOC Form and his testimony regarding the circumstances surrounding his release and that of his nephew.

[15] The RAD further noted a contradiction between the applicant's testimony and his BOC Form regarding the fact that the nephew was not treated by the same doctor.

[16] The RAD also concluded that it was also open to the RPD to rely on the delay of approximately one year before the applicant claimed refugee protection in Canada to make a

negative credibility finding. The RAD noted that, while the delay was not a determinative factor, it was nevertheless relevant.

[17] With regard to the applicant's documents, an affidavit from the headman of the village, a medical certificate and a death certificate from his brother, neither the RAD nor the RPD gave them any probative value because of their inherent shortcomings. Considering the applicant's lack of credibility, the RAD concluded that these documents were not sufficient to render his allegations credible.

### III. Issue and standard of review

[18] This case raises only one question: Did the RAD err in its assessment of the applicant's credibility and its dismissal of the appeal?

[19] The presumption of reasonableness, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], applies in this case. Although this presumption may be rebutted where the rule of law requires that the standard of correctness be applied or where the legislature explicitly prescribes a specific standard of review or statutory appeal mechanism, neither of these exceptions applies in this case (*Vavilov* at paras 16–17).

[20] The standard of review applicable to RAD decisions that involve assessing a refugee protection claimant's credibility is therefore reasonableness (*Alim v Canada (Citizenship and*

*Immigration*), 2021 FC 230 at para 11; *Keqaj v Canada (Citizenship and Immigration)*, 2020 FC 563 at para 13 [*Keqaj*]).

[21] In conducting a reasonableness review, the reviewing court must consider the decision reached by the administrative decision maker at the end of the reasoning process, to ensure that the decision as a whole is reasonable and therefore transparent, intelligible and justified (*Vavilov* at paras 15, 96).

[22] Indeed, issues relating to the credibility and plausibility of a story “command a high degree of judicial deference upon judicial review, considering the role of trier of fact conferred to the administrative tribunal” (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15). The Court must therefore take a deferential approach, given the RPD and the RAD’s expertise as specialized tribunals (*Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at para 15 [*Vall*]).

#### IV. Discussion

A. *Did the RAD err in its assessment of the applicant’s credibility?*

[23] Mr. Singh submits that this application must be considered in light of the teachings of this Court in *Onoh v Canada (Citizenship and Immigration)*, 2020 FC 552 [*Onoh*] at para 8, which acknowledges that “concrete reasons supported by cogent evidence” should exist before a presumption that a claimant is telling the truth is rebutted (*Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at 305).

[24] The applicant submits that the RAD's findings as to his credibility are unreasonable.

First, he argues that he did not have to mention what the conditions imposed by the police were in his BOC Form or even to fully understand what they were. Nor did he have to know why the police released him, his brother and his nephew when they were suspected of being Sikh militants. He cannot be criticized for being confused about why the police released them.

[25] The applicant therefore submits that the RAD erred in confirming the negative inferences drawn from the lack of information or from the implausibilities of the police officers' decisions about others.

[26] In the first instance, the RPD criticized the applicant for failing to state in his BOC Form that his nephew had returned to his village to seek treatment after they were released by the police, whereas the BOC Form indicated that a doctor had treated both of them. The applicant argues that the RAD erred in drawing a negative inference from this contradiction, that this element of his account was not essential, and that he had even made it clear that this was an error made by the interpreter. Thus, the RAD did not have serious grounds to draw a negative inference as to his credibility.

[27] The consistency between a refugee protection claimant's account and their testimony is certainly a relevant element of analysis. However, this consistency can be questioned only with respect to significant elements. Otherwise, the administrative decision maker could systematically identify the slightest deficiency in order to deny the refugee protection claim. Accordingly, the applicant submits that the RAD erred in assessing his credibility. The Decision

is therefore seriously flawed, to the extent that it fails to meet the requirements of justification, intelligibility and transparency.

[28] In essence, the applicant is asking this Court to reweigh the evidence and reach a different conclusion; he is asking this Court to substitute its own opinion for that of the RAD as to his credibility and the weight and probative value of the evidence. However, the law is settled: this is not the role of this Court in a judicial review proceeding.

[29] Therefore, I cannot accept the applicant's argument. Having reviewed the documents, it appears to me that the gaps and deficiencies in them are obvious.

[30] As noted above, the RAD, an administrative tribunal that specializes in immigration matters, has considerable expertise in hearing and deciding appeals under the *Immigration and Refugee Protection Act*, SC 2001, c 27, and in assessing the credibility of accounts and drawing the inferences it deems appropriate (*Koita v Canada (Citizenship and Immigration)*, 2016 FC 774 at para 7). This Court owes it a high degree of deference with respect to its credibility findings (*Vall* at para 15; *Keqaj* at para 14).

[31] As an appellate tribunal, the RAD "has robust powers of error-correction consistent with its statutory purpose" (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 42 [*Kreishan*]). However, the fact remains that adverse conclusions and inferences with respect to credibility drawn by the RAD and the RPD must find their justification in the evidence and their expression in the reasons for the decision (*Kreishan* at para 46; *Onoh* at para 8).



[32] In this case, the RAD conducted an independent analysis of the evidence, including listening to the recording of the hearing held by the RPD. The RAD identified numerous significant contradictions between the applicant's written and verbal accounts, as well as implausibilities in those accounts. The findings made by the RAD following its correctness review of the RPD's decision are therefore well-founded.

[33] I am therefore of the opinion that the RAD did not commit any reviewable error requiring the intervention of this Court. On the contrary, the Decision, taken as a whole, is adequately justified and bears the hallmarks of reasonableness. Indeed, the RAD was careful to set out and explain each of the conclusions it reached on the basis of the evidence on the record. The Decision sets out the reasons for which the RAD accepts the RPD's findings and discusses all the grounds raised by the applicant.

[34] Consequently, in light of the reasons given by the RAD, which are supported by intelligible and rational reasoning, the Decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at paras 86–87).

## V. Conclusion

[35] In light of the foregoing, I find that the Decision is reasonable. This application for judicial review is dismissed. There is no question to certify.

**JUDGMENT in IMM-4467-20**

**THIS COURT'S ORDER** is as follows:

1. This application for judicial review is dismissed.
2. No question is certified.

“Alan S. Diner”

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Judge

Certified true translation  
this 8th day of July 2021.

Elizabeth Tan, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4467-20

**STYLE OF CAUSE:** BINDER SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 2, 2021

**JUDGMENT AND REASONS:** DINER J.

**DATED:** JUNE 15, 2021

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