

Federal Court



Cour fédérale

Date: 20240624

Docket: IMM-7787-23

Citation: 2024 FC 975

Ottawa, Ontario, June 24, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

GURDEEP SINGH MEETKAY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Context

[1] The Applicant seeks judicial review of the decision dated May 25, 2023 of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, confirming the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee nor a person in need of protection [Decision].

[2] The determinative issue before both the RPD and RAD was credibility. The credibility findings related to lack of a reasonable explanation for a failure to provide evidence pertaining to a First Incident Report [FIR] (i.e., police charges); a medical certificate that the RAD found as being “not genuine.” Therefore, the RAD found that the lack of evidence did not support his allegations of torture, and that the Applicant’s profile was not that of a militant.

[3] For the reasons set out below, this application for judicial review is dismissed. The Applicant has not persuaded me that the Decision was unreasonable, warranting the Court’s intervention.

II. Facts

[4] The Applicant is a citizen of India and fears persecution at the hands of Indian authorities, in particular the police. The Applicant states that in January 2017, he was stopped, and questioned by the police who were investigating the murder of AS, a Hindu leader. In August 2017, he was stopped at a bus station and taken to the police station where he was advised that he was a suspect in the murder of AS. He was fingerprinted and released.

[5] In November 2017, the Applicant flew to Canada but was denied entry. He was taken to a police station, and released upon paying a bribe and on condition that he report to police. He was released after a bribe was paid by a municipal councillor and others. The Applicant states that the police continued to harass him and accused him of having links with Sikh militants abroad and of putting up posters about the Khalistan Referendum.

[6] In April 2018, after being taken to the police station, the Applicant was tortured and made to sign blank sheets of paper. He was released after a bribe was paid on the condition that he report to the police station every month. He fled to Canada in May 2018.

[7] On October 17, 2022, a hearing was held virtually before the RPD.

[8] In its decision dated December 22, 2022, the RPD rejected the Applicant's application for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[9] The RPD found the Applicant's credibility and trustworthiness were seriously undermined. The RPD found that the Applicant did not provide a reasonable explanation on whether there had been charges of FIRs filed against him, despite his claim of being a suspect in the murder of AS; that he was able to travel in and out of India without difficulty, despite his claim of being viewed by authorities as a suspect, or an associate of Sikh militants or Kashmiri terrorists; that he did not prove his allegations of being tortured by police considering the medical certificate contained discrepancies in the document, thus not genuine; and, he did not have the profile of a Khalistani/Kashmiri militant or someone associated to this militancy.

[10] The Applicant appealed the RPD's decision. The RAD issued its Decision on May 25, 2023.

[11] The RAD found that the RPD was correct to conclude that the medical certificate was not genuine because the discrepancies go beyond spelling errors. The RAD also found that the RPD did not review all of the relevant country documentation about restrictions on exiting India. The RAD found that the RPD did not err in finding that, if he was truly suspected of militancy involved in the murder of a Hindu leader, he would not have been able to exit India and would have been arrested and detained upon re-entry.

[12] The Applicant alleges that the RAD made adverse findings of credibility in a perverse and capricious manner, based on irrelevant considerations, or without regard to the totality of the evidence before it. The Respondent states it was reasonable for the RAD to conclude that the medical certificate submitted was not genuine and this eroded the Applicant's overall credibility.

III. Issues and Standard of Review

[13] The issue before me is whether the RAD's Decision is unreasonable.

[14] The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging

the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[15] The Applicant states that the RAD did not consider the medical certificate in a reasonable way, instead focusing on minor typographical errors and not considering that English is not the mother tongue of the physician who wrote the certificate. The Applicant relies on *Enamejewa v Canada (Citizenship and Immigration)*, 2021 FC 315 at paragraphs 27 to 30, *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 at paragraphs 6 to 9, and *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paragraphs 22 to 24, to submit that minor typographical errors should not by itself establish fraud. The Applicant contends that the RAD focused on minor issues and did not look at the document as a whole. If it had, the medical certificate would have supported the Applicant's narrative of having gone to the hospital in May 2018 to receive treatment for his injuries. If the RAD had accepted the medical certificate, it would have found that the Applicant's assertions align with his claim of being tortured by police. The document would corroborate his refugee claim.

[16] The Respondent submits that the RAD's conclusion that the medical certificate was not genuine had been the result of a well-conducted assessment. Contrary to the Applicant's contention, the RAD did consider the document as a whole and noted various nonsensical statements and other irregularities in the document. The RAD found that these were not minor mistakes. In addition, the medical certificate was a central document to the Applicant's claim of the persecution that he alleged he suffered in India. Having found that the document was not

genuine, the RAD concluded that he was not tortured. This finding was at the core of the Applicant's claim, and negatively affected his credibility.

[17] Respectfully, I cannot agree with the Applicant that the medical certificate contained only minor typographical errors. The RAD identified substantive issues with the content of the certificate and irregularities that go beyond minor spelling mistakes as casting doubt on the authenticity of the medical certificate. I find no reviewable error in how the RAD approached the analysis of the medical certificate, and its conclusion on this document is not unreasonable.

[18] The Applicant states that the RAD erred when it confirmed the RPD's conclusion that it was reasonable to expect the Applicant to make efforts to determine whether a FIR or criminal charges have been filed against him. The Applicant states that this finding is unreasonable in light of the objective evidence on the country's condition that corruption is rampant within police forces in India or that legal guidelines are not strictly followed. The Applicant contends that in his narrative, he provided the circumstances to explain that it would have been unlikely for the police to give him the FIR, and that the RAD failed to consider the reality in India when it had found that an FIR would have been available to the Applicant.

[19] The RAD's analysis included a reference to this Court's decision, in *Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 at paragraph 37, in which the Court found that a decision-maker may impute an adverse credibility finding based on the absence of reasonably available corroborative evidence and the lack of reasonable explanation to justify this absence.

This principle was recently considered in *Khosla v Canada (Citizenship and Immigration)*, 2023 FC 1557 at paragraph 33.

[20] Credibility findings should not be made based strictly on the absence of corroborative evidence. However, when there is a valid reason to question a refugee claimant's credibility, further negative credibility inferences may be drawn if the claimant is unable to provide an explanation for the lack of reasonably expected corroborative evidence. Where corroborative evidence should reasonably be available to establish essential elements of a claim, and there is no reasonable explanation for its absence, a decision-maker may draw a negative inference on credibility based on the claimant's lack of effort to obtain such corroborative evidence *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 25 [*Lawani*].

[21] I disagree with the Applicant's contentions challenging the Decision on the FIR. The Applicant argues that it is unlikely that police would have given him access to the FIR. However, this argument is speculative. The RAD had centered its Decision on the issue of whether there had been efforts made to access the FIR. The RAD considered evidence including the fact that FIRs are uploaded to the police station website where they are registered and can be downloaded for free. Furthermore, the evidence was that neither the Applicant nor his counsel had attempted to obtain the FIR. In addition, the RPD had considered news articles that related to criminal charges against fifteen individuals arising out of a FIR dated January 15, 2017. The Applicant was not listed. As such, I cannot find that the RAD was unreasonable in finding that the Applicant's credibility was further undermined given his lack of effort to obtain a FIR.

[22] The Applicant submitted that the RAD did not consider other information included in the National Documentation Package [NDP] indicating instances where wanted persons were able to leave the country. Furthermore, the documentation also cited general types of accusations police levy on individuals suspected of being militants. Police use excuses to target people perceived of supporting Khalistan. This objective information should have been considered by the RAD when it assessed the Applicant's claim and credibility.

[23] The Applicant further stated that the RAD erred in disregarding three affidavits submitted by his father, the municipal councillor and his neighbour. The Applicant cited *Valdeblanquez Ortiz v Canada (Citizenship and Immigration)*, 2017 FC 410 [*Valdeblanquez Ortiz*] in its submissions to the RAD, as well as its submissions to this Court, to contend that affidavits needed to be assessed individually despite finding that the Applicant was not a credible witness.

[24] The RAD found that the case was distinguishable from the Applicant's because in *Valdeblanquez Ortiz*, the facts pertained to medical reports and other third party documents that had not been reviewed at all. The RAD relied on recent case law that evidence must be assessed in the context of the overall claim and credibility concerns. The RPD also did not rely on the affidavits because the witnesses were not present and not able to be examined before the panel.

[25] I find no reviewable error. The lack of credibility with respect to the central elements of a claim may extend to other elements of the claim and apply generally to documentary evidence adduced to corroborate a version of events (*Abdelgadir v Canada (Citizenship and Immigration)*),

2020 FC 721 at paragraph 18; *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 26; *Lawani* at para 24).

[26] Evidence is not assessed in isolation from the overall claim, and when the Applicant's personal evidence is not credible, it is reasonable for the RAD to have credibility concerns with the supporting documentary evidence (*Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312 at para 26). Indeed, in *Lawani* at paragraph 24, the Court stated a lack of credibility concerning central elements of a refugee protection claim may extend and trickle down to other elements of the claim and may be generalized to all of the documentary evidence presented to corroborate a version of the facts.

[27] While the Applicant raises a point on the NDP article that the RAD does not reference in its Decision, I do not find that this is sufficient to render the Decision unreasonable. As the Supreme Court of Canada instructs, before a decision can be set aside, the reviewing court must be satisfied that there are sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100). The issue here is that the finding on the Applicant's credibility centred on many factors, and not just this one.

[28] Here, the medical certificate relied upon by the Applicant was not found to be reliable because there were significant discrepancies on the face of the document. A key element of his claim was based on this medical certificate, that he was tortured and beaten by police. Finding the medical certificate not genuine resulted in a finding that he was not tortured. The use of a non-genuine document further adversely affected his overall reliability and credibility. In other words, given that the Applicant's personal evidence was found to be not credible, the RAD had credibility concerns with the supporting documentary evidence he provided to support his claim.

[29] This is consistent with the case law. Justice Turley in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1106 at paragraph 22, outlined this Court's well-established jurisprudence that a lack of credibility may be extended to all documentary evidence submitted to corroborate a claimant's version of the events.

[30] Independent of this, the Applicant was also unable to demonstrate that he was wanted in India as an alleged suspect or a militant. No evidence was presented in support of this claim, whether through failing to make efforts to obtain a FIR or other FIRs that did not list him as a suspect. The case law is also clear that this could also give rise to an adverse credibility finding.

V. Conclusion

[31] Given the above, I cannot find that the Decision was unreasonable.

[32] The parties confirmed that there is no question of general importance to certify and I agree that none arise in this case.

JUDGMENT in IMM-7787-23

THIS COURT'S JUDGMENT is that:

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

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7787-23

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