

Federal Court



Cour fédérale

Date: 20220804

Docket: IMM-6246-21

Citation: 2022 FC 1166

Ottawa, Ontario, August 4, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**HYDER ALI
HASSAN HYDER
SADIA HAIDER
MERAB HYDER
MUHAMMAD ZILE
TAHA HYDER**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”), dated August 9, 2021, confirming the decision of the Refugee Protection Division

(“RPD”) that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Applicants fear persecution in Pakistan because the Principal Applicant, Hyder Ali, and the Associate Applicant, Sadia Haider, are in an inter-sect marriage. The RAD agreed with the RPD’s finding that the Applicants’ claim lacked credibility and found the Applicants’ new evidence to be inadmissible.

[3] The Applicants submit that the RAD erred by rejecting their new evidence and argue that the RAD should have afforded them an oral hearing to assess their credibility. The Applicants further submit that the RAD erred in its credibility findings by microscopically assessing the evidence, as well as by misapprehending and misconstruing evidence.

[4] For the reasons that follow, I find the RAD’s decision to be reasonable. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicants*

[5] The Principal Applicant is a 42-year-old citizen of Pakistan from a Sunni Muslim family. Upon training to become an information technology (“IT”) professional, the Principal Applicant moved to Kuwait on a work visa and continued working in the IT field.

[6] In 2007, the Principal Applicant married the Associate Applicant, who is also a citizen of Pakistan. The Principal Applicant states that his family was unhappy about this match because the Associate Applicant is a Shia Muslim, and that his family was cruel to her in the early months of their marriage, which led to her becoming depressed and hospitalized. Eventually, the Principal Applicant was able to bring the Associate Applicant to Kuwait.

[7] The Principal Applicant and the Associate Applicant have four children: Merab (age 14), Muhammad (age 12), Taha (age 7), and Hassan (age 4).

[8] In July 2019, the Principal Applicant states that he resigned from his job in Kuwait after a conversation in which he gave his opinion on the ongoing human rights crisis in Yemen, and criticized Saudi Arabia for its role in the killing of innocent people. This conversation allegedly led to tensions in his workplace that precipitated his resignation.

[9] On August 14, 2019, the Principal Applicant and the Associate Applicant visited Pakistan, where they stayed with a friend in Gujranwala, the Principal Applicant's hometown. Together, they attended a number of Shia religious gatherings.

[10] On August 19, 2019, the Principal Applicant states that his uncle, Muhammad Azmat ("Uncle Azmat"), and the Maulvi of his uncle's mosque ("Maulvi Khalid") came to his friend's house with two other people. Allegedly, the visitors told the Principal Applicant that he should not be attending religious gatherings where Shia clerics were speaking and that he should leave his wife. The visitors allegedly beat the Principal Applicant and the Associate Applicant. The

Principal Applicant claims that he reported this incident to the police, yet the police told him the incident involved a domestic and religious issue that he should resolve himself.

[11] The Applicants claim that Maulvi Khalid is associated with a religious extremist group, Sipah-e-Sahaba. The Principal Applicant also believes his uncle Pervez (“Uncle Pervez”) has connections to Sipah-e-Sahaba because they control the mosque where he prays.

[12] On August 25, 2019, the Principal Applicant attended a religious seminar in Gujrat where he claims he spoke about the tensions between Sunni and Shia Muslims. Following the seminar, he allegedly began receiving phone calls from anonymous callers threatening him and his family. He also received threatening letters that included demands for money. The Principal Applicant believes that his uncle and the Sipah-e-Sahaba were behind the letters. Once again, the Principal Applicant reported these threats to the police, but claims they did nothing.

[13] On September 7, 2019, the Principal Applicant and the Associate Applicant were on their way home when someone allegedly attempted to stop their car. During her testimony before the RPD, the Associate Applicant stated that a person on a motorbike pursued them and fired shots at their car. They managed to speed away and sought refuge at a nearby police station, where they made a report. This incident prompted the Applicants to leave Pakistan.

[14] On September 13, 2019, the Applicants landed in the United States. On September 17, 2019, they crossed into Canada and made a refugee claim.

