

Federal Court



Cour fédérale

**Date: 20220726**

**Docket: IMM-6150-21**

**Citation: 2022 FC 1114**

**Ottawa, Ontario, July 26, 2022**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**BAKHTIAR HOSSAIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Bakhtiar Hossain, is a citizen of India who seeks judicial review of a decision of the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD] rejecting his refugee claim. Mr. Hossain claims that he left India due to persecution by Hindu extremists within the Rashtriya Swayamsevak Sang [RSS], the Bharatiya Janata Party [BJP], and the Shiv Sena party on account of the fact that he operated a cow trading

and slaughter business and sold meat, for being a Muslim, and for being a member of the Trinamool Congress Party [TMC Party], a political party which advocates on behalf of Muslims.

[2] The determinative issue for both the RPD and the RAD was Mr. Hossain's credibility. I have not been convinced that the RAD erred in its negative credibility findings, and, therefore, I would dismiss the application for judicial review.

## II. Facts and proceedings

[3] Mr. Hossain is a Muslim and born in India; his wife and twin boys remain at home in the state of West Bengal; he asserts that he is a cow trader, buying cows and selling them to slaughterhouses, with most of his business taking place around the Islamic annual Feast of the Sacrifice [Eid al-Adha]. In addition, according to his narrative, he slaughtered cows and sold cow meat as well. In most states in India, the slaughtering of cows is a regulated business, however not in West Bengal where there are no restrictions on such trade. In addition, Mr. Hossain asserts that he was also employed by a real estate company and also imported clothing from China. He began supporting the TMC Party in 2014.

[4] In March 2017, the BJP ordered the closure of numerous slaughterhouses and meat shops; violence and protests ensued. In April 2017, Mr. Hossain claims that members of the RSS attacked him. He went into hiding at the house of his brother-in-law's friend and, in May 2017, travelled to the United States of America, hoping the dust would settle; he did not file for refugee protection in that country, and returned to India after one week. In fact, it was determined that he was vacationing in New York City with a friend during that week. He failed to claim refugee

protection at the time because, he asserts, he was worried about his family back home, despite claiming that he feared for his life if he was to return. The reason why Mr. Hossain even left for vacation when “worried” for his family back home was left unanswered.

[5] A few months following his return to India, he resumed his business activities; however, Mr. Hossain purportedly continued to face harassment and threats from assailants and at the hand of members of the RSS and BJP. Mr. Hossain again left India, this time for Canada in November 2017, but did not claim refugee protection; he returned to India about three weeks later, supposedly because he missed his family, however his true purpose for coming to Canada was, again, for vacation.

[6] Upon his return, Mr. Hossain ceased his cow business until June 2018, but eventually began trading and transporting sacrificed animals in anticipation of the coming celebration of Eid al-Adha in August 2018. During the night of August 19, 2018, he claims that while in his cow shelter, 15 to 20 individuals attacked him with sticks, during which time he was severely beaten and was, he asserts, close to death, having sustained injuries to his head, his shoulders, back, legs and feet [August 2018 attack]. Mr. Hossain testified that he did not seek medical treatment because he would first have had to report to the police and file a First Information Report [FIR] regarding the incident, and that he was afraid of repercussions from the RSS and BJP if he complained to the police who would in any event have refused to assist him. Mr. Hossain claims that his persecutors intended to murder him because of his cow business, and therefore, he hid at the house of his brother-in-law’s friend. He asserts that, in September 2018, he tried to leave India but was refused at the airport because of an issue with his U.S. visa.

[7] Mr. Hossain claims that, on February 10, 2019, after returning to his home to visit with his mother, wife and sons, Hindu extremists of the RSS and BJP attacked his home in an attempt to find and kill him [February 2019 attack]; he was not at the house at the time, but the attackers beat his mother. Mr. Hossain returned in the evening to witness the aftermath of the attack, and, seeing the condition of his mother, took her to the hospital where she passed away from her injuries a month later after being in a coma for nearly three weeks. Before the RPD, Mr. Hossain testified that his mother received medical attention for her injuries without having to file a FIR with the police. In any event, it would seem as though Mr. Hossain's persecutors returned and again attacked his home the next day, on February 11, 2019; he was again not home at the time, yet the attackers harassed his brother and his sister-in-law, seeking Mr. Hossain's whereabouts. Following those attacks, Mr. Hossain fled India and arrived in Canada on February 13, 2019, yet only claimed refugee protection four months later, towards the end of June 2019. Mr. Hossain's stated objective is to eventually sponsor his family to come to Canada.

