

Federal Court



Cour fédérale

Date: 20230503

Docket: IMM-2372-22

Citation: 2023 FC 642

Ottawa, Ontario, May 3, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**KAZI MOHAMMED REJUYAN
ITI KHATUN
KAZI MOHAMMAD SHOPNO
RAVIA REJUYAN
RIZWANA REJUYAN ROJE**

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 Protection Division (“RPD”) dated February 24, 2022, determining that the Applicants’ claims have no credible basis and are manifestly unfounded pursuant to sections 107(2) and 107.1 of the *Immigration and*

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

[2] The Applicants submit that the RPD unreasonably concluded that their claims have no credible basis and are manifestly unfounded because the RPD failed to address all the evidence before it and did not justify its conclusions.

[3] For the reasons that follow, I find that the RPD’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicants*

[4] Kazi Mohammed Rejuyan (the “Principal Applicant”), Iti Khatun (the “Associate Applicant”), and their three children (collectively the “Applicants”) are citizens of India and identify as Muslim.

[5] The Principal Applicant’s amended Basis of Claim (“BOC”) narrative indicates that he owned and operated several successful businesses in Kolkata, West Bengal. The Principal Applicant alleges that members of the Bharatiya Janata Party (“BJP”) and the Rashtriya Swayamsevak Sangh (“RSS”) in West Bengal extorted, threatened, and assaulted him and his family.

[6] After the BJP became the ruling party in 2014, Hindu nationalism and anti-Muslim violence increased in India. In response to growing Hindu nationalism, the Principal Applicant and his spouse founded and operated a non-profit organization to educate the Muslim community on standing up for their rights through non-violence. In December 2018, the Principal Applicant and his spouse arranged a procession to protest the lynching of Muslims across India. The Principal Applicant claims that armed men wearing RSS attire attacked the procession and beat him. The Principal Applicant allegedly sustained injuries and received medical treatment at a clinic. When he tried to report the attack, the police allegedly refused to allow him to file a complaint because he could not identify his attackers individually.

[7] The Principal Applicant claims that in June 2019, he won a valuable contract by outbidding a competing business owned by a BJP member. The competitor allegedly threatened the Principal Applicant and demanded that he withdraw his bid. When the Principal Applicant refused, he claims a BJP leader summoned him to an urgent meeting where the BJP leader hurled racial slurs at him and slapped him. The BJP leader allegedly demanded that the Principal Applicant hand his profits over to the competing BJP member and make a “donation” to the BJP. The Principal Applicant says that he reported the incident to the police, who refused to take a complaint against the BJP leader for fear of retribution.

[8] On June 19, 2019, the Principal Applicant alleges that he was on his way home when several men emerged from a car and beat him. The Principal Applicant claims that one of the men handed him a cellphone with a deputy of the BJP leader on the line. The deputy allegedly chastised the Principal Applicant for reporting the BJP leader to the police and doubled the

“donation” amount required of the Principal Applicant. The Principal Applicant claims he was hospitalized with injuries from the attack and discharged on June 24, 2019.

[9] In July 2019, the Principal Applicant claims that members of the BJP attacked his employees and robbed his warehouse. In August 2019, during Eid, the Principal Applicant and his relatives sacrificed a cow at his house. A mob chanting “Jai Sree Ram” allegedly attacked and beat them, including the minor Applicants. The Applicants claim they sustained injuries and were treated in a hospital.

[10] Later in August 2019, the Principal Applicant claims he received a call from the BJP deputy who reminded him that he had missed the deadline for making the “donation” required of him. Two days later, the Principal Applicant claims that BJP members abducted him and demanded a ransom from his wife. The Principal Applicant’s wife allegedly paid part of the ransom by selling her jewelry and borrowing from a moneylender at a high interest rate to secure the Principal Applicant’s release.

[11] The Applicants allegedly had two weeks to pay the remaining ransom. The Applicants claim they could not come up with the money in two weeks so they fled to Bangalore, Karnataka on August 23, 2019. They allegedly rented a house in Bangalore and stayed there until BJP members broke into their house on September 15, 2019. The Applicants claim they escaped and fled to a friend’s house in Delhi. In early October 2019, the Principal Applicant claims that BJP members came to his friend’s house while he was away and asked for his whereabouts, accusing him of stealing from the BJP.

