

Federal Court



Cour fédérale

Date: 20231109

Docket: IMM-7640-21

Citation: 2023 FC 1494

Ottawa, Ontario, November 9, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

**PALVEER KAUR, GURDEV SINGH,
ASHMEEN KAUR, HARKIRAT SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Palveer Kaur, her spouse Gurdev Singh, and their two children, are a family from India who seek judicial review of a September 22, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Singh, a former adherent of a religious group, became disillusioned with the group when he learned that the leader is a criminal and a fraud. After leaving the group, he spread awareness of the leader's criminal activity, and the applicants fear reprisal. While the leader was in prison, the applicants state they received threats from powerful followers of the group. They state Mr. Singh was arrested for his activities against the group and only released after he agreed to cease his activities. The applicants claimed refugee protection based on a fear of persecution or harm at the hands of followers and the police if they are returned to India.

[3] The RPD found that the applicants' evidence and testimony was not credible with respect to Mr. Singh's profile and involvement with the group, the activities in opposition to the group and its leader, and the pursuit by followers and the police.

[4] The applicants contend the RPD's negative credibility findings were tainted by interpretation errors. On appeal to the RAD, the applicants alleged they were denied natural justice as a result of poor quality interpretation.

[5] The applicants tendered new evidence on appeal to support their argument that the quality of interpretation caused the RPD to make erroneous credibility findings. The new evidence was an affidavit of Ms. Kaur, an affidavit of Mr. Singh, an interpretation audit report conducted by a board-certified interpreter, and an affidavit of a paralegal who works with the applicants' counsel, stating she translated the recording of the RPD hearing from Punjabi to English. The RAD found Ms. Kaur's affidavit was not new evidence as contemplated by subsection 110(4) of the *IRPA*; however, the RAD considered Ms. Kaur's affidavit as

submissions along with the arguments contained in the applicants' memorandum. The RAD accepted the other three documents as new evidence.

[6] While the RAD accepted the paralegal's affidavit, the RAD gave it no weight. The paralegal's affidavit indicated that a translation of the RPD hearing was attached, but the RAD stated there was no attachment. Also, there was no evidence establishing the paralegal's proficiency as a Punjabi-English interpreter. As a result, the RAD gave no weight to the applicants' arguments that were based solely on the translation that the paralegal prepared.

[7] The RAD accepted the expertise of the board-certified interpreter and gave his audit report full weight.

[8] The RAD stated it reviewed the audit report in its entirety, the arguments in the applicants' memorandum related to errors outlined in the audit report, and the RPD record, including the transcript of the RPD hearing and the relevant portions of the audio recording. The RAD concluded the applicants were not denied natural justice due to poor quality interpretation during the RPD hearing. The RAD found that the interpretation at the RPD hearing met the jurisprudential standard of linguistic understanding, and that the errors outlined by the applicants were peripheral and not material to the RPD's credibility findings:

[24] [...] While the interpretation was not always exact, I do not find that the errors outlined in the audit report establish that there was a lack of linguistic understanding between the Appellants and the RPD panel. Many of the issues identified in the audit relate to the choice of words by the interpreter that while different, have the same or similar meanings. In many cases, the questions and responses that followed an inexact interpretation of a few words or

a phrase demonstrate that there was linguistic understanding between the hearing participants.

[25] Further, and importantly, I do not find that the errors were material to the RPD's findings. As noted above, the RPD's findings were based on significant discrepancies and inconsistencies between the Appellants' narrative, testimony, other verbal and written statements made during the course of their immigration proceedings, and the corroborative evidence presented in support of their claims. The excerpts of the interpretation that are highlighted by the Appellants relate to peripheral issues that did not underpin the RPD's findings.

[9] The applicants submit they were denied natural justice at the hearing because of the quality of the interpretation. Credibility was determinative of their claim for refugee protection, and the fact that there were translation errors is itself sufficient to result in a denial of natural justice. The applicants submit the RAD failed to address all of the translation errors they raised, and erred in rejecting the interpretation errors that were summarized in the paralegal's affidavit. The applicants submit the RAD's decision cannot stand. They ask that the RAD's decision be set aside and that the matter be returned to the RAD for reconsideration by a differently constituted panel, or alternatively, that the matter be returned to the RPD.