B. *The RPD Decision*

[15] In a decision dated February 4, 2021, the RPD denied the Applicants' claim, finding that they were neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *IRPA*. The determinative issue was credibility, and the RPD drew multiple negative findings based on inconsistencies and omissions in the Applicants' evidence.

[16] First, the RPD found that the First Information Report ("FIR"), which the Applicants claim they filed with the police after the incident on September 7, 2019, was fraudulent. The RPD noted that the FIR does not include details of the incident or mention that shots were fired at the Applicants' vehicle. While the Associate Applicant had explained that this was what they had received from the police, the RPD was not convinced by her explanation, since the FIR appears to refer to an entirely different incident than the one alleged by the Applicants. The FIR also does not contain information about the motivation behind the incident, the identity of the alleged attackers, and whether those attackers were sponsored by the agents of persecution, despite how the Applicants claimed to know all these details. The RPD gave the FIR no weight.

[17] The RPD also found that, based on the Principal Applicant's inconsistent testimony, the Applicants lacked credibility regarding their agents of persecution. The RPD noted that the Principal Applicant had named Uncle Azmat as the person who came to his friend's house and beat him on August 18, 2019. Yet when he was asked who he feared in Pakistan, he stated that he feared Uncle Parveen, but not Uncle Azmat. The RPD also noted that the Applicants made no mention of Uncle Parveen in their Basis of Claim ("BOC") narratives, yet the Principal

Applicant testified that Uncle Parveen was the person who engaged Maulvi Khalid and, in turn, Sipah-e-Sahaba to target the Applicants. Additionally, the RPD drew a negative credibility finding from the Principal Applicant's failure to include details about his agents of persecution during his interview with Canada Border Services Agency ("CBSA").

[18] Furthermore, the RPD drew a negative inference from the Principal Applicant's failure to mention in the CBSA interview that he and his wife were in an intersect marriage – particularly since this was one of the grounds on which the Applicants based their refugee claim. The RPD found that because the Applicants had failed to demonstrate that their families did not accept their marriage, they did not fit the profile of couples that would face persecution. Based on this, the RPD concluded that the Applicants had failed to establish that they were being targeted or that they face a serious possibility of persecution in Pakistan based on their intersect marriage.

[19] Finally, the RPD drew a negative inference from the Principal Applicant's failure to mention a newspaper article that describes someone's attempt to kill him in his written submissions or testimony. The Principal Applicant had referenced the newspaper article in his CBSA interview. When the RPD asked him about this omission, he stated that it had been published in a local paper and he did not think it was important. The RPD did not find this explanation reasonable, particularly since the Applicants had been represented by counsel, yet had not mentioned the newspaper article until confronted about it during the hearing. Based on this, the RPD drew a negative inference regarding the Applicants' overall credibility.

C. *Decision Under Review*

[20] In a decision dated August 9, 2021, the RAD dismissed the Applicants' appeal, confirming the RPD's finding that the Applicants are neither Convention refugees nor persons in need of protection.

[21] The RAD first considered several pieces of new evidence, which the Applicants had submitted on June 2, 2021, after filing and perfecting their appeal. The documents included:

- A. A translated document, which purports to be a translation of a newspaper article dated September 9, 2019, entitled "Assassination attempt on Kuwait returnee by religious extremists." A copy of the newspaper article itself was not provided.
- B. A translated document, which purports to be a translation of a letter addressed to the Principal Applicant, dated September 5, 2019. A copy of the original Urdu version was also provided.
- C. A translated letter from the Principal Applicant addressed to the "SHO" Police Station, Satellite town Gujranwala, dated September 6, 2019.
- D. A translated letter from the Principal Applicant addressed to the "SHO" Police Station, Satellite town Gujranwala, dated September 7, 2019.
- E. A copy of an affidavit, written in English, by the Principal Applicant's father-in-law, dated March 31, 2021.

[22] The RAD refused to admit the Applicants' new evidence, finding it did not meet the test set out in subsection 110(4) of *IRPA*, in particular because all of the documents pre-dated the rejection of the Applicants' claim by the RPD or, in the case of the affidavit, referred to events that pre-dated the rejection. The RAD found that the Applicants had not provided a reasonable

explanation for why the documents could not have been obtained earlier, given their arrival in Canada nearly three years prior. The Applicants had also not explained how they were eventually able to obtain the documents. Accordingly, the RAD dismissed the Applicant's request for an oral hearing.