### III. The underlying decisions

[8] The RPD, in a decision dated February 1, 2021, found that Mr. Hossain lacked credibility with respect to his central allegations and submitted insufficient evidence to support his claim. First, the RPD concluded that Mr. Hossain lacked a genuine subjective fear due to his delay in departure from India, his continued reavilment, and his delay in claiming refugee protection once in Canada. The RPD also found significant inconsistencies with respect to the purported nature of Mr. Hossain's business as a livestock trader, as well as with respect to the dates of operations of his real estate and clothing businesses; no corroborative evidence regarding his business as a livestock trader was provided. In addition, the RPD made a credibility finding

regarding Mr. Hossain not having sought medical treatment following the August 2018 attack although he had claimed to be close to death, leading the RPD to find that he probably was not assaulted on that day; the RPD determined, contrary to Mr. Hossain's assertion, that the objective evidence did not support his claim that he was required to first file a police report and an FIR relating to the incident before being able to be treated by a doctor for his injuries.

[9] Further, the RPD was not convinced that Mr. Hossain's mother's admission to hospital was due to the alleged attack on February 2019 attack, or that she was even attacked in the first place, as Mr. Hossain presented no hospital record identifying his mother's diagnosis, and her death certificate did not mention the cause of death being the result of the physical trauma. On the whole, the RPD found that not just Mr. Hossain, but also his brother and wife whose unsigned affidavits supported the false claim of his mother being attacked during the February 2019 attack, to be inaccurate, dishonest, unreliable and not credible. As for the purported injuries suffered by Mr. Hossain's wife during the February 2019 attack, no medical report was offered; Mr. Hossain explained that there is no medical report issued when the patient is simply treated in hospital without being admitted. This excuse was not accepted by the RPD which concluded that, in the absence of any medical report and on the basis of the vagueness of Mr. Hossain's testimony regarding his wife's treatment, it was not satisfied that Mr. Hossain's wife had been attacked and injured on February 2019, as alleged.

[10] In addition, the RPD found that the inconsistencies between Mr. Hossain's testimony and his brother's affidavit – regarding whether his brother was present or not the day of the attack and regarding the whereabouts of his brother the next day, when the persecutors purportedly

injured him – undermined his credibility. Finally, the RPD found that Mr. Hossain did not establish a serious possibility of being persecuted on account of his affiliation with the TMC party or that he would be persecuted because he is a Muslim, as India is governed under a democratic system and it has not been shown that state protection generally is inadequate for Muslims.

[11] Before the RAD, the determinative issue was Mr. Hossain's credibility. With the perfection of his claim, Mr. Hossain submitted as new evidence under subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], an affidavit which only makes reference to additional affidavits that are forthcoming but not actually filed or attached to his affidavit. The RAD found that Mr. Hossain's affidavit was simply argumentative and replicated his memorandum before the RAD as to the reasons why he thought the RPD decision was wrongly decided. As such, it was not new evidence and thus did not meet the criteria of subsection 110(4) of the Act; the RAD refused to admit it.

[12] Several months later, after the perfection of his appeal, Mr. Hossain filed an application to offer new evidence, properly under section 29 of the *Refugee Appeal Division Rules*, SOR/2012-257. The RAD considered the requirements under section 29 for submission of new evidence after the perfection of an appeal, as well as the factors for admission under subsection 110(4) of the Act in conjunction with the additional factors set out in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385. The RAD refused to admit any of the new evidence. As the RAD's refusal to accept

the new evidence has not been contested by Mr. Hossain in the present application for judicial review, I will say no more on this issue.

