

Federal Court



Cour fédérale

Date: 20230210

Docket: IMM-399-22

Citation: 2023 FC 200

Ottawa, Ontario, February 10, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

VINAY TALWAR AND POOJA TALWAR

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the “RAD”], dated December 23, 2021 [the “Decision”], which dismissed the Applicants’ appeal and upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board [the “RPD”], dated August 17, 2021.

[2] The RPD and the RAD found that the Applicants were neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[3] The Applicants Vinay Talwar [the “Principal Applicant”] and his wife Pooja Talwar [the “Associate Applicant”] are citizens of India. Prior to entering Canada, the Applicants lived in the city of Jalandhar, Punjab, India. They have two children still residing in India.

[4] The Applicants claim to fear persecution due to their political beliefs. The Principal Applicant is a supporter of the Bharatiya Janata Party [the “BJP”] and claims to have been especially vocal in his support for the BJP and in his opposition to the rival political party, the Indian National Congress [the “Congress Party” or “Congress”], during the Punjab state elections in February 2017. The Applicants claim that, because of the Principal Applicant’s political activism, members and supporters of the Congress Party began harassing them.

[5] This harassment allegedly began with a threatening phone call and escalated thereafter. In his narrative, the Principal Applicant describes the following incidents:

- A. Approximately one month after the February 2017 elections, the Principal Applicant received a threatening phone call.

- B. One week after the phone call, as the Principal Applicant was returning home from work, a gang of five men assaulted him for his anti-Congress activism. When the Principal Applicant attempted to report the incident to local police, they refused to allow him to file a report and urged him to refrain from criticizing the Congress Party.

- C. In August 2017, the Principal Applicant returned home from work to find the Associate Applicant visibly shaken. She told the Principal Applicant that three men came to their home searching for him while he was away. The following day the Principal Applicant received a phone call threatening him for supporting the BJP.

- D. In October 2017, four men attacked the Principal Applicant and told him that this was his last warning. If he continued his pro-BJP or anti-Congress activism, he would be killed. Once more, the Principal Applicant attempted to report the assault to the police. The police, upset at the Applicant for not heeding their previous warning, detained the Applicant and assaulted him.

- E. In March 2018, the Applicants and their children returned home from a trip to the market. Their neighbour told the Principal Applicant that four men had been at the Applicants' home looking for them.

[6] In August 2018, the Applicants left India and entered Canada on visitor visas. The Applicants applied for refugee protection in May 2019.

[7] In its decision dated August 17, 2021, the RPD rejected the Applicants' refugee claim, finding them to be neither Convention refugees nor persons in need of protection. The dispositive issue for the RPD was the Applicants' credibility. The RPD found the Applicants' testimony regarding his involvement with the BJP contained material omissions, lacked detail and was contradictory and evolving during the hearing. The RPD points to the following aspects of the Applicants' testimony:

- A. The length and nature of the Principal Applicant's involvement with the BJP was unclear and consequently he failed to establish that he was a member or perceived member of the party:
 - i. The Principal Applicant initially testified that he had been a supporter for the party "for quite a long time and from 2016". When confronted with his Schedule A form, where he claimed he was a supporter since January 1997, he responded that he was a supporter from 1997 but became a member in 2016. However, the Principal Applicant appeared to know little about the workings of party membership. He did not know whether the BJP issued membership cards or charged membership dues.
 - ii. The Principal Applicant testified that he had stopped supporting the BJP after entering Canada but stated that if he were in India he would continue to support the BJP. When asked to explain the discrepancy, the Principal Applicant expressed fear over the safety of his parents and children, who remain in India.

- B. The Associate Applicant's testimony about whether the Applicants' family members in India had been harassed since the Applicants left was vague. She eventually stated that she learned approximately one year ago that Congress Party supporters surveilled the Applicants' Indian home. However, the Applicants never mentioned this in their Basis of Claim forms.

- C. In their Basis of Claim form, the Applicants indicated that their languages were Hindi and Punjabi. When exploring the possibility of Bengaluru as an Internal Flight Alternative, the Applicants downplayed their Hindi proficiency to reduce the viability of relocation.

- D. The Associate Applicant has not demonstrated that she faces a well-founded fear of persecution based on membership in a particular social group, as a woman. The Associate Applicant claimed that members of the Congress Party had attempted to sexually assault her when they came looking for her husband in 2017. This likely did not occur; given that the RPD found the Applicants had not established that the Principal Applicant was an actual or perceived member of the BJP, there was no reason for Congress Party members to come looking for him.

- E. Letters submitted by family members and neighbours in support of the Applicants' claim are vague and do not alleviate the key deficiencies in the Applicants' testimony.

[8] The Applicants appealed the RPD decision to the RAD. In the Decision, dated December 23, 2021, the RAD dismissed the Applicants' appeal, upholding the RPD's decision. The Applicants seek judicial review of the Decision.

III. Decision Under Review

[9] On appeal to the RAD, the Applicants advanced two arguments. First, the Applicants argued that faulty English-Punjabi language interpretation during their RPD hearing resulted in a breach of procedural fairness. Second, they argued that the RPD erred in its negative assessment of the Applicants' credibility.

[10] The RAD accepted new evidence submitted by the Applicants under subsection 110(4) of the IRPA. The evidence is a declaration from Navdeep S. Atwal, an interpreter certified by the Society of Translators and Interpreters of British Columbia that purports to highlight deficiencies with the RPD interpreter's translation.

[11] The RAD rejected the Applicants' faulty translation argument, finding that the Applicants received adequate interpretation during the hearing, as they were able to understand what the RPD member asked of them and relay their story. The RAD made the following relevant findings:

- A. Mr. Atwal's declaration is worthy of little weight because of its lack of detail. It does not refer to any specific translation errors that occurred during the RPD proceeding.

