

Federal Court



Cour fédérale

Date: 20230628

Docket: IMM-5553-22

Citation: 2023 FC 903

Toronto, Ontario, June 28, 2023

PRESENT: Madam Justice Go

BETWEEN:

SHAKTI, Daanya MALHOTRA, Indu MALHOTRA

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Shakti [the “Principal Applicant” or “PA”], his wife Indu Malhotra, and their minor daughter Daanya Malhotra [together, the “Applicants”] are citizens of India.

[2] According to the Applicants’ Basis of Claim [BOC] narrative, the Principal Applicant engaged in a variety of activities that attracted the ire of Indian authorities, drug dealers and their

associated goons. The PA alleged in his BOC that he established a youth welfare club in 2016 to help lower cast members of the neighbourhood file documents for various departments. The Applicants further claimed that they were interrogated and tortured by the police because of the PA's support for his domestic helper after she was assaulted by unidentified men, on the basis that her husband was allegedly involved with Muslim terrorists. At the RPD hearing, the PA testified that he was also outspoken against thugs in the community who sold drugs, harassed and extorted the community, and that this was the primary reason that led to his persecution.

[3] The PA fled India and arrived in Canada in December 2017, followed by his wife and daughter sometime after his wife's release from police detention in March 2018. The Applicants made a refugee claim in June 2018.

[4] The Refugee Protection Division [RPD] rejected the Applicants' claim in February 2022 on credibility grounds. In a decision dated May 25, 2022, the Refugee Appeal Division [RAD] upheld the RPD's credibility findings and confirmed that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* [Decision].

[5] The Applicants seek judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[6] The only issue is whether the RAD's credibility findings were unreasonable in light of the evidence before it.

[7] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] 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 and 133-135.

[9] For a decision to be unreasonable, the Applicants 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.

III. Analysis

[10] The Applicants focus their challenge on the RAD's finding surrounding the omission of the PA's anti-drug activism from the BOC narrative. Both the RPD and RAD interpreted the Applicants' claim to state that it was these anti-drug activities that motivated the agents of harm to target the PA. When questioned about the omission at the RPD hearing, the PA insisted that his use of the word "social" covered his activism against illegal drugs. The RPD and RAD did not accept this explanation to be reasonable.

[11] Instead, the RAD agreed with the RPD that the omission from the BOC narrative of the allegation that the PA's anti-drug activism motivated the agents of harm significantly undermined the Applicants' credibility, as it related to the very activity that resulted in persecution. The RAD also agreed with the RPD's finding that the omission of the first instances of police harassment from the BOC undermined the Applicants' credibility, but found that this omission was not, on its own, determinative.

[12] Before this Court, the Applicants now argue that the RAD misinterpreted the evidence in arriving at its conclusion. The Applicants submit that a close review of the PA's BOC narrative shows that the activism against drugs was not omitted, as viewed in its entirety, it is clear that the PA was active against goons who were also selling drugs, and as such the PA was active against drugs.

[13] The Applicants highlight the following excerpt of their narrative:

At the same time, we have been active against goons who were collecting goonda tax and harassing people including females. We also find out they were selling drugs in the area and, the society was scared of them.

[14] As such, the Applicants argue that the RPD and RAD's finding that his involvement in anti-drug activities was omitted is unreasonable. Relying on the definition of "omit" in the Merriam Webster online dictionary, the Applicants submit that the PA's involvement against drugs was not excluded or left out from his narrative, as it was mentioned, albeit not in detail.

[15] I reject the Applicants' arguments for the following reasons.

[16] First, I note that the RAD did consider the above-quoted passage in the Applicants' BOC narrative and noted that while the PA "does mention that there are drugs and drug dealers in his community, at no point in his written materials does he claim to be targeted because of his anti-drug advocacy." The Applicants did not point to any reviewable error with respect to this finding, other than to reiterate that read as whole, he did mention his activism against the goons who were selling drugs, and therefore he was active in anti-drug advocacy. As the Respondent points out, the Applicants' argument does not undermine the reasonableness of the RAD's analysis, but amounts to seeking a correctness review by this Court.