[13] In a decision dated August 12, 2021, the RAD dismissed Mr. Hossain's appeal, agreeing with the RPD that he had not provided sufficient credible evidence supporting a genuine subjective fear of return to India given his decisions to go on vacation while supposedly fearing for his family's well-being, his continued reavilment, and the delay in which Mr. Hossain finally filed for refugee protection after arriving in Canada in 2019; his excuse that he had sworn to his mother that he would never return to India and his intention of sponsoring his wife and children once in Canada simply did not answer the issue of his delay in seeking protection.

[14] As regards the alleged August 2018 attack, Mr. Hossain argued that the RPD misunderstood his testimony; he submits that he testified that he could not seek medical assistance because the doctors would have had to report his injuries to the police, thereby putting his life in danger [emphasis added]. After reviewing the transcription of the hearing, the RAD found that Mr. Hossain's argument had no merit; the RPD did not misunderstand his testimony as to the reason why he did not seek medical assistance following the attack, and found that he simply failed to support his assertion of his injuries with objective evidence. Therefore, the RAD found that there was insufficient evidence to establish the August 2018 assault.

[15] The RAD found that Mr. Hossain's evidence regarding his period of hiding after the August 19, 2018, assault was vague and confusing, and, therefore, he concluded that he did not establish with sufficient credible evidence that he was in hiding. The RAD further found that the

supporting evidence was insufficient to offset the credibility issues and his lack of subjective fear. The RAD agreed with the RPD that Mr. Hossain's supporting affidavits lacked probative value, as they present omissions and inconsistencies which gave rise to more questions than answers; there was also insufficient evidence establishing that Mr. Hossain's mother had died from the February 10, 2019, attack.

[16] Finally, the RAD found that even if Mr. Hossain had dabbled in the cow business, he had no longer a forward-looking risk, as he was no longer in that business and his family had not experienced further problems. The RAD also found that Mr. Hossain did not face more than a mere possibility of persecution due to being Muslim.

#### IV. Issues and standard of review

[17] The sole issue raised by Mr. Hossain in this application for judicial review is whether the RAD's decision is unreasonable, more specifically, whether the RAD erred by ignoring evidence and in the assessment of his credibility. The applicable standard of review for the merits of the RAD's decision is reasonableness, which is concerned with the existence of justification, transparency and intelligibility in the reasoning process of the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 99, 101 [*Vavilov*]).

#### V. Analysis

[18] Mr. Hossain submits that the RAD erred by ignoring evidence and by unreasonably rejecting his explanations regarding the credibility findings, and points to a series of findings of the RAD to make his case.



[19] The purported August 2018 attack is an event which Mr. Hossain sees as pivotal for his claim, as it resulted in him needing to go into hiding and eventually escape to Canada.

Mr. Hossain argues that the RAD focused on the absence of a medical report, which Mr. Hossain testified he could not obtain without first reporting to the police. However, the issue was not that, argues Mr. Hossain, he was not able to obtain a medical report, but rather that he felt he was unable to even attend a hospital to be seen by a doctor without first filing an FIR with the police.

[20] In any event, Mr. Hossain argues that the RAD's decision misses the point. Clearly, he admits being mistaken in his belief that he needed to first attend at the police station and file an FIR before seeking medical attention. The RAD knew, or should have known, that his belief was incorrect and even stated it to be so in its decision; Mr. Hossain now concedes that the duty to report an incident to the police was not on the injured person, but on the doctor if the doctor suspects the injuries were caused by a criminal act. Mr. Hossain now argues that, knowing this to be the case, the RAD should have realized the reason why Mr. Hossain did not seek medical treatment was because he was under the mistaken belief that he first needed to attend at the police station to file an FIR on the incident; the issue was not who bore the duty of reporting the incident to the police, but rather that Mr. Hossain did not want the police involved to begin with, supposedly for fear that he would be in trouble.

