

Federal Court



Cour fédérale

Date: 20211215

Docket: IMM-5111-20

Citation: 2021 FC 1422

Ottawa, Ontario, December 15, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

HAFIZ MUHAMMAD WASEEM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Hafiz Muhammad Waseem, seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated September 18, 2020, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD], pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD found that the Applicant was neither a Convention refugee, nor a person in need of protection.

[2] The Applicant is a citizen of Pakistan who came to Canada in December 2015 on a study permit. In March 2018, he claimed refugee protection based on allegations of being targeted by his former fiancée's family and the Lashkar-e-Jhangvi [LeJ] due to his conversion to the Shia faith.

[3] On June 26, 2019, the RPD found that, on a balance of probabilities, the alleged problems faced by the Applicant in Pakistan had not occurred. More specifically, the RPD determined that the Applicant's conversion to the Shia faith was not credible and that his delay in making a refugee claim further undermined his credibility. It also concluded that even if the Applicant's story was credible, the Applicant had a viable internal flight alternative [IFA] elsewhere in Pakistan.

[4] The Applicant appealed the decision to the RAD. Like the RPD, the RAD determined that credibility was the determinative issue. The RAD found that the Applicant's conversion to the Shia faith lacked credibility. It also found that the Applicant's supporting documents and his delay in filing for protection further undermined his credibility. The RAD concluded that the Applicant had failed to provide sufficient credible and trustworthy evidence to support his claim of conversion to the Shia faith and the alleged threats and attacks by the LeJ and his former fiancée's family. Having failed to establish, on a balance of probabilities, the basic elements of his claim, the issue of a viable IFA did not arise.

[5] The Applicant submits that the RAD erred in rejecting critical evidence for what it did not say rather than for what it did say. He also argues that the RAD breached the rules of

procedural fairness in making numerous novel credibility findings without first giving him notice.

II. Analysis

A. *Standard of Review*

[6] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4 (CA)).

[7] When the standard of reasonableness applies, the Court’s focus is on “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court “must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

[8] With respect to the issue of procedural fairness, the Federal Court of Appeal clarified in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] that issues of procedural fairness do not necessarily lend themselves to a standard of

review analysis. Rather, the role of this Court is to determine whether the proceedings were fair in all the circumstances (*Canadian Pacific* at paras 54-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

B. *Applicant's Credibility and Assessment of the Evidence*

[9] The Applicant challenges the RAD's finding that his conversion to the Shia faith lacked credibility. He argues that the RAD erred when assessing the probative value of the letter from the Imam Bargah, the affidavit of his close friend H. A., the letter from the Al-Eman Society of Canada, and the donation receipts and pictures. He submits that the RAD should have considered this evidence for what it said and not for what it did not say. He also contends that the RAD should have considered this evidence in context rather than in isolation.

[10] I am not persuaded by the Applicant's arguments.

[11] The issue for the RAD when assessing this evidence was the genuineness of the Applicant's conversion to and practice of the Shia faith. The RAD rejected the Applicant's evidence on the basis that it lacked detail regarding his ongoing practice after converting to the Shia faith in February 2015 until his departure from Pakistan in December 2015, and during the period between December 2015 and March 2018, when he filed for refugee protection.

[12] The Applicant claims that he left Pakistan in December 2015 because he was being persecuted due to his conversion in February 2015. The question of his attendance and his activities were important factors in assessing whether the Applicant had actually adopted the

Shia faith. While the letter from the Imam Bargah and the affidavit mention the Applicant's conversion in February 2015, they do not provide any significant details of his continuing practice of the Shia faith while in Pakistan. In fact, the letter from the Imam Bargah, which is dated April 18, 2019, raises more questions as it indicates that the Applicant "has been coming at our Imam Bargah". The failure to include basic details as to the nature of the Applicant's practice during this critical period reasonably affected the value of this evidence.

[13] Likewise, the letter from the Al-Eman Society of Canada and the donation receipts and pictures do not establish the Applicant's continuing practice as a Shia when he came to Canada. The RAD noted that, while the letter indicated that the Applicant attended all religious programs for the preceding 24 months, the Applicant himself was unable to provide much detail when he testified on what he did there, when he first started attending, how often he attended and whether he was attending when he made his claim for protection.

