

Federal Court



Cour fédérale

Date: 20220614

Docket: IMM-5594-21

Citation: 2022 FC 887

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MUHAMMAD ABBAS WARRAICH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Pakistan, seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated July 23, 2021 [the Decision], which confirms the decision of the Refugee Protection Division [RPD] dated December 18, 2020 [the RPD Decision], finding that the Applicant is neither a Convention refugee nor a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is dismissed, because I find that the RAD's credibility analysis in the Decision is reasonable.

II. **Background**

[3] The Applicant says he fears harm by the Sipah-e-Sahaba Pakistan [SSP], because his ownership of a cutlery manufacturing business in Pakistan and involvement in the Shia community resulted in him being targeted by the SSP. He says he received a threatening phone call from the SSP on August 13, 2016, and that, on September 18, 2016, he was assaulted by the SSP, following which he went to the hospital, reported the incident to the police, and then went into hiding in Lahore.

[4] The Applicant travelled to Canada in October 2016 and subsequently made a refugee claim. The RPD Decision rejected his claim, and the Applicant appealed to the RAD.

III. **Refugee Appeal Division Decision**

[5] In the Decision that is the subject of this application for judicial review, the RAD upheld the RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection. The RAD found that the RPD did not err in finding that the Applicant's claim was not credible due to inconsistencies in his account of the September 18, 2016 attack against him by the SSP. The RAD reasoned that this incident went to the very heart of the claim and that the discrepancies therefore undermined the claim as a whole.

[6] The RAD noted that the Applicant's Basis of Claim [BOC] narrative states as follows:

On September 18, 2016, four unknown, long-bearded and armed goons came to the office at my factory in Wazirabad. It was Sunday and the factory was closed for the day. I had gone there to take care of my business accounts. The goons had identified themselves as being from the Sipah-i-Sahaba Pakistan (SSP). One of those goons forcefully grabbed me and he then proceeded to push and slap me in the face several times. He then started to repeatedly hit me with his firearm. Because of the beating, I was in some considerable pain. Once the beating had ceased, one of the other SSP goons told me that there was no room in Pakistan for Shia Kafirs like me who wanted to spread their filthy Kafir religion among the Sunnis. He said that I should get out of the country or be ready to be killed next time I crossed paths with the SSP. He also said that if I ignored this threat like I had ignored the previous threat they had made against me over the telephone, I would soon find out how serious they were.

After the goons had left, I was greatly in need of medical care....

[7] However, the First Information Report [FIR], prepared by the police after the Applicant reported this incident, states:

...on September 18, 2016, at about 1:00 PM, the complainant was present at his office situated at Arif Shaheed road, Nizamabad, Wazirabad, three armed assailants entered in my office and started breaking my office accessories. They started beating me and verbally abused me. One of them said that I did not obey their commands. He further said they would abduct me today and they would take me with them. And then they would kill me. The culprits took the complainant out of the office by beating and dragging him and fired bullets in the air to spread terror. Many people gathered after hearing firing. Muhammad Zubair Butt and Atiqul Rehman intervened with the help of other people and begged to save me from the accusers, as otherwise those criminals could have abducted me and killed me later. The criminals waved their weapons in the air and left from there by saying that they would come again....

[8] The RAD agreed with the RPD that the versions of the September 18, 2016 incident contained in the BOC and the FIR are significantly different, which represents a valid reason for rebutting the presumption of truth regarding the incident. The discrepancies related to the number of assailants involved, whether the assailants fired shots, and whether they tried to abduct the Applicant. The RAD found the RPD had put these discrepancies to the Applicant and considered his explanations that: 1) the police had their own way of writing, 2) he told them the number of people, and 3) he had no idea why they added these things. However, the RAD found these explanations failed to reasonably explain the discrepancies.

[9] The RAD also found the RPD did not err in finding the supporting documents failed to overcome the significant credibility concerns arising out of the different versions of the September 18, 2016 incident. The RAD concluded that, while a medical report and affidavit of the Applicant's brother-in-law corroborated the September 18, 2016 incident, they did not address or overcome the discrepancies between the BOC and FIR. Similarly, while the police report referred to telephone threats against the Applicant in August 2016 and a second affidavit of the Applicant's brother-in-law referred to threats made against him, they did not address or overcome the discrepancies.

[10] The RAD agreed with the Applicant that the RPD erred in drawing an adverse inference from his delay in leaving Pakistan, because the delay was not lengthy and was reasonably explained. (The Applicant stated that he delayed leaving Pakistan, despite having a US visa, due to discrimination against Muslims there, and he referred to Canada as being a generous country

to refugees). While it set aside this particular RPD finding, the RAD ultimately found this was not a determinative factor in the RPD's rejection of the claim.

[11] The RAD also found the RPD failed to consider the Applicant's risk in Pakistan as a practicing Shia Muslim. Therefore, the RAD considered this argument as part of its independent assessment and found that the objective documentary evidence establishes that: 1) most Shias do not face a risk of serious harm due to practicing their religion in Pakistan, and 2) individuals who are high profile or hold a prominent position in the Shia community are at heightened risk of being targeted by Sunni extremists. The RAD found that the evidence did not establish that the Applicant is high profile or a prominent member of the Shia community, such that he is at heightened risk of being targeted by Sunni extremists. Therefore, the RAD confirmed the decision of the RPD and dismissed the Applicant's appeal.

IV. **Issues and Standard of Review**

[12] The Applicant's Memorandum of Argument articulates the following issues for the Court's consideration:

- A. Was the RAD's finding, that the Applicant was not credible as to the material aspects of his claim, reasonable?
- B. Were the RAD's finding, that the Applicant faced no prospective risk in Pakistan, and its attendant finding that he was neither a Convention refugee nor a person in need of protection, reasonable?

[13] At the hearing of this application, the Applicant's counsel explained that the Applicant's position, that the RAD erred in finding that he faced no prospective risk in Pakistan, is based on his arguments that the RAD's credibility analysis was unreasonable. Therefore, the Applicant submits, and I agree, that the determinative issue in this application is the reasonableness of the credibility analysis. As suggested by that articulation, the applicable standard of review is reasonableness.

V. Analysis

[14] First, the Applicant argues that, in rejecting his explanation for the discrepancies between his BOC narrative and the FIR, the RAD unreasonably engaged in speculation and conducted an unsubstantiated plausibility analysis. The Applicant relies on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, which explains that plausibility findings should be made only in the clearest of cases.

[15] As the RAD explained, the inconsistencies between the BOC narrative and the FIR related to the September 18, 2016 incident, which went to the very heart of the Applicant's claim. As the Respondent submits, this incident was the precipitating event that led the Applicant to depart Pakistan and assert a refugee claim. The RAD considered the Applicant's explanations for the inconsistencies in the accounts of this incident, as well as his submission that the RPD's rejection of his explanations represented an impermissible plausibility analysis. However, the RAD reasoned, as follows, that the Applicant had not offered an explanation that reasonably explained the significantly different versions of events contained in the BOC and FIR:

... While I accept that police may write in a particular way and I accept that there are significant issues regarding police effectiveness in Pakistan, these issues failed to explain the discrepancies in the evidence, and this fails to explain the inconsistency in the evidence regarding the number of assailants. Further, I do not accept, on a balance of probabilities, that the police would add information to the FIR that the Appellant had not reported, such as the assailants firing shots and trying to abduct the Appellant.

[16] As I read the RAD's analysis, it concluded that neither an idiosyncratic method of recording evidence nor a lack of competence served as a viable explanation for the police inaccurately recording the Applicant's evidence and, in particular, not as an explanation for the police adding detail to the Applicant's version of events. I do not consider this reasoning to represent an impermissible plausibility analysis. Rather, the RAD rejected the Applicant's explanation as illogical.

[17] Next, the Applicant argues that the RAD erred in failing to properly analyse and afford appropriate corroborative weight to the documentary evidence provided in support of the Applicant's claim. This evidence included a medical certificate identifying injuries the Applicant sustained in 2016; a police report related to telephone threats the Applicant had previously received; an affidavit by the Applicant's brother-in-law explaining that he took the Applicant to the hospital on September 18, 2016; a letter from the Applicant's Iman explaining the Applicant's involvement in the Shia community and asserting that the SSP noticed his activism and therefore became his enemies; and a second affidavit by the Applicant's brother-in-law that identified a January 27, 2019 incident in which he was personally threatened by the SSP.

[18] In his appeal to the RAD, the Applicant asserted arguments similar to those he advances in this application, to the effect that the RPD failed to properly analyse this documentary evidence. In its Decision, the RAD noted that it agreed with some of the Applicant's arguments but nevertheless found that the RPD did not err in finding that the supporting documents did not overcome the significant credibility concerns arising from the different versions of the September 18, 2016 incident in the BOC narrative and the FIR.

[19] The Applicant takes issue with the RAD's failure to explain which of the Applicant's arguments it agreed with. However, as the Respondent submits, the previous paragraph of the Decision identifies the Applicant's submissions that the RPD routinely affords supporting documentation corroborative weight notwithstanding that its authors do not have first-hand knowledge of specific incidents; that the authors of the affidavits and the medical report actually did have personal knowledge of the circumstances of the September 18, 2016 attack; and that it is an error to automatically dismiss evidence that contradicts general conclusions.

[20] While I accept that the Decision does not identify precisely which components of these submissions the RAD agreed with, I do not consider that lack of precision to undermine the reasonableness of the RAD's analysis of the documentary evidence. As I read the Decision, the RAD found merit to the Applicant's arguments challenging the RPD's analysis and therefore conducted its own independent assessment of the documentary evidence. Indeed, the RAD found the documentary evidence to have corroborative value. However, this value did not overcome the credibility concerns arising from the discrepancies between the BOC and the FIR. I find no reviewable error in this aspect of the RAD's analysis.

[21] Finally, the Applicant notes that the RAD's independent assessment of the documentary evidence does not refer to the letter from his Iman. He refers the Court to the explanation in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1425 [*Cepeda-Gutierrez*] at para 17, that the more important the evidence that is not specifically mentioned and analysed in a decision-maker's reasons, the more willing a court may be to infer from the silence that the decision-maker made an erroneous finding of fact.

[22] While I agree that the principles identified in *Cepeda-Gutierrez* are helpful in analysing this aspect of the Decision, I am not convinced that they assist the Applicant. In addition to the passage on which the Applicant relies, *Cepeda-Gutierrez* explains that reasons are not to be read hyper-critically by a court and that decision-makers are not required to refer to every piece of evidence that is contrary to their finding and to explain how they dealt with it (at para 16).

[23] I do not understand the letter from the Applicant's Iman to represent a first-hand account of any of the Applicant's alleged difficulties with the SSP. Rather, the Applicant's counsel submits that the letter corroborates the Applicant's involvement with the Shia community, which afforded him a profile sufficient to attract the attention of the SSP. I accept that the letter has probative value on this point. However, I do not consider this evidence to represent a significant contradiction of the RAD's findings, such as would warrant a conclusion that it was overlooked by the RAD.

[24] Having considered the Applicant's arguments and finding no basis to conclude that the RAD's credibility analysis was unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5594-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5594-21

STYLE OF CAUSE: MUHAMMAD ABBAS WARRAICH V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: JUNE 8, 2022

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JUNE 14, 2022

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