

Federal Court



Cour fédérale

Date: 20220317

Docket: IMM-4136-20

Citation: 2022 FC 363

Toronto, Ontario, March 17, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

NAVJOT SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr Navjot Singh, has applied for judicial review of a decision by the Refugee Appeal Division (the “RAD”) dated August 17, 2020, with accompanying reasons dated August 10, 2020. The RAD dismissed an appeal from a decision of the Refugee Protection Division (the “RPD”) dated August 7, 2019. Both decisions concluded that the applicant was not a Convention refugee or a person in need of protection under s. 96 and subs. 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”).

[2] For the reasons below, the application must be dismissed. In my view, there is no basis for the Court to interfere with the RAD's findings of fact leading to its determinative, negative credibility findings.

I. Facts and Events Leading to this Application

[3] The applicant is a citizen of India. Until 2014, he lived in a small village near the city of Jalandhar, Punjab, India.

[4] On November 3, 2014, he fled India. After transiting through a number of countries, he arrived in the United States on April 18, 2015. There, he was detained for approximately seven months before being released on bail. The applicant claimed asylum in the United States, but left for Canada before his claim was determined.

[5] On January 1, 2016, the applicant arrived in Canada. On February 17, 2017, he claimed refugee protection under the *IRPA*.

[6] The applicant claimed that he and his father were followers of Saint Gurmit Ram Rahim Singh (known as "RRS"). According to the applicant, he was therefore at risk of persecution at the hands of members of the Shiromani Akali Dal Badal political party, which opposes his faith. He expressed fear of the police, governments in India and others.

[7] The applicant and his father took part in RRS events. They decided to host an event at their home on March 31, 2014. About a week before the event, they received threats not to hold it. They ignored the threats. However, on the day of the event, the applicant's home was attacked and damaged. His parents were beaten and threatened that the applicant would be killed. The

event did not occur and the applicant stayed with relatives. Eventually, it was decided that the applicant would leave India, which he did on November 3, 2014.

[8] In August 2016, a leader of the RRS named Jagdish Gagneja was murdered. The applicant claimed that the police used this event as an excuse to arrest, detain and torture his father, claiming suspicion of involvement in the murder. His father was released upon payment of a bribe by the elected leader of the village, known as the Sarpanch. The applicant claimed that his father has been in hiding since his release.

[9] The applicant claims that he fears for his life if he returns to India.

[10] The RPD denied the applicant's refugee claim. The determinative issue was the credibility of the applicant and his claim. The RPD also found that the applicant had three internal flight alternatives within India.

[11] The applicant appealed to the RAD, which affirmed the RPD's negative credibility findings. In brief summary, the RAD agreed with the RPD's conclusions and substantially with its reasoning. The RAD concluded:

- the applicant had not credibly identified the agents of persecution. His evidence was both vague and inconsistent about who exactly was after him and why they were specifically targeting him. The RAD concluded that this was a "fundamental element" of the applicant's claim and a "determinative negative credibility finding";
- in addition, the applicant did not adequately establish a connection between the alleged agents of persecution and the Badal or Akali Dal party;

- the applicant did not credibly establish that his father was arrested in connection with the Gagneja murder or that the police were looking for him in that context;
- the applicant did not credibly establish his association with the RRS. The RAD stated that this was a “foundational element of his claim and a determinative negative credibility finding”; and
- the applicant’s conduct in not claiming refugee protection at the first opportunity did not reflect a risk of harm or fear of persecution, and supported the determinative negative credibility findings.

[12] The applicant applied to this Court to set aside the RAD’s decision as unreasonable. Relying on paragraph 18.1(4)(d) of *Federal Courts Act*, RSC 1985, c F-7, he submitted that the RAD ignored or failed to give effect to important evidence when it reached its negative credibility determinations, particularly in the applicant’s own testimony and in the affidavit provided by the Sarpanch, Ms Kaur.

II. Standard of Review

A. *The Vavilov Standard of Review*

[13] The standard of review of the RAD’s decision is reasonableness, as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[14] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. The starting point is the reasons provided by

the decision maker, which must be read holistically and contextually and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97 and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 31.

[15] The court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; see also *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-35.

[16] One flaw identified by the Supreme Court in *Vavilov*, at paragraph 101, arises if a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

B. *Judicial Review of Fact-Finding by an Administrative Decision-Maker*

[17] Paragraph 18.1(4)(d) of the *Federal Courts Act* provides that this Court may grant relief on judicial review if it is satisfied that a federal board, commission or other tribunal “based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it”. That provision contemplates a high degree of deference to fact-finding by administrative decision makers: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 46.