[21] I cannot follow Mr. Hossain's argument. To begin with, his testimony before the RPD is clear in that the reason for not seeking medical assistance was that he thought he first needed to attend at the police station and file an FIR on the incident, and that, even if he did attend, the police would not assist him, would not allow him to file the FIR, and would send him back to his

persecutors. Before the RAD, Mr. Hossain argued that the RPD wrongly interpreted his testimony, and that what he really said was that he could not seek medical assistance because the doctors would have had to report his injuries to the police, thereby putting his life in danger; in other words, what Mr. Hossain was arguing before the RAD was what he feared ultimately was the police getting involved, and acknowledged the true state of affairs in India was that the duty is upon the doctors to report any sign of criminal activity to the police. As stated earlier, after reviewing the testimony, the RAD agreed with the RPD's understanding of Mr. Hossain's testimony and agreed that it negatively affected his assertion that the August 2018 attack ever took place.

[22] Before me, however, Mr. Hossain seems to be reverting back to the first version of what he may or may not have testified, the version which he claimed before the RAD was a misunderstanding on the part of the RPD – that he did not seek medical assistance because he first needed to attend to the police and file a FIR – but now with a twist that the RAD should have realized he was clearly mistaken in his belief and should not have used his reason for not seeking medical assistance as an attack on his credibility. The RAD knew, argues Mr. Hossain, the true state of affairs in India regarding a doctor's duty to report injuries suspected of having been caused by a criminal act to the police because it mentions it in its decision and refers to the relevant section of the objective evidence. That may be true, but before the RAD, Mr. Hossain was also now familiar with the true state of affairs, having pointed it out to the RAD in his arguments, and having asked the RAD to interpret his testimony before the RPD consistently with such state of affairs; put another way, in the immortal words of George Costanza, "it's not a

lie...if you believe it”, and here, since Mr. Hossain was not lying, his mistaken belief for not seeking medical attention should not be used against him.

[23] For my part, and putting aside that this new “twist” was not put before the RAD, I am afraid I cannot agree with Mr. Hossain. I accept that the RAD saw this as a credibility issue; both the RPD and the RAD determined that the stated reason for Mr. Hossain not seeking medical attention when he was claiming to have been close to death on account of the beating he had received was simply not credible, leading to, along with its other findings, the conclusion that the August 2018 attack never took place. I see nothing unreasonable with such a finding. I also accept that the mere failure to produce a medical report as corroborating evidence of the attack does not mean that the testimony of Mr. Hossain having been injured is not credible, but that is not how either the RPD or the RAD reasoned the issue. It was not the failure to produce corroborating evidence of the attack that was the problem, but rather the failure to even seek medical assistance, and then the attempt to explain that failure away in the manner Mr. Hossain did, which led both the RPD and the RAD to determine that, in all likelihood, the August 2018 attack never took place and Mr. Hossain’s testimony regarding the attack was not credible. In the end, the RAD reviewed the transcript of his testimony and found that the RPD did not err in drawing an adverse finding on his explanation for not seeking medical attention. I see nothing unreasonable in the RAD’s assessment of his testimony.

A. *Mr. Hossain’s brother affidavit*

[24] Mr. Hossain argues that the RAD cannot, on the one hand, give his brother’s affidavit little probative value on account of it not being signed, and then rely on the affidavit to discredit

Mr. Hossain's testimony on the basis of an inconsistency with his brother's affidavit;  
Mr. Hossain argues that the RAD cannot have it both ways, either the affidavit has little probative value and cannot be referred to, or it can be relied upon.

[25] In addition, Mr. Hossain asserts that the RAD misread his brother's affidavit; at one point, his brother states that Mr. Hossain had been attacked by vigilantes on multiple occasions, and later states, specifically regarding the August 2018 attack, that Mr. Hossain's place was "hit by cow vigilantes who robbed him of all his livestock." Mr. Hossain says that the RAD has not read his brother's affidavit fairly and reasonably when it determined that the brother's reference to the August 2018 attack as a "theft" was inconsistent with Mr. Hossain's testimony that it was during an attack which he was seriously injured.

