Federal Court Cour fédérale

Date: 20220125

Docket: IMM-6554-20

Citation: 2022 FC 76

Ottawa, Ontario, January 25, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

MUDASSAR IQBAL WARRICH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Mudassar Iqbal Warrich, is a citizen of Pakistan. He is seeking judicial review of a decision rendered in November 2020 [Decision] by an officer of the Refugee Appeal Division [RAD], which confirmed a decision issued in April 2019 by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. Both the RAD and

the RPD rejected Mr. Warrich's claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on the basis that he was not credible.

[2] Mr. Warrich submits that the RAD failed to properly exercise its jurisdiction by endorsing the RPD's illogical conclusions, that it did not analyze the whole of the evidence before it, and that it erred by unreasonably drawing a negative inference of credibility and ignoring the presumption of veracity of his testimony. He asks the Court to set aside the Decision and to render the decision that should have been rendered or, alternatively, to quash the Decision, refer the matter back to the RAD and order that a different panel member issues a new decision.

[3] For the reasons set out below, I will dismiss Mr. Warrich's application for judicial review. After reviewing the RAD's reasons and findings, the evidence before it and the applicable law, I see no basis to overturn the Decision. It is clear from the reasons that the RAD properly exercised its role as an appellate body. In addition, the inconsistencies between Mr. Warrich's narrative, his testimony and the documentary evidence reasonably support the RAD's findings of lack of credibility. As such, these inconsistencies provided valid grounds entitling the RAD to rebut the presumption of truthfulness of Mr. Warrich's testimony. In sum, the Decision possesses the qualities that make the RAD's analysis logical and coherent within the relevant legal and factual constraints. There is, therefore, no reason for the Court to intervene.

II. Background

A. *The factual context*

[4] Mr. Warrich alleges to have been a police informant in his country, Pakistan. He claims that he provided information to the Pakistani authorities, which led to the capture and prosecution of several members of the Lashkar-e-Jhangvi [LeJ], a religious extremist group operating close to the border between Pakistan and India, near the Kashmir region. Mr. Warrich says that the LeJ is beyond the control of the authorities across the territory, and that no one in Pakistan can protect him from this group.

[5] Mr. Warrich alleges that, further to his collaboration with the Pakistani authorities, the LeJ retaliated by attacking him and his family at their home in March 2016. Mr. Warrich further maintains that, in April 2016, he was kidnapped at gunpoint, beaten and humiliated by three individuals. On May 6, 2016, he was able to escape and to leave the region with an accomplice.

[6] Mr. Warrich fled to the United States in early June 2016, and made an asylum claim there. Before his U.S. claim was decided, he subsequently crossed the Canadian border a few months later, and applied for refugee status in Canada.

[7] The RPD rejected Mr. Warrich's claim on the basis that his application was tainted by serious credibility concerns. The RPD found several material omissions and inconsistencies in the evidence and in Mr. Warrich's testimony, which undermined his allegations that he had suffered persecution at the hands of the LeJ.

B. ***The Decision***

[8] In the Decision that Mr. Warrich is now asking the Court to review, the RAD concluded that the RPD was correct in its conclusions and that Mr. Warrich was neither a Convention refugee nor a person in need of protection.

[9] The RAD found that credibility was the determinative issue of Mr. Warrich's appeal. In the Decision, the RAD identified numerous inconsistencies relating to important elements of Mr. Warrich's story, sufficient to make a negative credibility determination. The main concerns singled out by the RAD can be summarized as follows.

[10] The RAD first found that the First Information Report [FIR] from the Pakistani police, submitted by Mr. Warrich as evidence of the LeJ attack and beating in March 2016, was not credible as it was inconsistent with his personal narrative and testimony before the RPD. In addition, Mr. Warrich was unable to provide an adequate explanation for this inconsistency.

[11] The RAD further found that Mr. Warrich's testimony about the March 2016 physical attack was not credible, as it was inconsistent with his own personal narrative. The RAD noted inconsistencies about whether Mr. Warrich was himself beaten during the attack, and about the persons threatened by the attackers and accused of spying on behalf of the authorities. The RAD determined, similarly to the RPD, that Mr. Warrich's explanations were inadequate and insufficient to redeem the credibility concerns they raised.

[12] The RAD then determined that Mr. Warrich's testimony around his escape from the kidnappers in May 2016 was not credible, as there were inconsistencies regarding the events surrounding Mr. Warrich's escape. More specifically, Mr. Warrich provided differing testimonies on the place that he and his accomplice went to after the escape. The RPD and the RAD found inconsistencies in the fact that Mr. Warrich's did not mention a stop in Pindi Bhattian, and in the fact that Mr. Warrich's testimony omitted to mention the presence of his accomplice in the village of Syaddamwali.

[13] Finally, the RAD gave little to no weight to the documents provided by Mr. Warrich to prove that the first LeJ attack took place, as they offered no probative value to his allegations that the persecutions suffered were at the origin of his refugee protection claim. The RAD concluded that the documents were not sufficient to overcome Mr. Warrich's credibility problems.

C. *The standard of review*

[14] It is not disputed that the RAD's credibility findings and its treatment of the evidence before it are reviewable on a standard of reasonableness. In *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*], the Federal Court of Appeal clarified that, in reviewing a decision of the RAD, the Court applies the reasonableness standard with respect to the RAD's determinations of factual issues, including credibility, and of issues of mixed fact and law (*Huruglica* at paras 30–35). The parties indeed do not dispute that the RAD's Decision is reviewable under the standard of reasonableness.

[15] That reasonableness is the appropriate standard has recently been reinforced by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In that judgment, the majority of the Court set out a revised framework for determining the standard of review with respect to the merits of administrative decisions, holding that they should presumptively be reviewed on the reasonableness standard unless either the legislative intent or the rule of law requires otherwise (*Vavilov* at paras 10, 17). I am satisfied that neither of these exceptions apply in the present case.

[16] Regarding the actual content of the reasonableness standard, the *Vavilov* framework does not represent a marked departure from the Supreme Court's previous approach, as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 and its progeny, which was based on the "hallmarks of reasonableness," namely justification, transparency and intelligibility (*Vavilov* at para 99). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome," to determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 83, 85; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31).

III. Analysis

[17] Mr. Warrich raises three main arguments in his application for judicial review. First, he submits that the RAD failed to exercise its jurisdiction by endorsing the RPD's illogical conclusions. Second, he complains that the RAD did not analyze the whole of the evidence and unfairly dismissed evidence. Third, he argues that the RAD erred by unreasonably drawing a

negative inference of credibility and ignoring the presumption of veracity of his testimony. Each argument will be dealt in turn.

A. *Failure to exercise its jurisdiction*

[18] Mr. Warrich contends that the RAD failed to exercise its appellate-body powers by relying on the RPD's conclusions and maintaining its erroneous credibility findings. On this front, Mr. Warrich takes particular exception with the RAD's conclusion from its assessment of the FIR. Mr. Warrich alleges that the RAD found the FIR unreliable because it was inconsistent with his testimony, and then concluded that the testimony was not credible because it was inconsistent with the FIR. This, says Mr. Warrich, is a clear example of circular reasoning, which reflects an internal irrationality in the Decision (*Vavilov* at para 104). Mr. Warrich further alleges that the RAD simply endorsed the RPD's findings, and did not appropriately exercise its jurisdiction.

[19] I disagree.

[20] It is well established that the RAD owes no duty of deference towards the RPD, as its standard of appellate review is that of correctness. Section 111 of the IRPA establishes a hybrid-appellate procedure where the RAD must conduct its appeal by reviewing all aspects of the RPD's decision and come to an independent assessment of whether a claimant is a Convention refugee or a person in need of protection (*Huruglica* at paras 58–60; *Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 39).

[21] Further to my review of the Decision, I am not persuaded that the RAD failed to carry out an independent analysis of all the evidence. On the contrary, I have no reason to doubt that the RAD followed the teachings of the Federal Court of Appeal in *Huruglica* and conducted its own independent, comprehensive and in-depth assessment of the evidence to determine whether Mr. Warrich was credible (*Huruglica* at para 54). The fact that the RAD reached the same conclusions as the RPD regarding Mr. Warrich's lack of credibility does not mean that the RAD failed to do its job as an appeal tribunal.

[22] The RAD expressly stated in its Decision that it reviewed the "correctness" of the RPD's findings, and it in fact proceeded to conduct its own assessment of the credibility of Mr. Warrich's testimony. Moreover, in its reasons, the RAD referred to its "independent review" with respect to the FIR event and to its "independent analysis" of Mr. Warrich's testimony, and repeatedly indicated that it was making its own findings of fact. In making its observations on the inconsistencies between the FIR and Mr. Warrich's testimony, the RAD identified several concerns that, as a whole, led it to conclude that Mr. Warrich lacked credibility. In doing so, the RAD certainly understood its role and followed the Federal Court of Appeal's guidance in *Huruglica* to the letter. Nothing in the Decision reflects a complacent deference to the RPD. One instead can see in the Decision that the RAD rigorously examined the evidence. In addition, the RAD even corrected the RPD on a few occasions and acknowledged that the RPD had made minor errors in its analysis, which the RAD is free to do (*Huruglica* at para 79).

[23] Review on the standard of reasonableness must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, a

reviewing court must examine the reasons given with "respectful attention" and seek to understand the line of reasoning followed by the administrative decision maker in reaching its conclusion (*Vavilov* at para 84). A reviewing court should adopt a deferential approach and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

[24] Following *Vavilov*, the reasons given by administrative decision makers take on greater importance and become the starting point of the analysis on a judicial review. They are the primary mechanism by which administrative decision makers demonstrate the reasonableness of their decisions, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to "explain how and why a decision was made," to demonstrate that "the decision was made in a fair and lawful manner" and to guard against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision. They must be interpreted broadly and contextually in order to understand "the basis on which a decision was made" (*Vavilov* at para 97; *Canada Post* at para 31).

[25] In the case of Mr. Warrich, the reasons for the RAD's Decision provide ample justification for its conclusions in a transparent and intelligible manner, and leave no doubt that the RAD exercised its jurisdiction as it had to.

B. ***Failure to analyze the evidence***

[26] As a second argument against the Decision, Mr. Warrich claims that the RAD failed to take the whole of the evidence into account, and notably ignored the documentary evidence and the national documentation package on Pakistan, which shed light on the issue of police corruption.

[27] I am not convinced by Mr. Warrich's submissions on this front.

[28] As acknowledged by counsel for Mr. Warrich at the hearing before this Court, it is well recognized that an administrative decision maker is presumed to have weighed and considered all the evidence presented to it, unless the contrary is established (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). Moreover, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), and decision makers are not required to refer to all the evidence supporting their conclusions.

[29] It is only when an administrative decision maker is silent on evidence squarely contradicting its findings of fact that the Court may intervene and infer that the decision maker overlooked the contradictory evidence when reaching its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v*

Canada (Minister of Citizenship and Immigration), [1998] FCJ No 1425 (QL), 157 FTR 35 at para 17). The failure to consider specific evidence must be viewed in context and may sometimes be sufficient to overturn a decision, but it is only the case when the evidence is critical and contradicts the decision maker's conclusion, and where the reviewing court determines that its omission means that the tribunal disregarded the material before it. This is not the situation here, and I do not find that Mr. Warrich's references to the documentary evidence on Pakistani police corruption fit the exceptional circumstances identified in the case law. While there was some general evidence on corruption in Pakistan, Mr. Warrich failed to provide any reliable evidence of police corruption in his particular case and to link the police corruption to his own situation.

C. *Failure to follow the presumption of veracity of testimonies*

[30] Mr. Warrich finally argues that the RAD was over-zealous in finding inconsistencies and contradictions in his testimony, and that it failed to apply the presumption of true testimony as set out in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*].

[31] I do not agree with Mr. Warrich's interpretation of the *Maldonado* decision, and with the scope that he wants to give to its conclusions.

[32] In *Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 [*Lunda*] and *Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 [*Fatoye*], I recently discussed the scope and limits of the *Maldonado* presumption of truthfulness in refugee claims (*Lunda* at paras 29–

31; *Fatoye* at paras 35–37). I take the liberty of reproducing the following paragraphs from *Lunda*:

> [29] […] *Maldonado* does not raise an irrebuttable presumption of truthfulness or immunity from suspicion for the applicants' testimony. On the contrary, *Maldonado* simply establishes the principle that "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness" (emphasis added) (*Maldonado* at para 5). This reservation is important because it means that the presumption is extinguished when reasons arise to doubt the veracity of the allegations made in a refugee protection claim. Thus, the presumption is rebuttable where the evidence on the record is inconsistent with a claimant's sworn testimony *(Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at para 11, citing *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCA No 114 (FCA) (QL)), or where the RPD is not satisfied with the claimant's explanation for inconsistencies in the evidence (*Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19).
>
> [30] The reason underlying the presumption of truthfulness in *Maldonado* is that claimants who have experienced certain types of emergency situations cannot reasonably be expected to always have documents or other evidence to support their claims. These circumstances may include passage through refugee camps, war-torn country situations, discrimination, or events in which claimants have only a very short period of time to escape from their agents of persecution and subsequently cannot access documents or other evidence from Canada (*Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 at paras 35–38).
>
> [31] However, in cases where a claimant has the opportunity to gather corroborative evidence before or after arriving in Canada, the strength of the presumption of truthfulness may depend directly on the extent to which corroborative evidence is provided. It follows that, if there is any reason to doubt the veracity of the allegations made in a claimant's affidavit or sworn testimony, adverse inferences about credibility may be drawn if the claimant is unable to provide an explanation for the lack of reasonably expected corroborative evidence (*Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 at para 184; *Murugesu v Canada (Citizenship and Immigration)*, 2016 FC 819 at para 30; *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 7). Similarly, where

> corroborative evidence should reasonably be available to establish the essential elements of a claim for refugee protection and there is no reasonable explanation for its absence, the administrative decision maker may make an adverse credibility finding based on the claimant's lack of effort to obtain such evidence (*Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33, 35).
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> [Emphasis in original.]

[33] As reflected in this extract, the *Maldonado* presumption implies that requiring objective corroborative evidence to support the statements coming from the personal knowledge of an applicant is generally unwarranted (*Luo v Canada (Citizenship and Immigration*), 2019 FC 823 at para 19). However, this presumption is rebuttable where the evidence on the record is inconsistent with a claimant's sworn testimony (*Lunda* at para 29), where there are grounds to find that the claimant's testimony lacks credibility (*He v Canada (Citizenship and Immigration*), 2019 FC 2 [*He*] at para 22), or where the decision maker is not satisfied with a claimant's explanations for the inconsistencies in the evidence (*Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 19). The *Maldonado* presumption is thus no panacea for an applicant's flawed testimony.

[34] Here, Mr. Warrich claims that the RAD relied on trivial, peripheral details in rejecting his testimony, and that it made an adverse credibility finding based <u>solely</u> on the absence of corroborative evidence. I find that these arguments have no merit.

[35] I do not dispute that not every standalone inconsistency can justify an adverse credibility finding. However, an accumulation of contradictions, inconsistencies and omissions concerning the crucial elements of a refugee claim can support such finding (*Paulo v Canada (Citizenship*

and Immigration), 2020 FC 990 at paras 55–56, referring to *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 21). In this case, the inconsistencies in Mr. Warrich's testimony were numerous and were far from being trivial. They instead pertained to crucial elements of the alleged events that led to his departure from Pakistan and that, ultimately, grounded his claim for refugee protection. These included whether Mr. Warrich was present and beaten during the LeJ attack in March 2016; who were the persons targeted and threatened by the LeJ; and where Mr. Warrich went after escaping from his April 2016 abduction. I do not agree with Mr. Warrich that these events can be qualified as peripheral or secondary to his claim, or that they can be merely considered as light oversights. In my view, they rather sit clearly at the core of Mr. Warrich's claim of persecution at the hands of the LeJ. More specifically, I am not convinced that Mr. Warrich's testimony on his escape from his kidnappers in May 2016 can be segregated from the abduction that preceded it, and which constituted one of the two main alleged events at the source of his fear of persecution.

[36] In addition, I do not agree that the RAD's adverse credibility findings were made on the sole basis of a lack of corroborative evidence. This is not a situation where the RAD found Mr. Warrich not credible simply because he was unable to provide documentary evidence corroborating his claims. Here, not only was Mr. Warrich unable to provide documentary evidence corroborating his claims, but there was also evidence on the record contradicting his own allegations and his testimony, as well as inconsistencies between his narrative in his refugee claim and his own testimony before the RPD.

[37] Requiring objective corroborative evidence is not contrary to the *Maldonado* presumption in situations where there are reasons to doubt an applicant's credibility (*He* at para 24; *Guzun v Canada (Citizenship and Immigration)*, 2011 FC 1324 at paras 19–21; *Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at paras 21–22, citing *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 para 10). This is the case here. I am also satisfied that the RAD provided a compelling analysis to support its conclusion that Mr. Warrich's explanations were inadequate and insufficient to overcome the credibility concerns.

[38] It is trite law that the Court owes deference to the RAD's and the RPD's assessment of a refugee claimant's credibility (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4). Findings of credibility require a high degree of deference from the courts on judicial review, given the role of trier of fact attributed to administrative tribunals (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 89; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at para 9). These credibility issues have been described as lying within the heartland of the RAD's and RPD's specific jurisdiction, expertise and knowledge under the IRPA (*Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426 at para 34; *Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938 at para 13; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 7–8).

[39] In the end, the arguments put forward by Mr. Warrich simply express his disagreement with the RAD's assessment of the evidence and in fact invite the Court to prefer his opinion and

his re-weighing of the evidence to the analysis made by the RAD. This is not the role of a reviewing court on judicial review.

IV. <u>Conclusion</u>

[40] For the foregoing reasons, the application for judicial review of Mr. Warrich is dismissed. I find nothing irrational in the decision-making process followed by the RAD and in its findings. Rather, I conclude that the RAD’s analysis of Mr. Warrich’s lack of credibility bears all the required hallmarks of transparency, reasonableness and intelligibility, and that the Decision is not tainted by any reviewable error. In all respects, the RAD’s reasoning can be followed without encountering any fatal flaws in terms of its rationality or logic.

[41] None of the parties has proposed any question of general importance to be certified, and I agree that none arises.

JUDGMENT in IMM-6554-20

THIS COURT'S JUDGMENT is that:

1. This application for leave and judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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