[12] The Applicants claim they decided to flee India. The Principal Applicant alleges that his relative retrieved the Applicants' passports from the Applicants' home in Kolkata and met the Applicants at the Kolkata airport to give them their passports.

[13] The Applicants arrived in Canada on October 11, 2019. They made claims for refugee protection on October 30, 2019, based on their fear of persecution in India. The Principal Applicant amended his BOC narrative on February 5, 2021. The RPD heard the Applicants' claims on February 16 and December 2, 2021.

B. *Decision Under Review*

[14] In a decision dated February 24, 2022, the RPD dismissed the Applicants' claims on the basis that they have no credible basis and are manifestly unfounded.

[15] The RPD noted a number of irregularities in the Applicants' evidence, including:

- A. Describing the alleged attack in December 2018, the Principal Applicant wrote in his BOC narrative that an assailant stuck his left elbow with a stick, resulting in a loss of sensation in his left hand. In his testimony, the Principal Applicant said he was beaten with a stick and fell on his left hand, resulting in a loss of sensation.
- B. The Principal Applicant's discharge summary documenting his medical treatment after the alleged attack in December 2018 contains odd and inappropriate uses of English that one would not expect given that English is used all over India. The

Principal Applicant's cousin was able to obtain the discharge summary from the clinic without his written direction. The RPD concluded that the discharge summary was probably manufactured for the hearing.

- C. The Principal Applicant wrote in his BOC narrative that he finalized the bid he won in June 2019, but in testimony he was unable to say what steps remained to finalize it and claimed his bid had been accepted. The RPD concluded that the Principal Applicant's allegations about threats from the competing business owned by a BJP member were probably manufactured.
- D. The allegation that the BJP leader told the Principal Applicant to hand his profits over to the competing business owner is "too unrealistic to be true" because the exact amount of the Principal Applicant's profits from the winning bid were unknown at the time.
- E. The Principal Applicant testified that the BJP leader doubled his required "donation" during the June 19, 2019 attack and gave him no time limit for making the "donation." The RPD found that a demand for money without a time limit is meaningless and, as a result, that the June 19, 2019 incident probably did not occur.
- F. The Principal Applicant's discharge summary following the June 19, 2019 attack contained language that the RPD found are foreign to medical records. The Principal Applicant testified that he obtained the discharge summary by calling the hospital, providing identifying information, and requesting that they release the

discharge summary to his cousin. However, he could not explain why only he could have given that identifying information. The RPD concluded that the discharge summary is probably a fake.

- G. The Principal Applicant testified that he obtained the Applicants' discharge summaries from the alleged August 2019 attack by speaking to the hospital and sending in his identification card. However, he provided no record of sending his identification card to or communicating with the hospital and no record of a written direction signed by him. The RPD concluded that the documents are probably not genuine.
- H. The Applicants provided an affidavit sworn by the Principal Applicant's maternal cousin who affirms that he took the Applicants to the hospital after the August 2019 attack. The RPD gave the affidavit no weight in view of its finding that the hospital records are likely not genuine.
- I. The Applicants presented no documentary evidence to corroborate the allegation that the Principal Applicant's spouse sold her jewelry and borrowed from a moneylender to secure his release in August 2019. The RPD found that the lack of documentary evidence undermines the claim that the Principal Applicant was abducted and released after paying a portion of the ransom demanded.
- J. The Principal Applicant testified that the Applicants rented a car to get to the airport in Kolkata then testified that they took a taxi, not a rental car. The RPD

found that the Principal Applicant changed his story when “an obvious and material contradiction was on the horizon,” undermining his claim that someone else retrieved the Applicants’ passports from their house and that they were ever in Bangalore and Delhi.

- K. The Applicants did not make refugee claims in the airport on arrival in Canada. The Principal Applicant testified that he did not know he had to make a claim at the airport and, later, that he was not mentally stable when he arrived. The RPD noted the lack of medical records of the Principal Applicant’s mental health and found that the delay in claiming refugee protection undermines the Applicants’ claims.

- L. The Principal Applicant presented a death certificate of his younger brother who died on April 2, 2021 and testified that his brother was beaten and killed by men who were searching for the Principal Applicant. The RPD was not satisfied that the Principal Applicant’s brother died from a beating related to the Principal Applicant because the Applicants presented no police report or inquest into the younger brother’s death.

