

Federal Court



Cour fédérale

Date: 20240703

Docket: IMM-12329-23

Citation: 2024 FC 1048

Vancouver, British Columbia, July 3, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

KULDEEP SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Kuldeep Singh is a citizen of India who seeks refugee protection in Canada. He alleges persecution at the hands of the Bharatiya Janata Party [BJP] and the police for having spoken out against them.

[2] The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada successively rejected his claim on the determinative issue of an internal flight alternative [IFA].

[3] On this judicial review of the RAD decision, Mr. Singh asserts unreasonableness and procedural unfairness. I find that the Applicant has established the latter issue by reason of the RAD's failure to put new credibility concerns to the Applicant before making its decision. The judicial review thus will be granted. More detailed reasons follow. Because the procedural fairness issue is determinative, I decline to consider the reasonableness of the decision.

II. Analysis

[4] Focusing on whether the process was fair in the circumstances, I find that it was not: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[5] While the issue of a viable IFA was before the RPD and the RAD on appeal, no credibility issues were raised by the RPD in respect of certain documentary evidence questioned by the RAD. In particular, the RAD took issue with the Applicant's father's affidavit about the nature of the injuries he, the father, suffered from an attack at the hands of BJP goons, versus the RAD's perceived inconsistencies with the hospital record relating to the attack.

[6] In my view, the Respondent's reliance on the decision of this Court in *Iqbal* is misplaced. Rather, the essential elements here are more analogous to the decision in *Ching*, which *Iqbal* specifically distinguishes.

[7] In *Ching*, the RAD reviewed positive credibility findings of the RPD, that the applicant unsurprisingly did not challenge on appeal, without giving the applicant an opportunity to respond to the RAD's concerns: *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 [*Ching*] at paras 4, 54.

[8] In *Iqbal*, the RAD came to a different conclusion than the RPD about the applicability of an IFA; the RAD's conclusion, although determined independently, nonetheless was consistent with the RPD's factual findings regarding the Applicant's risk: *Iqbal v Canada (Citizenship and Immigration)*, 2020 FC 170 [*Iqbal*] at paras 36-37.

[9] Here, unlike in *Iqbal*, the credibility of the Applicant's documentary evidence was the new issue before the RAD, the RPD having found (at para 18) the Applicant generally credible and his documentary evidence corroborative of his testimony.

[10] As this Court previously has held, new credibility issues demand an opportunity to respond (i.e. meaningful participation by an applicant) to avoid findings of procedural unfairness: *Collins v Canada (Citizenship and Immigration)*, 2024 FC 665 at paras 20-29; *Nooristani v Canada (Citizenship and Immigration)*, 2024 FC 99 at para 17; *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258 at para 28.

[11] As the late Justice Hughes stated, "if the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties

and give them an opportunity to make submissions”: *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10.

[12] I acknowledge the Respondent’s argument that once an IFA determination is made, it is unnecessary for the RPD, and in turn the RAD, to consider the risk of harm to an applicant’s family members. That is not what the RAD here did, however.

[13] I agree with the Applicant that the RAD considered the credibility of particular pieces of evidence (at para 34) in the context of the motivation of his agents of persecution to continue looking for him. More to the point, in my view, the RAD’s assessment of this particular evidence represents “a frolic and venture into the record” of the sort cautioned against by Justice Hughes.

III. Conclusion

[14] For these reasons, I conclude that the RAD breached procedural fairness owed to Mr. Singh by not seeking his submissions about the specific evidence with which the RAD had concerns, thus warranting the Court’s intervention. The RAD decision will be set aside, with the matter remitted to a different RAD panel for redetermination.

[15] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-12329-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is allowed.
2. The September 2, 2023 decision of the Refugee Appeal Division is set aside.
3. The matter is remitted to a different Refugee Appeal Division panel for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12329-23

STYLE OF CAUSE: KULDEEP SINGH v THE MINISTER OF
CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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