

Federal Court



Cour fédérale

**Date: 20221020**

**Docket: IMM-4506-21**

**Citation: 2022 FC 1437**

**Ottawa, Ontario, October 20, 2022**

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

**BETWEEN:**

**ALI AZAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ali Azam, seeks judicial review of the decision of the Refugee Appeal Division [RAD] dated June 10, 2021 [Decision] upholding a decision of the Refugee Protection Division's [RPD] dated October 8, 2020 that the Applicant is neither a Convention refugee nor a person in need of protection as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA]. The RAD agreed with the RPD that the Applicant's claim was not credible.

[2] The Applicant submits that the RAD's credibility assessment was unreasonable because it made unsupported findings and seized on inadvertent errors and minor flaws. He further submits that the RAD failed to assess the extensive corroborative documentation provided by the Applicant.

[3] For the reasons that follow, I find no reviewable error on the part of the RAD. The application for judicial review is accordingly dismissed.

I. The Applicant's Refugee Claim

[4] The following is a summary of the facts regarding the Applicant's refugee claim as reported in the RPD's decision.

[5] The Applicant is a 25-year-old Pakistani citizen from Punjab. He is a Shia Muslim from a religious family. The Applicant volunteered at his town's *imambargha* and his father, a retired government employee, made important donations to the congregation hall.

[6] In March 2015, the Applicant claims he started receiving threats by telephone. At the time, he owned a mobile phone store. The unknown caller criticized the Applicant and his family for their wealth and demanded that his father pay some money, failing which the Applicant would be attacked and his store destroyed.

[7] The caller identified himself a few days later as a member of Lashkar-e-Jhangvi [LeJ], a terrorist organization according to the Pakistani government. The Applicant went to the police station to report the threats.

[8] On June 5, 2015, the Applicant received another call criticizing him for going to the police and threatening to steal his family's property and kill his family. The Applicant and his father went to the police to seek police protection; however, the police told them there was nothing to be done since the threats were made by telephone.

[9] On June 10, 2015, some people attacked the Applicant's family home in Mandi Bahauddin, and allegedly tortured the Applicant, his parents and his sister and robbed them. The Applicant claims that the whole family then moved to Lahore, over 200 kilometres away.

[10] Some time later, the Applicant's father received a call advising him that LeJ had been informed that the family had left Madi Bahauddin and they would be killed. Fearing for his son's life, the Applicant's father arranged for the Applicant to relocate to Laos with the help of an agent.

[11] In August 2015, the Applicant left Pakistan and went to Laos to work. However, the Applicant could not establish himself there as work was sporadic, his immigration status was precarious, he had language difficulties and he was lonely.

[12] The Applicant returned to Pakistan in December 2015. He worked at a restaurant for a period of six months, without encountering any problems, and then returned to Laos.

[13] In August 2018, the Applicant returned to Pakistan for a month to renew his passport before returning to Laos.

[14] In November 2018, intending to seek better employment, the Applicant applied for a visa for the United States of America, which he obtained on November 9, 2018.

[15] On January 23, 2019, the Applicant returned once again to Pakistan, this time to visit his family in Lahore. The Applicant learned that members of LeJ, who were allegedly informed of the Applicant's visit, ransacked his sister's home. Following the attack, the Applicant's brother-in-law suffered a heart attack and died.

[16] On February 8, 2019, the Applicant left Pakistan and, after a two-month stay in Laos, arrived in the United States of America on April 9, 2019.

[17] The Applicant entered Canada on August 8, 2019, by way of an irregular border crossing. He was detained and claimed refugee status.

## II. Proceedings before the RPD

[18] On August 13, 2019, the Applicant's refugee protection claim was referred to the RPD.

[19] On September 14, 2020, the Applicant submitted an update of his statements in his Basis of Claim Form [BOC]. According to this update, the Applicant's father informed him that a man named Sofi Ghulam Nabi, a religious cleric and leader of LeJ, and his associates were behind the threats made against his family. In February 2020, the Applicant's family was informed that these individuals were planning an attack on their home in Lahore and, as a result, they relocated to Islamabad. Once there, the family learned that Sofi Ghulam Nabi had filed a blasphemy complaint with the police and issued a *fatwa* against the Applicant and his father.

[20] The Applicant's claim was heard by the RPD on September 22, 2020.