[23] The RAD also affirmed the RPD's credibility findings. In particular, the RAD found that the RPD was correct to not assign any weight to the FIR, as it tells a story "completely at odds" with the Applicants' account of what happened on September 7, 2019. The RAD further agreed with the RPD's negative credibility findings related to the agents of persecution, the Applicants' interview with the CBSA, the threats related to the intersect marriage, and the newspaper article. Ultimately, the RAD concluded that the Applicants' allegations were not credible. The Applicants failed to demonstrate that they face a serious possibility of persecution in Pakistan, or that they would be personally subjected to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment in Pakistan.

III. **Issues and Standard of Review**

[24] This application for judicial review raises the following issues:

- A. *Whether it was reasonable of the RAD to reject the Applicants' new evidence and decline to hold an oral hearing.*
- B. *Whether the RAD's credibility analysis was reasonable.*

[25] The Applicants make no submissions on the appropriate standard of review. The Respondent submits that the presumptive standard of reasonableness applies to administrative decisions, and that circumstances warranting a departure from the presumption do not arise in this case. I agree with the Respondent that the presumptive standard of reasonableness applies to both issues raised in this application. I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 25 and 33.

[26] 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).

[27] 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; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. **Analysis**

A. *Whether it was reasonable of the RAD to reject the Applicants’ new evidence and decline to hold an oral hearing.*

[28] The Applicants submit that the RAD erred by rejecting new evidence demonstrating that their lives were at risk in Pakistan. They argue that the documents were not reasonably available to them prior to the RPD hearing and that they provided a reasonable explanation for why they could not obtain the evidence at the time. The Applicants maintain that they had nobody in Pakistan who could help them gather the evidence sooner; the Principal Applicant could not ask his family for assistance, because their threats were the reason they had fled Pakistan. The COVID-19 pandemic made it additionally difficult to obtain the documents. Since the RAD erred by refusing to admit the new evidence, it also erred by refusing to hold an oral hearing.

[29] The Respondent submits that the RAD reasonably refused the new evidence pursuant to subsection 110(4) of *IRPA*. The Respondent argues that the RAD reasonably rejected the Applicants’ explanation for not providing the evidence sooner; particularly given the length of time the Applicants had been in Canada and the fact that they had a reliable friend in Pakistan who was willing to assist them. Furthermore, the Respondent maintains that it was reasonable of the RAD to refuse the affidavit even though it post-dated the RPD’s decision. The newness of evidence is not established solely by the date on which the document was created, but rather it is

the event or circumstance sought to be proved by the documentary evidence (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 16).

[30] I agree with the Respondent. Under subsection 110(4) of the *IRPA*, new documentary evidence is only admissible in a RAD appeal if it (a) arose after the rejection of a claim by the RPD, (b) was not reasonably available, or (c) was reasonably available but the person could not reasonably be expected in the circumstances to have presented at the time of the rejection (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 34). While the Applicants do not dispute that the newspaper article and three letters all pre-date the RPD's decision, they maintain that they could not have reasonably presented the evidence sooner. In its decision, the RAD noted that despite the Applicants' submissions regarding their inability to obtain help in securing the documents for over two and a half years, and the challenges posed by COVID-19, the Applicants failed to explain why, "all of a sudden in June 2021, they were able to obtain them". In my view, it was reasonable for the RAD to expect some explanation about how the Applicants were eventually able to obtain the documents. Absent a proper explanation, it was thus reasonable to conclude that the documents could have been obtained and provided to the RPD sooner. The Applicants also failed to explain how they eventually obtained the documents, and from whom.

[31] With respect to the affidavit, I also agree with the Respondent that the RAD reasonably found that the affidavit only refers to events from September 2019. The Applicants failed to provide an adequate explanation for why they could not have provided a similar affidavit to the RPD prior to its decision.

