

Federal Court



Cour fédérale

**Date: 20240614**

**Docket: IMM-4155-22**

**Citation: 2024 FC 912**

**Ottawa, Ontario, June 14, 2024**

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

**BETWEEN:**

**ROHINIBEN HIREN PATEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant is a citizen of India who alleges she is at risk in that country at the hands of former business partners and her mother-in-law. The Applicant's daughter alleged the same risk, and sought protection on the additional ground of her sexual orientation. The Refugee Protection Division [RPD] rejected the claim, citing credibility concerns.

[2] The RPD's decision was appealed to the Refugee Appeal Division [RAD]. In a decision dated March 18, 2022, the RAD granted the daughter's appeal, finding the RPD had erred in its sexual orientation analysis, but dismissed the Applicant's appeal.

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the RAD decision as it relates to her. She argues, among other grounds, that the RAD erred in (1) concluding issues of interpretation did not render the proceeding before the RPD unfair, and (2) finding she had failed to credibly establish the risks alleged in India.

[4] As addressed in more detail below, I am satisfied that the RAD reasonably concluded there was no breach of fairness. I am also satisfied that the RAD's credibility findings are supported by the evidence and reasonable. The RAD's fairness conclusions and credibility assessment are determinative; the Application is dismissed.

## II. Background

[5] The Applicant alleges one of her late husband's former business partners [BP1] defrauded and murdered her husband in 2012, and subsequently threatened the Applicant and defrauded her of their properties. She alleges BP1 also made sexual advances toward her and attempted to sexually assault her daughter. The Applicant also states that her former business partner [BP2] has become BP1's accomplice, and has taken out loans in her name that have not been repaid. Further, she alleges her mother-in-law has abused her because her father-in-law, who passed away in 2014, had willed all his assets to the Applicant and her daughter to the

exclusion of her mother-in-law. The Applicant's daughter relied on the allegations in the Applicant's Basis of Claim [BOC] and further reported that she feared persecution in India based on her sexual orientation.

### III. Decision under Review

[6] After rejecting new evidence, the RAD addressed the Applicant's argument that interpretation issues had undermined the fairness of the proceedings before the RPD. The RAD found there to be no merit to the allegation.

[7] The RAD noted that the Applicant's daughter testified in English and that neither the daughter nor counsel, both of whom understand Hindi, objected to the translation of the daughter's English language testimony. The RAD found the allegation that errors in translation were directly linked to the RPD's credibility concerns lacked merit and that the Applicant had failed to point out how cited examples of errors in translation were incorrect. Similarly, the RAD found the translator's requests for the Applicant to repeat testimony to allow evidence to be accurately reported were not a breach of fairness or of the Chairperson's Guideline 9:

*Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics.* The RAD noted that counsel did interject on one occasion to correct a word but otherwise did not raise an objection to the quality of the translation. Citing *Singh v Canada (Citizenship and Immigration)*, 2021 FC 810 at paras 41-42, the RAD also noted that the failure to object at the first opportunity amounted to a waiver of the right to later take issue with the translation.

[8] On the issue of credibility, the RAD did find certain of the RPD's findings to be microscopic, but found this error did not establish the allegation that the Applicant was at risk in India. The RAD concluded that medical records did not corroborate the alleged attempted sexual assault on the Applicant's daughter, undermining the credibility of the allegation. The Applicant's inconsistent evidence relating to an alleged video recording of the attempted sexual assault further undermined the Applicant's credibility, as did the omission from her BOC of information relating to BP1's reported knowledge of the Applicant's daughter's sexual orientation. The RAD also found that the Applicant's failure to state in her testimony that she feared BP2 and her mother-in law, as reported in her BOC, undermined her credibility. Finally, the RAD found her daughter's return to India in 2019, for approximately two months, was inconsistent with and undermined the Applicant's reported fear.

[9] In considering the documentary evidence, the RAD found the letters provided by the Applicant's brother, mother and neighbour were not credible, noting they were not accompanied by identification or contact information, they were undated, and they were written in the same format, on the same type of paper and in very similar handwriting. The RAD found the banking documents, including the father-in-law's will, were insufficient to establish the allegations against BP1, BP2 or the Applicant's mother-in-law, and that the husband's death certificate lacked probative value in that it did not identify a cause of death. The RAD found the documentary evidence was insufficient to overcome the identified credibility concerns.

[10] Not having credibly established the allegations of risk, the RAD rejected the Applicant's appeal.

IV. Issues and Standard of Review

[11] The Applicant has raised a series of issues. However, and as I have noted above, the RAD's fairness and credibility analyses are determinative and are therefore the only matters I need to address.

[12] The Parties agree that the RAD's credibility determinations are to be reviewed on the standard of reasonableness.