- B. Interpretation errors that occurred during the hearing were clarified during the hearing.
- i. The Associate Applicant was asked why the Applicants came to Canada. She stated that they came as visitors. At that point, the Applicants' counsel objected to the question and stated that the question was incorrectly translated as "how did you come to Canada" instead of "what was your purpose of coming to Canada". Counsel also stated that this particular interpreter "did have some problem in the past...but I have no objection". The RPD rephrased the question and the Associate Applicant responded that they came to Canada to save their lives.
 - ii. There was a dispute between the interpreter and counsel as to whether the Associate Applicant had used the words "sexual harassment" when recounting the story of how men looking for her husband harassed her. The interpreter stated that the Associate Applicant had not used the words whereas Applicants' Counsel insisted she had. The Associate Applicant clarified to the RPD that the men had in fact tried to rape her.

[12] The RAD also dismissed the Applicants' argument relating to the RPD's credibility findings. The Applicants argued that there is a presumption that sworn testimony is true and, in this case, there was no reason to override that presumption. The RAD found that the RPD had sufficient reason to doubt the Applicants' credibility, including the inconsistencies and lack of detail in their stories.

[13] Finding no breach of procedural fairness and echoing the RPD's credibility finding, the RAD found the Applicants would not face a serious possibility of persecution if returned to India and dismissed the appeal.

IV. Issues

A. Did the RAD err when finding that the Applicants did not receive inadequate interpretation that would amount to a breach of procedural fairness?

B. Did the RAD err in its assessment of the Applicants' credibility?

V. Standard of Review

[14] The substantive standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[15] The standard of review for issues relating to procedural fairness is correctness or a standard of the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34-35 and 54-55 [*CPR*], citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). Ultimately, the question is whether the party knew the case to meet and had the opportunity to meet it (*CPR* at para 41).

VI. Analysis

- A. *Did the RAD err when finding that the Applicants did not receive inadequate interpretation that would amount to a breach of procedural fairness?*

[16] Section 14 of the Charter of Rights and Freedoms guarantees the right to the assistance of an interpreter to parties who do not understand or speak the language in which the proceedings are conducted.

[17] Interpretation services provided to applicants in the refugee proceeding context must be “continuous, precise, competent, impartial and contemporaneous” (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 FC 85 at para 4 [*Mohammadian*]). The standard of interpretation provided at a hearing need not be perfect or without flaw (*Mohammadian* at para 6, citing *R v Tran*, [1994] 2 SCR 951 at 987 [*Tran*]). What is important is that a tribunal observes the principle of linguistic understanding so that claimants are not disadvantaged by virtue of the language they speak (*Mohammadian* at para 6; *Tran* at 978).

[18] Applicants alleging inadequate interpretation do not have to establish actual prejudice, but must identify material errors – that is, errors that are not insignificant and trivial (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 28-30).

[19] The Applicants argue that they received inadequate interpretation services at the RPD and that the RAD erred in failing to recognize that this constituted a breach of procedural fairness.

Principally, the Applicants take issue with the RAD's treatment of Mr. Atwal's declaration. According to the Applicants, the RAD was wrong to attribute little weight to Mr. Atwal's declaration because it did not contain specific examples of translation errors without first giving the Applicants or Mr. Atwal an opportunity to respond.

[20] I find no breach of procedural fairness due to inadequate translation services. The RAD committed no error in its assessment of Mr. Atwal's declaration. The RAD correctly observed that the declaration does not identify any translation errors. In his declaration, Mr. Atwal criticizes the RPD interpreter in generalities, stating in various ways that the interpreter failed to properly convey meaning from English to Punjabi; however, Mr. Atwal's declaration fails to identify a single instance where the interpreter translated a statement incorrectly. Without knowing what was relayed to the Applicants in comparison to what ought to have been relayed, it is impossible for the RAD, or the Court, to conclude whether there has been an error and whether that error amounts to material error. Moreover, there was no objection to the translation being a problem before the RPD that would have prevented the Applicants from being able to sufficiently and reasonably tell their story so that it could be properly considered.

[21] There was also no obligation for the RAD to reach out to the Applicants or Mr. Atwal to request examples of specific translation errors. It is not the RAD's responsibility to remedy deficiencies in the Applicants' evidence. In any event, the RAD canvassed the record and independently identified two possible translation errors that it reasonably concluded were remedied and therefore immaterial.

[22] There was no breach of procedural fairness.

B. *Did the RAD err in its assessment of the Applicants' credibility?*

[23] The Applicants argue that the RAD's credibility finding was unreasonable. The Applicants rely on the principal that a refugee claimant's testimony is presumed true, absent indication to the contrary. Further, the Applicants argue that the RAD improperly expected corroboration of their testimony.

[24] I find the RAD's credibility determinations reasonable. The presumption of truthfulness may be defeated by contradictions and inconsistencies in testimony (*Sun v Canada (Citizenship and Immigration)*, 2020 FC 477 at para 38 citing *Canada (Minister of Employment and Immigration) v Dan-Ash*, [1988] FCJ No 571, 93 NR 33 (CA)). The RAD found the presumption of truthfulness of the Applicants' testimony was overcome by its evolving nature and material inconsistencies.

[25] The RAD reasonably endorsed the reasons the RPD had provided for doubting the Applicants' testimony and noted that the RPD did not make an adverse credibility finding *solely* based on a lack of corroboration, as there were several independent reasons to doubt the testimony's truthfulness.

JUDGMENT in IMM-399-22

THIS COURT'S JUDGMENT is that:

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

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-399-22

STYLE OF CAUSE: VINAY TALWAR AND POOJA TALWAR v THE
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