[16] The RPD noted a number of allegations without explicitly accepting or rejecting them, including that the Principal Applicant founded a non-profit organization dedicated to educating Muslims about their rights, that the Principal Applicant tried to report the December 2018 attack to police, and that BJP members robbed the Principal Applicant’s warehouse in July 2019.

[17] The RPD concluded that the Applicants' claims have no credible basis and are manifestly unfounded, thereby rejecting them.

III. Issue and Standard of Review

[18] The Sole issue in this application is whether the RPD's decision is reasonable.

[19] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[20] 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).

IV. Analysis

[21] The Applicants challenge the RPD's determinations that their claims have no credible basis and are manifestly unreasonable. I find that the RPD's decision is reasonable.

A. *No Credible Basis*

[22] Serious consequences flow from a finding by the RPD that a claim has no credible basis or is manifestly unfounded. Either finding bars a claimant from appealing an RPD decision to the Refugee Appeal Division pursuant to section 110(2)(c) of *IRPA*. It also denies the claimant a statutory stay of removal pending the Federal Court's determination of an application for leave and judicial review pursuant to section 49(2)(c) of *IRPA* and section 231(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[23] Given the significant consequences, this Court held that the threshold for finding that a claim has no credible basis or is manifestly unfounded is high (*Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 18 ("*Ramón Levario*"); *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 at para 45). The RPD cannot find that there is no credible basis for the claim if there is any credible or trustworthy evidence that could support a positive determination even if, ultimately, the RPD finds that the claim has not been established on a balance of probabilities (*Ramón Levario* at paras 18-19; *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51 ("*Rahaman*").

[24] The Applicants submit that the RPD's no credible basis finding is unreasonable because the RPD failed to expressly address all the evidence before it. The Applicants submit that they proffered evidence verifying their identities, the Principal Applicant's business background, and the non-profit organization that the Principal Applicant founded. The Applicants also provided objective country conditions evidence documenting the persecution Muslims face in India. The

Applicants maintain that, even with the RPD's credibility concerns, the Applicants have provided evidence that could support a positive determination. The Applicants submit that the RPD failed to analyze the Applicants' risk based on the evidence before it.

[25] The Applicants contend that, instead of considering all of the evidence before it, the RPD ignored evidence that contradicted its findings. The Applicants provided letters and affidavits corroborating their allegations, a police report, and medical records, which the RPD either did not mention or discussed but did not determinatively evaluate. The Applicants contend that the RPD cannot support a no credible basis finding without considering all the evidence.

[26] The Applicants further submit that the RPD failed to explain how it arrived at the no credible basis determination. The RPD only raises this determination in its conclusion. The preceding analysis addresses the credibility of individual pieces of evidence. The Applicants maintain that the RPD's findings that the Principal Claimant lacks credibility and that supporting evidence is insufficient are not adequate grounds for a no credible basis determination.

[27] The Applicants cite *Mahdi v Canada (Citizenship and Immigration)*, 2016 FC 218, where this Court held that a no credible basis determination "cannot be either a catch-all, a throwaway line or a summary of insufficiency and weighing of evidence pros and cons" (at para 10). The Applicants contend that the RPD unreasonably stated its no credible basis determination as a catch-all in the concluding paragraph and failed to justify its determination.

[28] The Respondent submits that the RPD conducted a thorough analysis of the evidence.

The Respondent states that the RPD found some documents insufficient to support the claim and others likely fraudulent, and concluded that the Applicants' claims have no credible basis.

[29] The Respondent maintains that the existence of some genuine evidence does not impugn the finding of no credible basis. There must be credible evidence capable of supporting the claim. The Respondent submits that the Applicants' identity documents, business records, and objective country conditions evidence do not support the core allegations of the claims and could not support a positive determination. The Respondent contends that the Applicants do not allege risk in India simply based on their religion. Therefore, the Respondent argues, evidence of anti-Muslim sentiment in India is insufficient to support a positive determination because the core of the Applicants' claim is the risk of persecution by the BJP due to a personal vendetta.