[13] In written submissions, the Parties diverged on the standard of review to be applied in reviewing the RAD's finding of no breach of procedural fairness before the RPD, the Applicant submitting that the correctness standard applies. In the course of oral submissions, the Applicant acknowledged that where the issue before the reviewing court involves consideration of the RAD's finding that there was no breach of procedural fairness before the RPD, as opposed to an allegation that the RAD itself has breached procedural fairness, the reasonableness standard of review is to be applied. This is consistent with the jurisprudence (*Rodriguez v Canada (Citizenship and Immigration)*, 2022 FC 774 at paras 16-19; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23 and 25 [*Vavilov*]). I have therefore adopted the reasonableness standard of review in considering both issues raised on the Application.

[14] Reasonableness review requires that the reviewing court ask 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).

V. Analysis

A. *The fairness finding was reasonable*

[15] The Applicant submits that in finding no breach of fairness, the RAD vaguely addressed the identified translation errors and their impact. The Applicant argues that, instead of addressing the translation errors, the RAD improperly adopted a lower standard for finding a breach of fairness because the translation was provided solely for the benefit of the Applicant whose daughter testified in English. Relying on *Bidgoli v Canada (Citizenship and Immigration)*, 2015 FC 235 [*Bidgoli*], the Applicant submits real and significant translation errors occurred and this alone is sufficient to find a breach of fairness – there is no need to establish actual prejudice resulting from the errors.

[16] Translation need not be flawless, and as the Applicant has acknowledged, errors must be real and significant to support a finding that there has been an impact on the fairness of the proceeding (*Bidgoli* at para 13, also see *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 27 and 31).

[17] The transcript discloses, and the RAD noted that: (1) the RPD had the Applicant confirm she understood the interpreter; (2) the Applicant's daughter's testimony was provided through long passages creating translation challenges, and for this reason, she was asked to break up her

answers; (3) the daughter was, at least at points in her testimony, “testifying softly,” (4) the interpreter had specifically requested that the daughter “speak up”; and (5) although headphones were suggested, the RPD agreed with the translator’s view that headphones would not assist the translator due to static.

[18] The RAD also addressed the errors identified by the Applicant. For example, the Applicant relies on the failure of the interpreter to translate the daughter’s testimony describing the Applicant’s reaction when her daughter disclosed her sexual orientation. However, in this instance, the daughter herself acknowledges that the words were spoken “lightly” and may not have been heard. It was reasonably open to the RAD to conclude, as it did, that this was not an interpretation error.

[19] The Applicant further argues that the interpreter interjected with her own opinion in relation to the “missed words” in the above example and refused to use headphones to assist in providing an accurate translation. Having reviewed the relevant portions of the transcript, the submissions exaggerate and do not accurately represent what occurred in the course of the hearing. Again, I can find no basis to conclude the RAD’s consideration of this issue was unreasonable.

[20] The RAD’s acknowledgement that the Applicant’s daughter’s testimony was in English and that the translation was for the benefit of the Applicant does not demonstrate that the RAD adopted a lower threshold in assessing whether the translation resulted in a breach of fairness.

The RAD simply acknowledged that the translation was not relied upon by the decision-maker, a factor that is relevant in determining whether the proceeding before the RPD was unfair.

[21] Nor did the RAD err in referring to this Court's jurisprudence holding that an Applicant's failure to object in a timely manner to a perceived inadequacy in the translation will be construed as a waiver.

[22] The RAD's fairness analysis is transparent, justified and intelligible. The conclusion reached – that the Applicant had failed to demonstrate translation errors constituted a breach of fairness in this case – was reasonably available to the RAD. The RAD's fairness findings are reasonable.

B. *Credibility analysis*

[23] The RAD engaged in a detailed and independent review of the RPD's credibility findings arising out of the Applicant's reported business interests and held those findings were microscopic and in error. The RAD then proceeded to consider each of the RPD's additional negative credibility findings and detailed its reasons for also concluding that the Applicant's credibility was negatively impacted and that the allegations of risk were in turn undermined.

[24] The Applicant's credibility arguments reflect disagreement with the RAD; however, disagreement is not sufficient to demonstrate that the findings or conclusions of the RAD are unreasonable.



[25] The Applicant argues that the RAD erred by failing to engage in a consideration of her residual profile as a single woman fearing gender-based violence in India. The RAD however, reasonably concluded that the reported fear of BP1 was not credible. While the Applicant asserts the RAD erred, no substantive argument is advanced nor does the Applicant point to any evidence that the RAD failed to consider or address. I am therefore unable to conclude the RAD erred in this regard.

[26] The RAD, having reasonably concluded that there was no breach of fairness and that the Applicant had failed to credibly establish the alleged risks, was under no obligation to consider an internal flight alternative or the adequacy of state protection.

#### VI. Conclusion

[27] For the above reasons, the Application is dismissed.

[28] The Parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT IN IMM-4155-22**

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

1. The Application is dismissed.
2. No question is certified.

“Patrick Gleeson”

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Judge

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

**DOCKET:** IMM-4155-22

**STYLE OF CAUSE:** ROHINIBEN HIREN PATEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 10, 2024

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JUNE 14, 2024

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