[26] First of all, the reason why neither the RPD nor the RAD gave any probative value to the affidavits of Mr. Hossain's wife and brother was not because they were not signed; although the RPD referred to the fact that both affidavits were unsigned, it gave them little probative value in view of the "omissions, inconsistencies, and content in the Affidavits which give rise to more questions than answers...". The RAD reviewed the affidavits of both Mr. Hossain's wife and brother and also found them to lack probative value, but not because they were unsigned. The RAD goes on at length to justify the reasoning supporting its findings regarding the affidavits, and I have not been convinced that such findings are unreasonable. Nor have I been convinced that the determination that the August 2018 attack never took place is also not unreasonable given the evidence before the RAD.

[27] Finally, the RAD did not characterize the brother's rendition of the August 2018 attack as a simple theft. The RAD simply read the affidavit for what it said, and not for what it did not say; the affidavit made no mention of Mr. Hossain being beaten and injured during the August 2018 attack, and thus the RAD was not prepared to find any support for such an alleged attack on Mr. Hossain in his brother's affidavit – hence little probative value was given to the affidavit as regards Mr. Hossain's assertion that he was beaten close to death during the August 2018 attack.

B. *How the RAD dealt with the objective country evidence*

[28] As stated earlier, according to the country evidence for India, if a doctor treats a patient for injuries seemingly sustained by a criminal act thus requiring the intervention of the police, the doctor is "duty-bound" to report the incident to the police, with many hospitals having police on site. The RAD found that as there was no evidence of any police involvement regarding the death of Mr. Hossain's mother, coupled with Mr. Hossain's lack of credibility in other areas of evidence, that there was insufficient evidence establishing that Mr. Hossain's mother died from an assault sustained during the February 2019 attack.

[29] The problem, argues Mr. Hossain, is that the RAD comes to the conclusion that the police were not involved following the injuries to his mother because police involvement was not mentioned on the death certificate. Again, I cannot follow Mr. Hossain's reasoning. I have not been shown where in its decision the RAD states that it bases its finding of no police involvement following the purported injuries to Mr. Hossain's mother on the fact that no such statement appears on the death certificate. As expected, the death certificate mentions the cause of death – as stated earlier, no mention of trauma is made on the death certificate – and it has not

been explained to me why one would normally expect there to be any mention of police involvement on such document. When pressed to clarify his position, Mr. Hossain's counsel conceded that he may have mistakenly read the RAD's decision on this point, but at the end of the day, the RAD's assertion that there was no police involvement in relation to Mr. Hossain's mother's injuries has no support in the evidence, and as such the decision is not justified, transparent and intelligible, and thus unreasonable. I cannot agree with Mr. Hossain. First of all, if the RAD did jump to conclusions on this issue, such an error was minor and, at the end of the day, I cannot see how that would have changed the outcome given the other failings on credibility identified by the RAD. Also, it remains that it is for Mr. Hossain to marshal his evidence to support his claim, and if he had brought forward no evidence of police involvement when the circumstances would have reasonably called for such involvement, I see nothing unreasonable with the RAD coming to the conclusion that such involvement did not exist under these circumstances; with no police involvement, it was also not unreasonable to find that the injuries sustained by Mr. Hossain's mother did not reasonably point to any criminal activity.

C. *The findings on the affidavits of Mr. Hossain's wife and brother*

[30] Mr. Hossain cites Mr. Justice Southcott's decision in *Francois v Canada (Citizenship and Immigration)*, 2018 FC 687, for the proposition that it was improper for the RAD to discount his wife's affidavit because it went to support a claim which was found not to be credible; just because a claimant is not found to be credible does not make a supporting affidavit not credible. I agree with the principle, however the difficulty in *Francois* was that the RPD, other than pointing to the fact that the impugned affidavit reiterated a claim which was otherwise found to be not credible, provided no other reason for finding that the affidavit lacked credibility. Here, on

the other hand, the RAD assesses the content of the wife's affidavit and finds a series of inconsistencies with Mr. Hossain's evidence, thus leading to its conclusion regarding that affidavit.