[10] The respondent submits the RAD identified and applied the correct test, reasonably concluded that there was linguistic understanding, and reasonably found the applicants had not established any material interpretation issues. The respondent submits the RAD noted multiple credibility concerns that were independent of the alleged interpretation issues.

[11] I find the applicants have not established an error that warrants setting aside the RAD's decision.

[12] The applicants have not identified any translation error that the RAD failed to address. The RAD addressed all of the errors the applicants had raised; however, the RAD did not give weight to the alleged errors that were based on the paralegal's affidavit because the paralegal's translation of the RPD hearing was not attached to her affidavit, the alleged errors were not identified as errors in the audit that was conducted by the board-certified interpreter, and the RAD preferred the evidence of the board-certified interpreter.

[13] The applicants submit the RAD should have considered the paralegal's affidavit because it is costly to hire an accredited interpreter, and the paralegal identified a number of instances where the interpretation was incorrect. However, the paralegal's affidavit does not identify any errors in the interpretation—the applicants' submissions about inaccurate interpretation that they attribute to the paralegal are not found in her affidavit. The paralegal's affidavit only states that she prepared a translation from Punjabi into English of the recorded RPD hearing, and "[t]he attached document is, in all respects, a true and correct translation from Punjabi into English". The RAD stated that the attachment was not in the record that was before it. The copy of the paralegal's affidavit that appears in the certified tribunal record does not have an attachment. As the respondent correctly notes, the applicants cannot rely on interpretation errors the paralegal allegedly identified when the paralegal's evidence in this regard was not before the RAD. Furthermore, the copy of the paralegal's affidavit in the applicants' record on judicial review does not include an attachment.

[14] In addition, I agree with the respondent that the RAD considered the submissions about errors that were allegedly supported by the paralegal's affidavit, and noted that the audit report

by the board-certified translator did not identify the errors. The RAD preferred the evidence of the board-certified interpreter.

[15] For these reasons, the applicants have not established any error in the RAD's treatment of alleged translation errors that were said to be supported by the paralegal's affidavit.

[16] The applicants also argue that translation errors themselves are sufficient to result in a denial of natural justice. However, the RAD addressed the interpretation errors that were identified in the audit report. On this application for judicial review, the applicants repeat the submissions they made in their memorandum to the RAD. Their written memorandum in this proceeding does not explain how the RAD erred in its assessment of whether the translation errors resulted in a denial of procedural fairness.

[17] At the hearing before this Court, the applicants argued that the RPD made material credibility findings based on Mr. Singh's testimony about the religious nature of the feared group, and a police visit in June of 2018. The applicants argued these were not peripheral findings of the RPD, and the findings were tainted by interpretation errors. I am not persuaded these arguments establish any error by the RAD. The alleged error in translating Mr. Singh's testimony about the religious nature of the group does not appear in the interpretation audit. This was a translation error allegedly identified by the paralegal's translation, which was never provided. The RAD addressed the translation error related to Mr. Singh's testimony about the police visit, and found that the RPD's credibility finding was based on a contradiction between the applicants' basis of claim narrative and Ms. Kaur's testimony, the accuracy of which was not

disputed. The RAD found the applicants had not established that the error in interpreting Mr. Singh's testimony about the police visit was material to the RPD's finding or affected the disposition of the case.

[18] In conclusion, the RAD determined there was no breach of procedural fairness due to inadequate interpretation during the RPD hearing, and the applicants have not established any error that would warrant setting aside the RAD's decision. Accordingly, this application for judicial review must be dismissed.

[19] No question for certification arises in this case.

JUDGMENT in IMM-7640-21

THIS COURT'S JUDGMENT is that:

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

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7640-21

STYLE OF CAUSE: PALVEER KAUR, GURDEV SINGH, ASHMEEN
KAUR, HARKIRAT SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 13, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: NOVEMBER 9, 2023

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