[18] The Federal Court of Appeal has confirmed that the Court may intervene under paragraph 18.1(4)(d) against a finding of fact made in a “capricious” manner or without regard to the evidence if there was no evidence to rationally support a finding or if the decision maker failed to reasonably account at all for critical evidence that ran counter to its findings: *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161, per Gleason JA (LeBlanc JA concurring), at para 123, quoting *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53, at paragraphs 14-17.

[19] As Justice Gleason noted in *Best Buy*, the analysis in *Vavilov* is akin to the Federal Courts’ approach under paragraph 18.1(4)(d): *Best Buy*, at para 122.

[20] The evidentiary record and the factual matrix may act as constraints on the reasonableness of a decision: *Vavilov*, at paras 125-126; *Canada Post*, at para 61; *Canada (Attorney General) v Honey Fashions Ltd*, 2020 FCA 64, at para 30. In its analysis in *Vavilov*, the Supreme Court held that a reasonable decision is “justified in light of the facts”. Absent “exceptional circumstances”, a reviewing court will not interfere with the decision maker’s factual findings and will not reweigh or reassess the evidence. A decision “may be jeopardized” if the decision maker “fundamentally misapprehended or failed to account for the evidence before it”: *Vavilov*, at para 126.

[21] It is only some elements of the factual and legal contexts that operate as a constraint on the decision maker when exercising delegated powers: *Vavilov*, at para 105. Peripheral or inconsequential evidence will not normally constrain a decision maker, whereas central or

critical evidence constitutes a constraint that urges an outcome or that may have to be addressed in the decision maker's reasons. Under *Vavilov* principles, the reviewing court's ability to intervene arises if the decision is "untenable in light of the relevant factual ... constraints" or if the decision maker "fundamentally misapprehended or failed to account for the evidence before it". Even then, the Court in *Vavilov* stated that the decision "may" be jeopardized if the decision maker fundamentally misapprehended or failed to account for the evidence before it: see *Vavilov*, at paras 101, 126 and 194.

III. Analysis

[22] The applicant made four principal arguments. I will address them in turn.

A. *The Agents of Persecution*

[23] The RAD concluded that the evidence about the agents of persecution was inconsistent. The RAD agreed with the RPD that the evidence was vague and general with respect to who exactly was after the applicant and why they were specifically targeting him. As noted, the RAD found that this was a "fundamental element" of the applicant's claim for protection and a determinative negative credibility finding.

[24] In this Court, the applicant submitted that his testimony was very clear about the identity of the agents of persecution. The applicant referred to his testimony that he was afraid of the government party, known as Badal or Akali Dal, and that his safety was in jeopardy from the police. He also testified that the Akali Dal are Orthodox Sikhs and that they do not want people like him to follow RRS and instead to support the Akali Dal.

[25] In my view, there are no grounds on which this Court may interfere with the RAD's conclusion on this issue. The RPD and the RAD had to be satisfied that the applicant identified the agent(s) of persecution with sufficient specificity: *Ugbaja v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 835, at para 12. Without a degree of specificity, the RPD and RAD may be unable to determine the source(s) of potential risks to a claimant, the extent of those risks and other related issues such as whether there are internal flight alternatives within the country of origin.

[26] I am not persuaded that the RAD made a reviewable error in considering the evidence. The RAD reviewed the evidence for itself. In a table in its reasons, the RAD compared the evidence about the agents of persecution as described in the applicant's point of entry interviews, his Basis of Claim form, his revised narrative, his testimony at the hearing, and the evidence in an affidavit provided by the Sarpanch. The RAD concluded that the agents of persecution were described in "very general terms including: the government of Punjab, fellow villagers, the Badal government group, ruling party in the Punjab, hard-core Sikhs, the government that is Akali Dal [SAD], Orthodox Sikhs, police, other Sikhs, etc." That characterization of the evidence and the RAD's conclusion that the identification was vague were both open to the RAD on the record.

[27] The applicant did not expressly challenge the RAD's conclusion that the evidence relied upon by the applicant was inconsistent. In response to a question at the hearing, the applicant submitted that the RAD's identification of inconsistencies reflected a rigid view of the evidence and that there were more commonalities in the several descriptions of the agents of persecution

than there were differences. The applicant also pointed to the clarity of his testimony, as addressed already.

[28] In my view, it was open on the evidence before the RAD to conclude that the evidence provided by the applicant revealed inconsistencies in the descriptions of the numerous agents of persecution he mentioned. In addition, as the table set out in the RAD's reasons revealed, the applicant himself provided at least two different underlying motives to explain why certain alleged persecutors were pursuing him and his father.

[29] In the result, the RAD found that the evidence was both vague and inconsistent. In my view, its conclusions on these issues were not untenable, nor did it ignore, fundamentally misapprehend or fail to account for the evidence relied upon by the applicant in this Court.

[30] In a related argument, the applicant submitted that the RAD erroneously found that the applicant's testimony did not sufficiently address the alleged connection between the agents of persecution and the Badal party. The applicant pointed to his testimony that identified the individuals who attacked his family. He testified that they were in "white clothes like Akalis wear and they also had badges". In this Court, the applicant submitted that in this testimony, he sufficiently connected the agents of persecution to the Badal party by their clothing. He argued that the RAD did not explain why it did not find his evidence credible and wrongly concluded that his father, who was in hiding, should have provided evidence to corroborate the identity of the attackers. The applicant further observed that the Sarpanch's affidavit corroborated his identification of the agents of persecution.

[31] In response, the respondent maintained that the RAD expressly assessed the applicant's testimony about the individuals in white clothing. The respondent submitted that the RAD was not required to accept the applicant's testimony without corroboration, because his testimony was hearsay – it recounted what his father told him about the individuals who participated in the attack. In addition, the RAD reasonably concluded that there was an absence of any corroboration in the Sarpanch's affidavit and no documentary evidence from the applicant's father.

[32] For the following reasons, I agree substantially with the respondent's position.

[33] First, the RAD set out the relevant passage from the applicant's testimony in its reasons. The RAD agreed that the RPD did not reference this testimony in its reasons. The RAD recognized, however, that the testimony was an account of the attack on the applicant's family "which took place in his absence", that the applicant was recounting information given to him by his father, and that he could not answer when questioned about the badges. It is clear that the RAD recognized that the evidence was not from a witness with first-hand information.

[34] The applicant was entitled to rely upon such hearsay evidence and the RAD was permitted to rely on it (under *IRPA* paragraphs 171(a.2) and (a.3)). In its reasons, the RAD noted the absence of corroboration of the hearsay information identifying the agents of persecution in the Sarpanch's affidavit and from the applicant's father. As the RPD had not expressly mentioned this evidence, it was open to the RAD to note the absence of corroborative evidence as part of its analysis: see *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968,

[2020] 4 FCR 617, at paras 23 and following; *Gao v Canada (Citizenship and Immigration)*, 2017 FC 1156, at para 33. I add that although neither party referred to the legal analysis in *Senadheerage*, at paras 23-36, the RAD appears to have satisfied the requirements described in that case.

[35] Second, the RAD considered the contents of the Sarpanch's affidavit. That affidavit referred to an attack at the applicant's family home, beatings and a threat to kill Mr. Singh. The affidavit did not specifically identify the perpetrators; it referred to "other Sikhs" who were not happy with the applicant's family and harassed them to stop their support of RRS. The RAD's conclusion that there was no corroboration in the affidavit was not a reviewable error.

[36] Third, the RAD found an absence of documentary evidence from the applicant's father which "should reasonably have been available". The applicant submitted that this conclusion was unreasonable because his father was in hiding following his arrest and torture by the police, who had used the Gagneja murder as an excuse to detain him. The applicant submitted that the RAD made no express finding that his father was not in hiding nor did it make a negative credibility finding on this issue. The respondent submitted that elsewhere in the RAD's reasons, it concluded that the allegation that his father was arrested and detained in connection with the murder was not credible. As a result of that finding, by necessary implication the father had no reason to be in hiding and the RAD must have concluded that he was not. On that basis, the RAD reasonably relied on the absence of documentary evidence from the applicant's father about the identity of the attackers.

[37] I agree with the applicant that the matter is not perfectly clear in the RAD's reasons. The RAD stated elsewhere in its reasons that certain events were "not reasonably explained by his father being in hiding from the police, accused of the Gagneja murder, when I have found that allegation not to be credible". It is not clear in that sentence which allegation was not found to be credible.

[38] However, having reviewed the RAD's reasons as a whole, I note that the RAD concluded earlier in its reasons that the applicant "did not credibly establish, on a balance of probabilities, that his father was arrested in connection with the Gagneja murder or that the police were looking for him in that context".

[39] Reading these paragraphs together, I agree with the respondent that the RAD must have concluded that, because the allegation that the applicant's father was arrested in connection with the Gagneja murder was not credible, there was no reason for the applicant's father to be in hiding. He therefore could have provided evidence to support the applicant's identification of the agents of persecution. In the circumstances, the RAD's conclusions on these issues were not untenable nor did they fundamentally disregard the evidence in the record.

[40] Accordingly, I conclude that the applicant has not demonstrated that the RAD made a reviewable error with respect to its conclusions that the applicant's identification of the agents of persecution was vague and inconsistent.

B. *The Arrest of the Applicant's Father*

[41] I have just addressed most of the applicant's submissions under this heading. The applicant challenged the RAD's conclusion that he did not credibly establish, on a balance of probabilities, that his father was arrested in connection with the Gagneja murder or that the police were looking for him in that context.

[42] On this issue, the RAD concluded that the applicant had not presented any evidence to corroborate his father's alleged arrest and detention in suspicion of the Gagneja murder. The RAD stated:

No corroborative evidence from the [applicant's] father was presented and while the Sarpanch affidavit says that the police arrested and tortured the [applicant's] father, it does not reference any dates or the Gagneja murder but instead says "[t]he police falsely link them with the militants."

[43] The applicant submitted that this conclusion in fact ignored the evidence in the Sarpanch affidavit that corroborated the arrest and torture of his father. The applicant further submitted that the level of detail expected by the RAD in this affidavit was unreasonable.

[44] I do not agree. The conclusions reached by the RAD, including the statement quoted immediately above, accurately reflect the Sarpanch's affidavit. In addition, the affidavit merely stated that the police also arrested and tortured the applicant's father once. As the RAD carefully stated, the affidavit did not connect that arrest and torture to the Gagneja murder. In my view, the RAD's conclusions satisfactorily reflected the evidence in that affidavit.

C. *The Applicant's Association with the RRS*

[45] The RAD agreed with the conclusion of the RPD that, on a balance of probabilities, the applicant did not credibly establish his association with the RRS. The RAD again concluded that this was a determinative negative credibility finding.

[46] The applicant submitted that the RAD improperly made this negative credibility finding on the basis that the applicant had little knowledge of RRS and that there was no affidavit from his father to show their involvement with RRS. The applicant submitted that the RPD asked very few questions of him to test his knowledge of RRS and focused mainly on the number of followers in the Punjab. In response, the respondent argued that the RAD did not conclude that the applicant was not knowledgeable about RRS. The RAD merely stated that the applicant was questioned by the RPD about it. The RAD made its own decision based on the applicant's testimony and documents in the record.

[47] I agree with the respondent. In its reasons, the RPD made specific reference to the applicant's testimony, the absence of any reference to membership in the RRS in his immigration forms and the absence of documentary evidence to establish his association with, or that he was a follower or believed in the RRS. In addition, the RAD also considered a specific passage from the applicant's testimony about the number of RRS followers in the Punjab and set that passage out in its reasons, together with additional evidence immediately afterwards about the number of followers and the nature of its beliefs. The applicant has not identified any reason why the RAD's treatment of this evidence was unreasonable or untenable on the record before the RAD. I therefore conclude that the applicant has not shown that the RAD made a reviewable error in assessing the evidence about the applicant's association with the RRS.

D. *Applicant's Failure to Claim Protection Elsewhere*

[48] As noted at the outset of these reasons, after the applicant fled India, he travelled through a number of countries before reaching the United States. Specifically, he travelled through Russia, Brazil, Colombia, Guyana, Panama and Mexico before arriving in the United States. He claimed asylum in the United States but left for Canada before American authorities made a decision. He then made a claim for protection in Canada approximately 13 months after his arrival.

[49] The RAD, in a short analysis, agreed with the RPD that the applicant's conduct in not claiming refugee protection at the first opportunity did not reflect a risk of harm or fear of persecution and supported the determinative negative credibility findings detailed elsewhere in its reasons.

[50] The applicant submitted that the RAD failed to look at his specific circumstances and his explanation why he did not make a claim elsewhere for refugee protection. I agree. The RAD's analysis was cursory and insufficient to make a proper determination. In addition, it did not consider his explanation for why he had not made an earlier claim. However, it is also clear that the RAD's assessment of this issue was effectively an additional reason supporting its earlier, determinative negative credibility findings. In the circumstances, the RAD's error on this issue did not vitiate the rest of its decision for the purposes of this application.

IV. **Conclusion**

[51] In the result, I conclude that the applicant has not demonstrated that the RAD made a reviewable error by ignoring evidence or making findings of fact or credibility without regard to the material in the record. The credibility findings made by the RAD were not untenable nor did it fundamentally misapprehend or misconstrue the evidence before it.

[52] The application is therefore dismissed. Neither party proposed a question for certification and none is stated.

JUDGMENT in IMM-4136-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4136-20

STYLE OF CAUSE: NAVJOT SINGH v THE MINISTER OF CITIZENSHIP
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DATED: MARCH 17, 2022

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