[30] I agree with the Respondent. I do not take the RPD's reasons to mean that any one of the pieces of evidence found to lack credibility are sufficient to base a finding that the Applicants' claim has no credible basis. Rather, the RPD reasonably found that when read overall, there are numerous concerns related to the credibility of the Applicants' evidence, which all touch on the core of the Applicants' claim. While the RPD did not have any doubt as to the Principal Applicant's identity, or the fact that he owned businesses, all the evidence concerning the central elements of the Applicants' claim—that he was extorted or subsequently threatened and assaulted—lack credibility. It is therefore reasonable for the RPD to find that the Applicants' claim has no credible basis and its reasons reveal an intelligible and justified examination of the evidence to arrive at this conclusion.

B. *Manifestly Unfounded*

[31] Section 107.1 of *IRPA* directs the RPD to state that a claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent. Citing *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at paragraph 23 (“*Warsame*”), my colleague Justice Norris recently summarized the principles that guide the application of section 107.1 of the *IRPA* in *Matthew v Canada (Citizenship and Immigration)*, 2022 FC 924 at paragraph 8:

It is the claim itself that must be fraudulent. The use of fraudulent documents to escape persecution or to enter Canada is not sufficient. However, once making a claim for refugee protection, that claimant must “operate with clean hands and statements in support of the claim have to be accurate or they could be held against the claimant” (at para 27).

For a claim to be fraudulent, “it would be required that a situation be represented of being of a certain character when it is not” (at para 30). Not every misstatement or falsehood would make a claim fraudulent. “It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way” (at para 30). For a claim to be clearly fraudulent, “there must be an attempt to deceive in a substantial or material manner with respect to the determination of the status” (at para 32). Falsehoods that are “merely marginal or are antecedent to the claim would not qualify” (at para 31).

The use of the word “clearly” denotes how firm the finding that the claim is fraudulent must be. (I would add that the same could be said about the word “manifestly”.) To make a finding that a claim is clearly fraudulent, the decision maker must have “the firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted” (at para 31).

[32] As with the RPD's finding under section 107(2), the Applicants submit that the RPD failed to explain how it arrived at its finding under section 107.1. The Applicants contend that the high threshold for findings under section 107.1 requires proper justification. Without that justification, the determination that the claims are manifestly unfounded is unreasonable.

[33] The Applicants further submit that there was no direct evidence of clear fraud relating to the central aspects of the Applicants' claim. Rather, the RPD drew negative credibility inferences from some evidence and found that some documents were likely manufactured or fraudulent. The Applicants cite *Brindar v Canada (Citizenship and Immigration)*, 2016 FC 1216, for the proposition that a negative credibility finding does not render a claim manifestly unfounded.

[34] The Respondent submits that there are clear reasons behind the RPD's finding that the claims are manifestly unfounded: the RPD found material aspects of the Applicants' claims untrue and it found that the Applicants relied on manufactured or fraudulent documents. These findings are interspersed throughout the RPD's reasons.

[35] The Respondent contends that the RPD did not simply find the evidence insufficient to support the allegations. Rather, the RPD clearly found the Applicants' account fraudulent and their evidence manufactured. The Respondent submits that the RPD reasonably concluded that the Applicants' claims are manifestly unfounded.

[36] While I agree with the Applicants' submission that an analysis of whether a claim is manifestly unfounded is separate and distinct from a negative credibility finding, I do not find that the RPD committed the error of supplanting one assessment for the other. The Applicants' evidentiary record contains a variety of documents proffered in support of central allegations that appear to be fraudulent and the RPD conducted a thorough and reasoned assessment of this evidence. The Applicants' submission that the RPD's occasional use of modifying language signals the unreasonableness of its finding that the claim is manifestly unfounded amounts to a "line-by-line treasure hunt for error" (*Vavilov* at para 102). This is insufficient to displace the overall reasonableness of the RPD's finding that the Applicants' evidence, when viewed in totality, is fraudulent, and central elements of the claim appear to be manufactured.

V. Conclusion

[37] This application for judicial review is dismissed. The RPD's determination that the Applicants' claims have no credible basis and are manifestly unfounded is justified in light of the record. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2372-22

THIS COURT'S JUDGMENT is that:

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

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2372-22

STYLE OF CAUSE: KAZI MOHAMMED REJUYAN, ITI KHATUN, KAZI MOHAMMAD SHOPNO, RAVIA REJUYAN AND RIZWANA REJUYAN ROJE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: MAY 3, 2023

APPEARANCES:

Allen Chao-Ho Chang	FOR THE APPLICANTS
Rachel Hepburn Craig	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT