Federal Court  Cour fédérale

Date: 20220303

Docket: IMM-1017-21

Citation: 2022 FC 300

Toronto, Ontario, March 3, 2022

PRESENT: Madam Justice Go

BETWEEN:

FAZEL VARDALIA
DANYAAL FAZEL VARDALIA
RAYAAN FAZEL VARDALIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Fazel Vardalia [the Principal Applicant], as well as his minor children Danyaal and Rayaan [together the Applicants] claim protection on the grounds that they experienced xenophobic attacks as South African citizens of Indian descent.

[2] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], which found they were not Convention refugees or persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD held that the Refugee Protection Division [RPD] was correct in its negative credibility findings regarding the Principal Applicant.

[3] The Applicants claimed refugee protection alongside Ms. Aziza Bougtib, a citizen of Morocco, who is the spouse of the Principal Applicant and the mother of the Minor Applicants. Ms. Bougtib's claim does not form part of this application for judicial review, as the RAD allowed her appeal and sent her claim for redetermination by the RPD.

[4] The Applicants argue that the RAD erred in its credibility assessment, in finding no ineffective assistance of counsel, and in failing to admit their proposed new evidence or hold an oral hearing. For the reasons set out below, I dismiss the application.

II. Background

A. *Factual Context*

[5] The Principal Applicant's Basis of Claim [BOC] narrative and testimony set out the following events; however, the RPD and RAD have questioned the credibility of essentially his entire narrative.

[6] The Principal Applicant owned a shoe store that he started in 2000 in Germiston, South Africa. He testified that he and his wife were assaulted with weapons and verbally harassed at their shoe store on three occasions in April 2012, June 2013, and October 2014. The Applicants reported all of these incidents to the police, but were given no assistance.

[7] In March of 2015, the Principal Applicant decided to close down the store, and he began working as a store manager for a shoe store owned by his friend Mohammed Dajee. However, he faced similar assaults on June 20, 2017 and October 5, 2018. After the second incident, he resigned from his job. Both incidents were reported to police without any assistance. On July 22, 2018, he was similarly assaulted in his home, again being threatened with death unless he went back to his country.

[8] In August 2018, the Applicants applied for and received Canadian visas. They entered Canada on February 8, 2019.

[9] On February 12, 2019, the Principal Applicant was admitted to hospital as he was suffering from confusion and delirium suspected to be caused by a seizure. His symptoms resolved without treatment and he was discharged the next day.

[10] The Applicants initiated their refugee claims on February 25, 2019. There were issues with the claim forms, and they had to go home twice to fix their forms. They eventually filed the claims on February 27, 2019, without the assistance of a lawyer.

[11] On April 12, 2019, the Principal Applicant's father was killed in an apparent hit and run allegedly motivated by xenophobia while on his way to pray at his local mosque.

[12] Around June of 2019, the Applicants retained a lawyer.

B. *RPD Decision*

[13] The RPD held a hearing on January 13, 2020, and rejected the claims on January 30, 2020. The claims of the Principal Applicant and the Minor Applicants were rejected on the grounds that inconsistencies undermined the Principal Applicant's credibility. The RPD found the following inconsistencies:

A. At the hearing, the Principal Applicant said he worked for Mr. Dajee from January 2016 until October 2018, but his Schedule A form listed March 2015 until February 2019. When asked about this discrepancy, he said his Schedule A was incorrect because he had been admitted to hospital with delirium shortly before completing his forms. Additionally, a letter from Mr. Dajee stated that the Principal Applicant was accosted in September 2018 during a protest march, but the Principal Applicant testified that the incident was in October 2018 and was not during a protest march. When asked about these inconsistencies, the Principal Applicant stated that Mr. Dajee's letter was mistaken. The RPD considered that the Principal Applicant had not explained these inconsistencies, and concluded that, on a balance of probabilities, the incident did not occur and he had not been employed by Mr. Dajee.