[21] At the hearing, the Applicant, who was represented by counsel, submitted a further updated statement containing changes and corrections to his initial narrative. In support of his claim, the Applicant filed various documents, including proof of volunteer work in his local Shia community, a filed police report, the death certificate of his brother-in-law, letters from the Applicant's local Shia Imam, an affidavit from the Applicant's father, and a copy of the *fatwa* and blasphemy complaint.

### III. RPD's Decision

[22] The RPD determined that the Applicant's claim was not credible. In light of omissions and inconsistencies in the Applicant's evidence, the RPD concluded that little weight should be given to the documents submitted by the Applicant concerning the events that occurred between 2015 and 2020 and that the documents were insufficient to rebut its concerns. The RPD's conclusions are set out in the paragraphs below.

[59] To summarize, given the claimant's three voluntary return trips to Pakistan and his six-month stay in that country during which he resided at his sister's home and worked, as well as certain omissions and inconsistencies identified, the panel concludes that the claimant has failed to discharge his burden of establishing, on a balance of probabilities that he was targeted by Lashkar-e-Jhangvi in Pakistan in 2015, and that he has since been the subject of death threats from this group, of a police complaint and of a *fatwa* issued by Sofi Ghulam Nabi.

[...]

[64] The claimant is from Mandi Bahauddin, Punjab and his family currently live in Islamabad. The panel is therefore of the view that, based on the claimant's personal circumstances, the risk of violence by reason of his religion falls below the threshold of a serious possibility.

#### IV. The RAD Decision

[23] The Applicant filed an appeal before the RAD against the RPD's decision. He did not submit new evidence and did not request an oral hearing.

[24] In his written submissions on appeal, the Applicant argued that the RPD erred in its assessment of his credibility. The arguments focussed on four credibility findings made by the RPD in reaching its conclusion.

[25] The appeal was dismissed by the RAD on June 10, 2021. It agreed with the RPD that the Applicant is not a Convention refugee nor a person in need of protection under sections 96 and 97 of *IRPA* due to the lack of credibility of his allegations.

[26] The RAD specifically addressed in the Decision the four errors alleged to have made by the RPD, concluding as follows:

- a) The RPD was correct in concluding that the Applicant's behaviour showed a lack of subjective fear as he failed to satisfactorily explain his returns to Pakistan in 2016 and 2019;
- b) The RPD was correct in finding the alleged complaint filed by LeJ against the Applicant to be not credible since LeJ is a terrorist group hunted by Pakistani authorities and therefore the religious cleric would not have openly mentioned his organization with LeJ as it is a banned organization;
- c) The RPD was correct in finding unreasonable the Applicant's explanation as to the reasons he declared on two occasions that his parents lived in Mandi Bahauddin (Punjab) and not in Lahore, where they had allegedly moved, out of fear in 2015, and;
- d) The RPD was correct in concluding that the Applicant's Shia profile was not sufficient to support an asylum claim, because, while Shiites are the targets of violence, discrimination and blasphemy charges, the vast majority of them live peacefully alongside their Sunni neighbours without problems.

[27] The Applicant submits that the RAD failed to carefully assess the totality of the evidence presented by the Applicant. He further submits that the RAD ignored plausible explanations and focused on minor flaws and inadvertent errors.

V. Analysis

[28] The only issue to be determined on judicial review is whether the RAD's decision is unreasonable.

[29] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). Findings regarding a claimant's credibility and the assessment of the evidence command a high degree of deference from this Court.

[30] When the standard of reasonableness applies, the Court's focus is on "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The decision must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court "must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[31] The Applicant submits that his reasonable explanations for returning to Pakistan in 2016 and 2019 were rejected without any explanation or appreciable basis. He maintains that it is not open to the RAD to simply state that it is not satisfied with a claimant's explanation for a



perceived inconsistency. The Applicant further submits that there was no evidentiary basis for the RAD's conclusion that the Applicant was not telling the truth when he alleged that his parents found it necessary to relocate to Lahore in 2015 because of threats made by the extremists. I disagree.

[32] Contrary to the Applicant's submissions, the RAD considered the Applicant's explanations and explained in its reasons why it was not satisfied with them. The findings were made after conducting an independent assessment of the entire record, including the audio record of the hearing, the documentary evidence, the RPD's decision and the Applicant's written arguments.

[33] The RAD accepted that the Applicant was required to return to Pakistan in 2018 to renew his passport. However, the RAD concluded that the Applicant had provided no justification for his returns in 2016 and 2019. The Applicant submits that there is nothing implausible about the explanations he provided for returning to Pakistan. However, the Applicant's arguments amount to mere disagreement.

[34] There is nothing unreasonable in the RAD's finding that the Applicant's behaviour in returning to Pakistan in 2016 and 2019 showed a lack of subjective fear. Voluntarily returning to a country where there is a fear of persecution is behaviour that is incompatible with a subjective fear of persecution (*Sujia Rodriguez v. Canada (Citizenship and Immigration)*, 2021 FC 142 at para 19; *Hartono v. Canada (Citizenship and Immigration)*, 2017 FC 601 at para 20; *Milovic v. Canada (Citizenship and Immigration)*, 2015 FC 1008 para 11).

[35] The Applicant submits that there was no evidentiary basis for the RAD's conclusion that the Applicant was not telling the truth when he alleged that his parents found it necessary to relocate to Lahore in 2015 because of threats made by the extremists. I disagree.

[36] The RAD considered the Applicant's explanation that he had inadvertently forgotten to correct his parents' address in his written statements prior to the hearing. The RAD rejected the explanation, stating that it was reasonable to expect that the Applicant would have remembered in 2019, when he completed his refugee claim forms that his parents lived in Lahore, four years after relocating from Mandi Bahauddin. This was a key fact, which underpinned his claim for refugee protection.

[37] The Applicant submits that the RAD had not identified any contradictions or inconsistencies in the Applicant's oral testimony. He points to his answer to another question in his IMM5669 form listing his residence as "Lahore" in 2019, which he claims would have been consistent with his narrative and is fact that the RAD did not address. He also points to his father's affidavit, which indicated that it had been stamped and sworn in Islamabad, the very city the Applicant alleged his parents had moved after the raid on his sister's residence in Lahore. According to the Applicant, the affidavit supported his contention that his family had been forced to relocate and was moving around. Yet, the RAD failed to mention or address this evidence. It is important to note that this argument was not advanced by the Applicant before the RPD, let alone the RAD.

[38] As for the copy of the police complaint filed by the Applicant's alleged persecutor, in which the persecutor identified himself as a member of a terrorist group, the Applicant did not challenge in his Further Memorandum or at the hearing before me the RAD's finding that it made no sense that a member of a terrorist group wanted by the authorities would openly write to police officials. Nor, for that matter, did the Applicant take issue with the RAD's finding that the Applicant's Shia profile was not sufficient to support an asylum claim.

[39] The Applicant submits that the RAD committed a reviewable error by only analyzing the police complaint filed by the religious cleric to conclude that the Applicant was not credible. The Applicant criticizes the RAD for failing to look at the rest of the documents that he claims could have corroborated his claim either in whole or in part. According to the Applicant, since they were not addressed in the Decision, this leads to the inference that they were ignored. I disagree.

[40] It is well established that a decision maker, such as the RAD, is presumed to have weighed and considered all the evidence presented unless the contrary is shown and a failure to refer to some relevant evidence will typically not justify a finding that the decision was made without regard to the evidence. As noted by the RAD in its reasons, all the evidence was considered.

[41] The RDP specifically stated in its decision that the Applicant's documents were given little weight given the significant credibility problems identified earlier in its decision. The Applicant did not contest this finding in his appeal to the RAD and now alleges, in a general

statement, that all of the documents submitted by the Applicant “might have overcome the RAD’s credibility concerns.”

[42] The Applicant is essentially inviting this Court to revisit the factual record and make factual findings in his favour. That is not this Court’s role on judicial review. If there was anything relevant in the documents filed by the Applicant that was overlooked by the RPD, it was incumbent on the Applicant to draw it to the RAD’s attention. As I stated in *Hoch v. Canada (Citizenship and Immigration)*, 2018 FC 580 at para. 18: “The RAD cannot be faulted for failing to consider arguments that were never raised.”

[43] Upon considering the written and oral submissions of the Applicant and reviewing the evidence in the Certified Tribunal Record, I see no reviewable error on the part of the RAD in dismissing the Applicant’s appeal. The RAD considered all the arguments put forward by the Applicant and provided detailed reasons for rejecting them.

[44] The RAD’s Decision is well founded in fact and in law. For these reasons, the application for judicial review is dismissed.

[45] Neither party has submitted any questions of general importance for certification, and no such question arises in this case.

**JUDGMENT IN IMM-4506-21**

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

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

**“Roger R. Lafrenière”**  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-4506-21

**STYLE OF CAUSE:** ALI AZAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 18, 2022

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** OCTOBER 20, 2022

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