[32] Having found that it was reasonable of the RAD to refuse to admit the Applicants' new evidence, I also find it was reasonable of the RAD not to hold an oral hearing, as appeals before the RAD must proceed without a hearing on the basis of the RPD record, unless new evidence is admitted (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 43).

B. *Whether the RAD's credibility analysis was reasonable*

[33] The Applicants submit that the RAD made several errors in its analysis of their credibility. First, the Applicants submit that the RAD erred by finding that the FIR was a fraudulent document on the basis that it did not describe in detail the events that took place on September 7, 2019. They note that the FIR mentions the Principal Applicant by name and states that he was attacked. Second, the Applicants argue that it was unreasonable for the RAD to draw a negative inference from the Principal Applicant's failure to mention in his BOC that he feared his Uncle Pervez. They maintain that the evidence as a whole clearly indicates that the Applicants fear both Uncle Azmat and Uncle Pervez, as well as any others connected to Maulvi Khalid and Sipah-e-Sahaba.

[34] Third, the Applicants submit that the RAD erred by placing too much weight on the Principal Applicant's interview with CBSA. They argue that they were told their story should be brief, and maintain that this adequately explains the details omitted in the CBSA interview. Fourth, the Applicants argue that the RAD erred by drawing a negative credibility inference from the Applicants' failure to produce the newspaper article, particularly since the RAD rejected such evidence when it was presented by the Applicants as new evidence. Finally, the Applicants submit that the RAD erred by ignoring and misconstruing evidence before it.

[35] The Respondent contends that the RAD's credibility analysis was reasonable. The Respondent submits that while the RAD did not specifically agree with the RPD that the FIR was fraudulent, it instead found that the facts contained in the document were irreconcilable with the Applicants' story. The Applicants failed to explain these discrepancies.

[36] With respect to the RAD's finding that there are inconsistencies in the Applicants' evidence regarding the agents of persecution, the Respondent notes that the Principal Applicant did not mention his Uncle Pervez at all in his BOC narrative and only spoke about his Uncle Azmat as the individual who engaged Maulvi Khalid and Sipah-e-Sahaba. Additionally, when the Principal Applicant was asked during the RPD hearing about which uncle he feared, he only mentioned Uncle Pervez. In light of the RAD's finding that the issue of the agents of persecution goes to the heart of the Applicants' claim, the Respondent asserts that it was reasonable for the RAD to draw a negative credibility finding based on this inconsistency.

[37] Furthermore, the Respondent maintains that the RAD was entitled to draw negative credibility inferences from the Applicants' failure to mention significant facts in their interview with the CBSA at the port of entry (*Avrelus v Canada (Citizenship and Immigration)*, 2019 FC 357 ("Avrelus") at para 14, citing *Kusmez v Canada (Citizenship and Immigration)*, 2015 FC 948 at para 22; *Arokkiyanathan v Canada (Citizenship and Immigration)*, 2014 FC 289 at para 35; *Bozsolik v Canada (Citizenship and Immigration)*, 2012 FC 432 at para 20; *Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at paras 14-15). Overall, the Respondent submits that the Applicants have not shown that the RAD ignored or misconstrued any evidence, and the Applicants have not mentioned any specific documents that were ignored.

[38] I do not find that the RAD erred in its credibility findings. With respect to the FIR, while the RAD's decision does not address whether the RPD was correct in determining that the FIR was fraudulent, it does state, "the question of who produced the FIR, how it was produced or why -- is immaterial." The RAD came to this conclusion because the FIR does not corroborate the Applicants' story. The RAD's decision states:

[...] Ultimately, [the FIR] tells a story completely at odds with the Appellants' story of what happened on September 7, 2019. It not only deserves to be given no weight, it also diminishes the overall credibility of the Appellants as it is inconceivable that persons who experienced what they alleged to have experienced would submit this document as a corroborating document for their claim.

The Appellants' argument that the document nevertheless mentions the Principal Appellant by name and suggests that he was personally targeted is irrelevant. Why would it mention a mass killing during a procession and state that the Principal Appellant was missing? There is no way to reconcile the document with the Appellants' story.