[17] Second, I find the cases cited by the Applicants distinguishable on the facts.

[18] The Applicants rely on *Canada (Minister of Citizenship and Immigration) v Chen*, 2004 FC 1403 [*Chen*], where the RPD accepted the applicant's explanations for inconsistencies and

omissions between her oral testimony and her narrative: at para 14. In reviewing the decision, the Court upheld the RPD's findings, noting that it had other grounds upon which to reasonably find the applicant a straightforward, credible witness despite the inconsistencies and omissions; these grounds included the RPD's consideration of the applicant's demeanor, her young age, inability to speak English, lengthy detention, and general anxiety: *Chen* at para 14.

[19] As the Respondent submits, and I agree, the main thrust of *Chen* is that deference is owed to the decision-maker on a credibility finding, be it positive or negative.

[20] *Chen* is also distinguishable on several other aspects. In the case at bar, other than a brief reference to his living in fear and that he may have forgotten some details, the PA offered no medical evidence to support that he had memory issues at the time of preparing the BOC, nor did he point to any other consideration that might mitigate the RAD's credibility concerns.

[21] Moreover, unlike *Chen*, the Decision was not based on the above-noted omission alone, but relied on the totality of the negative credibility findings. For instance, the RAD assessed various supporting documents provided by the Applicants, which it found undermined the Applicants' credibility. The RAD also found a medical report detailing the treatment received by the PA after he was attacked to be not authentic, as it did not include significant treatments the PA testified he received. Finally, the RAD found two summonses provided by the Applicants not authentic based on country condition evidence detailing the process of issuing summonses and the formatting they should contain. The Applicants do not contest any of these other credibility findings in the present application.

[22] The Applicants also cited *Veres v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 124 [*Veres*], where the Court confirmed that omissions from BOC narratives must be assessed in the circumstances surrounding the omission: at para 25. I find the Applicants' reliance on *Veres* misplaced, as the legal principles enumerated in that case primarily focus on instances where a claimant has not given evidence in chief, and an omission is revealed through their cross-examination: at para 25.

[23] Finally, the case of *Cao v Canada (Citizenship and Immigration)*, 2012 FC 694, is distinguishable because here, both the RPD and RAD provided some analysis and specifically addressed the PA's explanations regarding the omissions from his BOC.

[24] Before me, the Applicants further submitted that the RAD's finding with respect to the omission of the anti-drug activism was so significant that it may have influenced all the other credibility findings made by the RAD. Further, the Applicants argued that even though some of the other credibility concerns could have been upheld as reasonable, this one error with regard to the omission was so erroneous that it rendered the entire Decision unreasonable.

[25] I reject these additional arguments. The RAD made clear that its findings of credibility were not based solely on the omission of the anti-drug activism, but also on several inconsistencies and reliability concerns in the documentary evidence provided by the Applicants that remain undisturbed. I agree with the Respondent that the unchallenged findings were sufficient on their own to support the Decision. I also agree that while the RAD found the

omission of the police harassment non-determinative, it does not mean that all the other negative credibility findings were similarly so.

[26] In conclusion, the Applicants have not addressed several other material credibility findings, apart from the omission of the first instances of police harassment that the RAD found not determinative. They have failed to demonstrate any reviewable error with respect the RAD's finding concerning the omission of the anti-drug activities in the Applicants' BOC. As such, I find it reasonable for the RAD to draw a negative credibility inference from the omission of something the PA identified as a primary activity that led to his problems in India.

IV. Conclusion

[27] The application for judicial review is dismissed.

[28] There is no question for certification.

JUDGMENT in IMM-5553-22

THIS COURT'S JUDGMENT is that:

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

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5553-22

STYLE OF CAUSE: SHAKTI, DAANYA MALHOTRA, LNDU
MALHOTRA v THE MINISTER OF CITIZENSHIP &
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 15, 2023

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