B. In the Temporary Resident Visas [TRV] that the Applicants obtained to come to Canada, the Principal Applicant listed only that he was employed at Vardalia Gas Solutions from July 2008 to August 2008. When questioned at the hearing, the Principal Applicant said this was a business he had started and financed but turned over to his brother. However, the RPD noted that none of the documentation he provided about Vardalia Gas Solutions

referred to his brother, and he was unable to provide documentation about his shoe business. The TRV contained no reference to his shoe business or the shoe business of Mr. Dajee, while the Schedule A did not refer to Vardalia Gas Solutions. The RPD concluded that it is more likely than not that he did not work in a shoe store and that he was attempting to mislead the panel about his connection with Vardalia Gas Solutions.

C. While the Applicants received their Canadian visas in August 2018, they did not leave South Africa until February 2019. The Principal Applicant testified that this delay was because they did not have the finances to leave, so he had to sell assets. The RPD found that he could have relied upon a financial professional to help him dispose of his assets after he left South Africa. In the RPD's view, if he was able to satisfy the Canadian authorities that he had sufficient funds to support his stay in Canada when he applied for his visa, then he likely would have been able to afford to leave South Africa earlier.

[14] The RPD found that the above credibility concerns were central to the claim, and thus cast doubt on all of the Applicants' evidence. The RPD nonetheless assessed prospective risk, and found that while xenophobia and violence in South Africa do exist, it is mainly targeted at poorer African migrant communities. The RPD also found that while the Principal Applicant had alleged that his father was deliberately run over on his way to mosque, there was insufficient evidence that this was a deliberate religiously-motivated attack. There was no evidence that the Principal Applicant's two grown children from a previous marriage, who remained in South Africa, had experienced any threats or attacks. The RPD concluded that the Applicants had lived in South Africa without incident for a significant period of time and that their profile as middle-class citizens diminished their risk.

C. *Decision under Review*

[15] The Applicants appealed to the RAD with the assistance of their current counsel. They alleged ineffective assistance of counsel on the grounds that their former counsel ought to have alerted them to inconsistencies in their documentation and notified them of the evidence required to prove their claim. They also argued that the RPD erred in its credibility analysis, and they sought to introduce new evidence. The RAD did not admit the new evidence or hold an oral hearing, and it dismissed the Applicants' appeal.

III. Issues and Standard of Review

[16] The Applicants submit that the RAD erred: (1) in rejecting the argument of ineffective counsel, (2) in its credibility assessment, and (3) in failing to admit the proposed new evidence and hold an oral hearing.

[17] Both parties submit that the standard of review for the substantive issues is reasonableness, according to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[18] The Applicants submit that issues of procedural fairness, such as the right to an oral hearing, are reviewable on the correctness standard. The Respondent submits that the RAD's determination of whether there was a breach of procedural fairness before the RPD is presumptively subject to the reasonableness standard of review: *Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at paras 12-18; *Ahmad v Canada (Citizenship and*

Immigration), 2021 FC 214 at para 13; *Larrab v Canada (Citizenship and Immigration)*, 2021 FC 135 at para 8. The Respondent also cites *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at paras 11-12, in which the Court concluded that the RAD's determination on ineffective assistance of counsel was subject to reasonableness review.

[19] In *Homauoni v Canada (Citizenship and Immigration)*, 2021 FC 1403, I addressed the standard of review for the RAD's decision on whether to admit new evidence or hold an oral hearing, as follows:

> [16] When reviewing the RAD's decision whether to admit new evidence or hold an oral hearing, the reviewing court typically applies the reasonableness standard, asking whether the RAD reasonably applied the statutory criteria in subsections 110(4) and 110(6) of *IRPA* (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at paras 22-29; see also more recent post-*Vavilov* jurisprudence of the Federal Court such as *Awonusi v Canada (Citizenship and Immigration)*, 2021 FC 385 at para 10; *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at para 8; *Hamid* at para 18).
>
> [17] Nonetheless, this Court has also used the correctness standard to review issues of procedural fairness, even if those issues touch on the application of statutory criteria in subsections 110(4) and 110(6) of *IRPA* (*Zidan* at paras 20, 31-39). In *Mohamed v Canada (Citizenship and Immigration)*, 2020 FC 1145 [*Mohamed*] at para 9, Justice McHaffie found that although the interpretation and application of subsections 110(4) and 110(6) of *IRPA* are typically reviewed on a reasonableness standard, the question of whether it was unfair for the RAD not to conduct an oral hearing before making determinations regarding the Applicant's allegations against his former counsel was a question of procedural fairness.
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> [18] As such, I have separately addressed the procedural fairness issues raised by the Applicant, which I have reviewed on a standard of correctness, and the substantive elements of the RAD's decision, which I have reviewed on the standard of reasonableness.

[20] I adopt the same approach in this case and apply the reasonableness standard to reviewing the substantive elements of the RAD's decision, and the correctness standard in reviewing the allegation of breach of procedural fairness before the RPD.

[21] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

IV. Analysis

A. *Was there a Breach of Procedural Fairness due to Ineffective Assistance of Counsel?*

[23] The Applicants argue that ineffective assistance of counsel before the RPD violated natural justice. The RAD rejected this argument, finding that former counsel had given the Applicants a list of documents to provide to the RPD and had not been involved with preparing their forms.

[24] The RAD, the Applicants, and the Respondent all appear to agree on the jurisprudential standards for incompetent counsel as set out in *Brown v Canada (Citizenship and Immigration)*, 2012 FC 1305 [*Brown*] at paras 55-56:

> [55] In order to establish that the incompetence of one's counsel resulted in a breach of procedural fairness, the Supreme Court of Canada in [*R v GDB*, 2000 SCC 22] at paras 27-29, held that (1), it must be established that counsel's acts or omissions constituted incompetence; **and** (2) the Applicant must demonstrate that a miscarriage of justice has resulted. The Supreme Court of Canada also confirmed that the onus is on an applicant to establish the acts or omissions of counsel that are alleged to have been incompetent and "the wisdom of hindsight has no place in this assessment."
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> [emphasis in original]
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> [56] In proceedings under the *Immigration and Refugee Protection Act*, the incompetence of counsel will only constitute a breach of natural justice in "extraordinary circumstances." With respect to the performance component, at a minimum, the incompetence or negligence of the applicant's representative [must be] **sufficiently specific and clearly supported by the evidence.** It must also be exceptional and the miscarriage of justice component must be manifested in procedural unfairness, the reliability of the trial results having been compromised. In this regard, the **Applicant must demonstrate that there is a reasonable probability that the**

> **result would have been different but for the incompetence of the representative**.
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> [emphasis added]

[25] The Applicants argue that but for former counsel's ineffective assistance, the RPD likely would have reached a different conclusion. The Applicants recount that when they were filling out their refugee claim forms after arriving in Canada, they asked the Canada Border Services Agency [CBSA] whether they should have a lawyer assist them and were told no. After filling their forms, they retained former counsel who helped them draft a more coherent narrative but failed to correct the inconsistencies between this new narrative and the forms. The Applicants further alleged that their former counsel told them they did not need to correct the incorrect date in Mr. Dajee's letter, and failed to advise them on evidence they would need to prove employment history.

[26] In addition, the Applicants argue that their allegations are very similar to the ones that resulted in three lawyers being disciplined by the Law Society just a few years ago for not providing enough guidance to refugee clients in the Roma community, including not reviewing their narratives with them, and leaving them with inaccurate or inadequate documentation. The Applicants cite two Federal Court cases in which clients of these lawyers were successful on judicial review of their Pre-Removal Risk Assessment applications, as the Court recognized that they had had incompetent counsel before the RPD and should thus be allowed to submit additional evidence: *Botragyi v Canada (Citizenship and Immigration)*, 2017 FC 79 [*Botragyi*], *Olah v Canada (Citizenship and Immigration)*, 2016 FC 316 at para 11 [*Olah*].

[27] The RAD distinguished *Olah* because the lawyer in that case had been found by the Law Society to have given inadequate representation to thousands of claimants, but in the present case there had been no disciplinary proceedings. The RAD also distinguished *Botragyi*, as in that case the Federal Court found that a PRRA officer failed to consider whether new evidence could have reasonably have been provided to the RPD at the time of the hearing, whereas in the present case the Applicants' lawyer had given them with a list of documents to provide.

[28] I find that the Applicants have failed to establish that their former counsel's acts or omissions constituted incompetence for several reasons.

[29] First, the forms in question were completed by the Applicants themselves, not their former counsel. Most importantly, the TRV application was filled out when the Applicants were still living in South Africa. There was nothing that former counsel could have done to prevent the RPD from relying upon the inconsistencies between the TRV application and the Principal Applicant's testimony, nor could former counsel have done anything about the Applicants' delay in leaving South Africa. The Applicants could not blame former counsel for their decision to not disclose fulsome information about their employment history in the TRV.

[30] The Applicants also claimed they were misled by CBSA into thinking they did not need counsel to fill out the forms. Assuming that to be true, the Applicants still cannot fault their former counsel for what they decided to include in the BOC and Schedule A.

[31] The RAD found, and I agree:

> Even if I assume prior Counsel was provided with copies of the immigration forms, it would have been of limited assistance to the credibility of the Appellants to provide new forms to replace those they have previously sworn to the authorities were true and correct.

[32] I also agree with the RAD that the cases cited by the Applicants can be distinguished, albeit for different reasons. In *Botragyi*, the applicants contended that their former counsel gave them only 20 minutes to complete their written narratives and did not give them any guidance about what to include. Counsel then arranged for the narratives to be translated. The translations were poorly done, and the applicants had no chance to review them before the hearing of their refugee claim. In *Olah*, the claimants had never even met their counsel, who relied on unsupervised interpreters to do the work for him. None of those situations happened in this case. Instead, the undisputed facts are that the Applicants' former counsel reviewed the BOC narrative and made substantial amendments, which were reviewed by the Applicants. He also provided the Applicants with a list of documents with 16 items as a guide to assist them prepare the relevant documents in support of their claim. While the list is "generic", it does point to pertinent documentary evidence claimants are expected to provide including, among other things, items 4 and 10:

> 4. Employment Documents, e.g. letters of employment/promotion/transfer, pay stubs, identity card, etc. If you were self-employed or owned your business, provide receipts of sales and purchases, business registration documents, payroll records, tax, records, etc.;
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> 10. Affidavit from eye witness/relative/friend confirming your experience or other aspects of your claim;

[33] It was up to the Applicants to compile the relevant documents, albeit assisted by counsel. The Applicants did adduce some of the evidence as advised, yet notably did not adduce any evidence regarding their own shoe store even though that was where several of the alleged attacks took place. In his affidavit to the RAD when seeking an appeal, the Principal Applicant explained why that was the case:

> I did not collect any evidence really to prove my employment beyond what happened to me when I was attacked because I did not think it was an issue.

[34] Based on the above statement, it would appear that it was the Principal Applicant, not his former counsel, who has decided what **not** to submit as part of his refugee claim. Before this Court, the Applicants also argue that there was no way they could have known that inconsistencies about their employment history would cause such an issue because it has little to do with the merits of their claim. This argument reinforces, in my view, that it was the Principal Applicant who decided not to provide proof of employment at the shoe store.

[35] The Respondent argues that, as the RAD found, the present case is most similar to *Khan v Canada (Citizenship and Immigration)*, 2016 FC 855 [*Khan*] in which the evidence of incompetence amounts to nothing more than counsel stating one thing and the Applicants stating another, and as such was insufficient to meet the high threshold of incompetence.

[36] I agree. The Applicants' former counsel filed an affidavit with the RAD to counter the Applicants' allegations of incompetent counsel. Former counsel denied every allegation of ineffective assistance as claimed by the Principal Applicant and stated that he did not participate in the Applicant's application for a TRV and had no fore knowledge of information the

Applicants provided in those applications. He also stated that he reviewed draft copies of the support letters and made amendments on a few of them. Importantly, former counsel stated he and the Principal Applicant went through all the personal documents disclosed and the latter never raised any issue regarding the month of September 2018 and October 2018.

[37] The RAD noted:

> I have no evidence before me other than Counsel stating one thing and the Appellants stating another. This is insufficient evidence to establish, on a balance of probabilities, the factual component required to meet the high bar established by the Jurisprudence to demonstrate prior Counsel's incompetence in his representation of the Appellants before the RPD.

[38] In light of the conflicting accounts given by the Principal Applicant and his former counsel, I see no error in the RAD's finding.

[39] As the Court in *Khan* noted at paragraph 44:

> [44] The Court of Appeal further held in *Singh* that appeals to the RAD are not opportunities to complete a deficient record submitted before the RPD. The Federal Court applied a similar rationale in *Abdulahi v Canada (Minister of* Citizenship *and Immigration)*, 2016 FC 260 at paragraph 15, wherein Justice Peter Annis concluded as follows:
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> > […] responding to an inadequacy identified by the RPD in a party's case cannot be a legitimate foundation for the party to claim that had she known about the deficiency she could have presented better evidence that was always in existence from persons that could have been called, in this case from her cousin. This would make the RPD process a monumental waste of time, which is surely not Parliament's intention in providing appeal rights.

[40] The same rationale applies here. As the alleged incompetence is not clearly supported by a "precise factual foundation", as required by this Court's jurisprudence (*Brown* at para 54; *Shirwa v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3026 (FCA), [1994] 2 FC 51; *Dukuzumuremyi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 278 at para 19), I confirm the RAD's finding that there was no breach of procedural fairness at the RPD hearing due to ineffective assistance. I need not consider the second part of the test in *Brown*.

B. *Did the RAD err in credibility assessment?*

[41] The Applicants challenge the RAD's credibility assessment, first, on the grounds that counsel's incompetence failed to resolve the inconsistent information in the Applicants' documentation. For the reasons above, I agree with the Respondent that since the Applicants have failed to establish incompetence, they cannot argue that the RAD erred in drawing negative inferences from significant inconsistencies central to their claim.

[42] Second, the Applicants challenge the credibility assessment on the grounds that the RAD mischaracterized the situation when it found this was not a case where the forms were completed at a port of entry. The RAD noted that after completing the forms at the CBSA, the Applicants went back to where they were staying to complete the forms neatly, and thus had an appropriate opportunity to ensure the Schedule A form was accurate. According to the Applicants, the fact that they had more time does not change the fact that they still faced the same difficulties most people face when making a port of entry claim, the most significant of which is that they were not represented when they completed the forms. The Applicants also argue the RAD ignored their submissions that the deficiencies in the claim forms were due to a combination of the

Principal Applicant being ill, not knowing how to fill out the forms properly, being told by CBSA that they did not need counsel to assist them in completing the forms, as well as their eventual lawyer not advising them to correct the inconsistencies.

[43] I reject these submissions. Whether or not they were represented, the Applicants were required to complete the forms truthfully and completely. As the RAD noted, the Applicants have been living in a country in which English is an official language. They testified fluently in English at the hearing without the aid of an interpreter. Other than being unrepresented, there was no evidence pointing to any barriers that the Applicants faced when completing these forms. The evidence further showed that the Principal Applicant was discharged from the hospital after one night without any follow up treatment. There was no evidence that he continued to suffer any medical issues in the weeks following the hospital stay before he and his spouse submitted their BOC.

[44] Additionally, the Applicants challenge the RAD's finding that they would not be at risk upon return to South Africa. The Applicants note that one of the groups the RAD listed as being targets of xenophobia was Pakistani nationals, and they argue that they are of South Asian and Indian origin and could easily be mistaken as Pakistani. They argue that the RAD displayed naïveté or ignorance about the nature of xenophobia and failed to look at the potential for xenophobia from the perspective of the perpetrator.

[45] I note that the RAD accepted that the Principal Applicant may be similar in appearance to a Pakistani national, but went on to conclude that "even if there is some possibility that the

Principal Appellant could be mistaken for a Pakistani national, this does not establish that he faces a serious possibility of persecution on those grounds when he does not live within a migrant community and where credible allegations of his prior persecution on those grounds are absent."

[46] I disagree with the Applicants that the RAD's conclusion is based on a flawed analysis of their credibility, as well as ignoring evidence of similarly situated individuals and failing to account for their entire risk profile, including as Muslims. On the contrary, as the Respondents points out, the RAD's conclusion is reasonably supported by the objective evidence.

[47] The RPD noted the targets of xenophobia are mostly poorer migrants and refugees who are Nigerians, Somalis, Malawians, Pakistanis and Zimbabweans, and that the xenophobic attacks occur mostly in informal settlements and townships. While some Asian migrants are targeted, the RPD found this is often linked to their socio-economic status, and poverty. These findings were adopted by the RAD. The RAD's conclusion is reasonable. I note, for instance, the Response to Information Requests from the Immigration and Refugee Board [IRB] regarding South Africa quoted the U.S. Department of State's Country Reports on Human Rights Practices for 2017, which states that incidents of xenophobia "generally were concentrated in areas characterized by poverty and lack of services."

[48] I agree with the Applicants that persons of Indian descent can be mistakenly identified as Pakistani. But given the Applicants' background as business people, who did not live in a township or a migrant community, and did not live in poverty, the RAD's finding that they do

not fit the profile of those targeted by xenophobia is reasonable in light of the totality of evidence.

C. *Did the RAD err to admit new evidence and conduct an oral hearing?*

[49] Before the RAD, the Applicants sought to admit new evidence, including statements from former employers, coworkers, and the Principal Applicant's brother, as well as paystubs, invoices, and photographs relating to the Principal Applicant's business. For most of the proposed new evidence, the RAD found that it related to events prior to the RPD hearing and thus could have been provided to the RPD at the time of its hearing. As such, the RAD refused to admit it under s. 110(4) of *IRPA.* The RAD made two exceptions: first, a tracking slip for Mr. Dajee's letter mailed from South Africa, and second, one part of the letter from the Principal Appellant's prior employer, which states that he only reopened one of his stores in January 2020. However, while these two items met the criteria of s. 110(4) of *IRPA*, the RAD did not admit them because they did not meet the requirement of relevance in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*].

[50] The Applicants rely on the alleged inadequate representation outlined above in order to argue that they could not have submitted the new evidence before the RPD. They argue that they were left with inaccurate and inadequate documentation, and that this was a matter of natural justice and procedural fairness that warrants admission of the new evidence. The Applicants further argue that by failing to admit the new evidence, the RAD undermined their ability to make an argument that counsel was inadequate.

[51] I find the RAD's Decision to not admit the new evidence reasonable. The RAD accurately identified the requirements of s.110(4) and the modified factors of credibility, relevance and newness in *Raza* and *Singh* in determining whether to admit new evidence. The RAD then applied these requirements to the evidence the Applicants sought to admit. The RAD provided reasons that are transparent, intelligible and justified in light of its finding with respect to the Applicants' failed argument of ineffective assistance of counsel and the legal requirements for new evidence.

[52] As the Respondent argues, the function of an appeal to the RAD is not to correct deficiencies in the evidentiary record identified by the RPD: *Singh* at paras 32-35, 49 and 54; *Demberel v Canada (Citizenship and Immigration)*, 2016 FC 731 at para 31; *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at paras 13-15. I agree.

[53] In effect, the Applicants disagree with the RAD's finding with respect to the allegations of incompetent counsel and ask this Court to reweigh all the evidence. That is simply not the role of this Court, nor is it the role of the Court to substitute its judgement for that of the RAD: *Julio v Canada (Citizenship and Immigration)*, 2015 FC 8 at para 7; *Hsu v Canada (Citizenship and Immigration)*, 2017 FC 1168 at para 8.

[54] Finally, as stated in s.110(6) of the *IRPA*, and confirmed by case law, the RAD can only hold an oral hearing if there is new evidence that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, that is central to the decision with respect to the refugee protection claim and that, if accepted, would justify allowing or rejecting

the refugee protection claim. As the RAD has reasonably refused to admit new evidence, it therefore cannot be faulted for declining to hold an oral hearing.

V. Conclusion

[55] The application for judicial review is dismissed.

[56] There is no question for certification.

JUDGMENT IMM-1017-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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