[31] As regards the inconsistency between the wife's assertion that her husband went into hiding after the August 2018 attack, and Mr. Hossain's testimony that he would regularly go back and forth from his friend's house to his home on a regular basis, I disagree with Mr. Hossain that his testimony regarding his whereabouts when he was purportedly hiding at the house of his brother-in-law's friend consisted of an addition to his narrative. He indicated in his narrative that he was hiding from September 2018 onwards, but during his testimony, he stated that he only had been hiding for 10 days when his mother was attacked on February 10, 2019. The RAD found that the evidence demonstrated that he was going back and forth to his home and hence, that he was not in hiding from September 2018 until his departure in February 2019 as he previously alleged. There are important differences from his original narrative, and it was open to the RAD to make adverse credibility findings on this matter (contrary to *Shah v Canada (Minister of Citizenship and Immigration)*, 2006 FC 627 at para 26; *Hyka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 220 at para 15). The RAD was perfectly justified in finding that continuing to return to your home, even to visit your mother and family, does not amount to going "into hiding".

[32] In addition, in her affidavit, the wife asserts that the family went into hiding, but also asserts that they lived in their home. Mr. Hossain argues that nowhere is the term "in hiding" defined, and it was possible that Mr. Hossain's wife meant that they were hiding within their

home. I find this argument difficult to accept. Normally, I would expect that if Mr. Hossain's wife was referring to taking refuge in a secret passage way, or a basement or attic within their home, when she spoke of the family living in hiding, she would have been more specific. It is not, as Mr. Hossain asserts, just an unspoken assumption of the RAD that the expression "living in hiding" means living somewhere else. More than an unspoken assumption, I think it is simple common sense.

D. *Assessment of Mr. Hossain's forward-looking risk*

[33] The RAD determined that Mr. Hossain is no longer exposed to a forward-looking risk because he is no longer in the livestock trading business, his family is still living in the same house without any further repercussions, and the objective evidence suggests little risk for Muslims living in India, let alone in West Bengal, where there is a significant Muslim minority. Mr. Hossain argues that the RAD did not analyze his forward-looking risk by considering his profile as a cow trader together with his profile as a Muslim; additionally, the RAD's finding is predicated on Mr. Hossain not returning to the cow trading business if he returns to India, and that even if he does not do so, the agents of persecution would no longer be interested in killing him. I find that the RAD did not err in its assessment of his forward-looking risk. A claimant cannot expect protection from a risk of this nature which is self-inflicted, so if avoiding a return to the very business which acted as the lightning rod for the purported persecution would keep him out of harm's way, it would not be unreasonable for the RAD to make such an assumption. As to any long-tail risk associated with his past business activities, there is simply no evidence of such a risk. In addition, the RAD assessed Mr. Hossain's risk relating to his profile as a cow-



related business owner and as a Muslim. Mr. Hossain does not explain how an assessment of his combined profile would differ from the analysis the RAD conducted.

E. *Lack of a genuine subjective fear*

[34] As regards the RAD's finding that he lacked a genuine subjective fear, Mr. Hossain argues that the RAD failed "once again" to consider his mindset at the time, as he stated that he "still had the desire to return to India to be with and protect his family" and that it was not until his mother's passing in March 2019 that he decided to seek protection in Canada. I do not agree with Mr. Hossain that the RAD did not consider his explanations regarding the delay in submitting a refugee protection claim. On the contrary, the RAD considered his explanation and found that his internally inconsistent explanation did not support the argument that he held a genuine subjective fear. I see nothing unreasonable in this conclusion.

[35] On the whole, I find that Mr. Hossain's arguments are simply disagreements with the RAD's assessment of the evidence and, as the Supreme Court of Canada stated in *Vavilov*, reweighing evidence is not for the court to undertake on judicial review (*Vavilov* at para 125).

VI. Conclusion

[36] I would dismiss the application for judicial review.

**JUDGMENT in IMM-6150-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Peter G. Pamel"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6150-21

**STYLE OF CAUSE:** BAKHTIAR HOSSAIN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 30, 2022

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** JULY 26, 2022

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