[39] In finding that the FIR and the Applicants' account of the September 7, 2019 incident are simply incompatible, the RAD agreed with the RPD's decision to afford the document no weight, and further concluded that the document diminishes the overall credibility of the Applicants' allegations. In my view, this is a reasonable conclusion. The FIR not only omits certain details such as the shooting at the Applicants' car, but it in no way corroborates the Applicants' accounts of the incident on September 7, 2019. The Applicants also had the opportunity to explain the discrepancies during the RPD hearing, yet failed to dispel the RPD's concerns. A statement by the Applicants' counsel that the police "said what they wanted to say in the report" does not adequately explain why the report describes a completely different incident.

[40] I also find that it was open to the RAD to draw a negative credibility inference from the inconsistencies related to the agents of persecution. Despite mentioning “my uncle”, the Principal Applicant does not specifically name Uncle Pervez in his BOC narrative. Only Uncle Azmat is named in the description of the incident on August 25, 2019 with Maulvi Khalid, who is allegedly connected to Sipah-e-Sahaba. Yet, as the RAD notes in its decision, during the RPD hearing, the Principal Applicant referenced Uncle Pervez as the person who is connected to Sipah-e-Sahaba. Specifically, when asked what Sipah-e-Sahaba is, the Principal Applicant explained that it is a Sunni organization. When further asked how this organization came to know he was a Sunni married to a Shia, he replied “my uncle” and when asked for clarification about which uncle, replied “Uncle Pervez”. The Principal Applicant only referenced Uncle Azmat when he was asked about him directly by the RPD. The Applicants maintain that it was not necessary to mention each member of the family that they feared. However, in light of the RAD’s conclusion that the agents of persecution is “at the heart of his claim”, I find it was reasonable of the RAD to draw a negative inference based on inconsistencies between the BOC narrative and the Principal Applicant’s oral testimony.

[41] With respect to the CBSA interview at the port of entry, I agree with the Respondent that it was also open to the RAD to draw an adverse credibility finding from the Applicants’ omissions. This Court has found that, while notes taken at the port of entry should be treated with caution, decision-makers are entitled to draw negative inferences where an omission or inconsistency relates to a central element of the claim (see: *Avrelus* at para 14; *Lin v Canada (Citizenship and Immigration)*, 2015 FC 62 at para 13; *Fang v Canada (Citizenship and Immigration)*, 2013 FC 241 at para 17). In examining the notes from the CBSA interview, the

RAD found that the Applicants had failed to mention their fear of the Principal Applicant's uncles, Maulvi Khalid, Sipah-e-Sahaba, or their intersect marriage. The CBSA interview notes mostly include details about the Applicants' time in Kuwait and the general tension between Sunnis and Shias in Pakistan. The RAD also noted the Applicants' explanation for the omissions, yet found that – even if they were told to be brief in the interview– it was reasonable for the RPD to draw a negative credibility finding because the Applicants “neglected to mention any of their main allegations underpinning their claim to the CBSA officer.” This conclusion is reasonable and accords with this Court's jurisprudence.

[42] Furthermore, I do not find that the RAD erred by affirming the RPD's negative credibility findings related to the newspaper article. It was reasonable of the RAD to question the lack of effort to obtain the newspaper article, given that the Principal Applicant specifically referenced it in his CBSA interview and indicated that he would attempt to obtain it. The fact that the RAD later rejected evidence containing a translation of the article because it did not meet the test for admissibility does not undermine the reasonableness of this analysis.

[43] Finally, I do not find that the RAD misconstrued or ignored important evidence. It is well established that the RAD is presumed to have considered all the evidence before it and is not required to mention every document (*Toor v Canada (Citizenship and Immigration)*, 2022 FC 773 at para 21; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16-17). Overall, I find that the RAD came to a reasonable conclusion regarding the Applicants' credibility based on a number of inconsistencies and omissions in the evidence that were not sufficiently explained at the RPD hearing.

V. **Conclusion**

[44] For the reasons above, I find the RAD's decision is reasonable. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6246-21

THIS COURT'S JUDGMENT is that:

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

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6246-21

STYLE OF CAUSE: HYDER ALI, HASSAN HYDER, SADIA HAIDER,
MERAB HYDER, MUHAMMAD ZILE AND TAHA
HYDER v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JULY 5, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: AUGUST 4, 2022

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