[14] Having reviewed the Applicant's evidence, I am satisfied that it was considered in the context for which it was submitted. The evidence was presented to address the issue of the Applicant's conversion and practice of the Shia faith, the cause of the alleged persecution at the hands of the Applicant's former fiancée's family and the LeJ.

[15] The Applicant has failed to persuade me that the RAD's assessment is unreasonable.

C. *Breach of Procedural Fairness*

[16] The Applicant also submits that the RAD breached procedural fairness by making numerous novel credibility findings without first giving him notice.

[17] It is well established that the RAD cannot raise new issues without notice to the parties. However, it is entitled to make independent findings of credibility against an appellant where: (1) credibility was at issue before the RPD; (2) the RPD's findings are contested on appeal; and (3) the RAD's additional findings arise from the evidentiary record (*Mohamed v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 657 at para 52; *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093 at para 47; *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 23-24).

[18] In this case, the issue of credibility was central to the RPD's conclusion. The RPD did not believe the Applicant's allegation of conversion to the Shia faith. It found that the Applicant was not a genuine believer and that his sole purpose for attending Shia organizations in Canada was to obtain evidence to support his refugee claim. The RPD also found that the lengthy delay in claiming protection significantly undermined the Applicant's credibility. The RPD considered the evidence adduced by the Applicant to support his allegation that he was the subject of threats and attacks by the LeJ and by his former fiancée's family. However, the RPD found that the evidence's probative value was substantially undermined by the fact that the Applicant was found not credible in regard to the central allegations of his claim. In making this finding, the

RPD also noted that the country condition documents indicated fraudulent documents were widely available in Pakistan.

[19] On appeal, the Applicant contested the RPD's findings of credibility. He also challenged the RPD's finding to assign no weight to his supporting documentation and submitted that the RPD's assessment was unreasonable. In addition, he argued that the RPD had erred in failing to make an explicit finding on whether the supporting documentation was fraudulent.

[20] The RAD determined that the Applicant's supporting documents did not provide sufficient independent and credible evidence of the threats and attacks by his fiancée's family and the LeJ. The RAD found that there was insufficient evidence to establish a credible connection between the Applicant's former fiancée's family and the LeJ. Regarding the threat letter, the RAD noted that it was handwritten and unsigned. It also added that it could have been written by anyone. As for the other letters, the RAD found that they did not contain first-hand knowledge of the threats and attacks and that the authors did not indicate how they had come to know of this information. The RAD further noted its concern with the fact that the supporting letters and the police report contained almost identical similarities in the wording and detail. It found that the documents and descriptions being so similar indicated, on a balance of probabilities, that they were not genuine, which further undermined the credibility of the Applicant's allegations of threats and attacks. The RAD concluded that the RPD did not err in giving no weight to the Applicant's supporting documentation.

[21] I find that the RAD did not raise a new issue. It was addressing the very issue raised by the Applicant. The RAD carried out its own analysis of the evidence to determine whether the RPD erred in assigning no weight to the evidence and its findings arose directly from the evidentiary record.

[22] The Applicant has failed to persuade me that the RAD's assessment of his supporting documentation resulted in a breach of procedural fairness.

[23] Furthermore, while the Applicant did not raise this as a separate ground of review in his memorandum, he submits that the RAD erred in failing to properly consider his explanations behind his delay in claiming protection. The Applicant has not demonstrated how or why the RAD's decision is unreasonable.

[24] Nonetheless, it is well settled that a delay in claiming protection is a relevant factor in assessing a claimant's subjective fear. While not determinative in itself, it may affect a claimant's credibility. Absent a satisfactory explanation as to why protection was not sought at the first opportunity, it is open to the decision maker to conclude that the claimant does not have a fear of persecution.

[25] It is important to recall that findings regarding a claimant's credibility and the assessment of the evidence command a high degree of deference from this Court. While the Applicant may not agree with the RAD's findings, it is not for this Court to reassess or reweigh the evidence in

order to make a finding that would be favourable to him (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[26] To conclude, I am satisfied that, when the RAD's reasons are read holistically and contextually, the decision meets the reasonableness standard set out in *Vavilov*. Moreover, the Applicant has failed to demonstrate a breach of procedural fairness.

[27] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-5111-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5111-20

STYLE OF CAUSE: HAFIZ MUHAMMAD WASEEM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 30, 2021

JUDGMENT AND REASONS: ROUSSEL J.

DATED: DECEMBER 15, 2021

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