**Date: 20240723**

**Docket: IMM-1857-23**

**Citation: 2024 FC 1156**

**Toronto, Ontario, July 23, 2024**

**PRESENT:    The Honourable Justice Battista**

 **BETWEEN:**

**RAVEENA KUMAR**

**Applicant**

**and**

**MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I.      Overview

[1]      This is an application for judicial review of a dismissal of the Applicant's appeal by the Refugee Appeal Division ("RAD").  The Applicant alleges that the RAD erred by engaging in an overzealous and microscopic examination of the evidence when it upheld adverse credibility findings made against the Applicant. For the reasons that follow, I find the RAD decision to be reasonable and I dismiss the application.

II.     Background

[2]     The Applicant is a 21 year-old woman from Jalandhar, India. She made a claim for refugee protection in Canada on December 26, 2019. Her claim was based on four grounds:

1.  The Applicant stated that she feared the police for two reasons. First, she alleged that the police detained her twice and sexually assaulted her because of her ex-boyfriend's association with a gangster group. Second, she stated that she was wrongfully accused by the police of supporting anti-nationalist elements based on her social media activity.

2.  The Applicant stated that she fears Gau Raksha Dal ("GRD") members who threatened and persecuted her because a cow in her father's herd died.

3.  The Applicant expressed fear of a private citizen named Gurpreet Singh who attacked her with acid in 2020 based on her affiliation with her ex-boyfriend.

4.  The Applicant stated that as a member of the Dalit caste she would be at risk of persecution.

[3]     The Refugee Protection Division refused her refugee claim on the basis of multiple adverse credibility findings, most of which were upheld by the RAD. These adverse credibility findings ranged from contradictions, to major omissions, to implausibilities.

[4]     The Applicant commenced an Application for Leave and Judicial Review of the RAD's decision in this Court on February 9, 2023, ten days later than the statutory deadline. The Applicant requested an extension of time to file the application on the basis that she believed that the deadline to challenge the RAD decision was 30 days rather than 15 days from the time it was communicated to her. Due to an administrative error, the order granting leave did not indicate a decision on the

request for an extension of time. After the hearing the Registry confirmed that an extension of time had in fact been granted, and the order granting leave omitted reference to this decision.

[5]     The order granting leave will therefore be corrected to indicate that an extension of time was granted.

III.    Issue

[6]     The only issue in this application is whether the RAD decision is reasonable.

IV.    Analysis

[7]     The appropriate standard of review of the RAD decision is reasonableness. The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of the duty of procedural fairness or constitutional issues, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

[8]     A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[9]     The RAD decision comprehensively reviewed the adverse credibility findings made against the Applicant, and while it found that the RPD erred in isolated findings, it reasonably found ample support for the majority of the RPD's conclusions. These credibility concerns arose from the Applicant's written and oral testimony rather than a microscopic examination of the evidence.

[10]     The Applicant challenges two findings of the RAD. First, the Applicant states that it was not reasonable for the RAD to draw an adverse credibility finding regarding her fear of Gurpreet Singh based on the fact that this basis of her claim was entirely omitted from her BOC. The RAD found that the Applicant submitted her BOC more than two years prior to her hearing. The RAD found that she had ample opportunity to amend her BOC to include her fear of Gurpreet Singh, particularly given that she submitted other amendments to her BOC. The RAD took note of the Applicant's allegation that the Canada Border Services Agency twisted her arm at her port of entry interview, but found that this incident did not explain her omission of this basis of fear from her BOC. I do not consider these findings unreasonable.

[11]     Second, the Applicant challenges the RAD's disregard of personal documents attesting to some of her problems in India. These documents included a sworn affidavit from her father describing her arrest and abuse by the Indian police. *Maldonado* instructs us that sworn evidence creates a presumption of truthfulness which is rebuttable by other contradicting evidence: *Maldonado v. Minister of Employment and Immigration*, [1980] 2 FC 302. In this case, the RAD reasonably found that grounds to rebut the sworn evidence existed. This evidence included differences between her written narrative and oral evidence concerning the manner of her report

to the police, and her approach to the police for protection despite the allegation of previously being victimized by them.

[12]    I find the balance of the RAD's findings reasonable, specifically:

-   Regarding the Applicant's fear of the police, the RAD reasonably found contradictions and inconsistencies in the Applicant's evidence regarding her contact with the police;

-   Regarding the Applicant's fears of GRD members: the RAD reasonably found contradictions between the Applicant's written and oral testimony regarding her alleged persecution;

-   Regarding the Applicant's fears based on her belonging to the Dalit caste, the RAD reasonably concluded that her inability to articulate the nature of her fears cast doubt on her subjective fear.

[13]    As mentioned above, the RAD did express concerns with findings made by the RPD. For example, the RAD was concerned that the RPD may have erred by dismissing evidence from the Applicant's family members because it was self-serving, and did not give adequate consideration to the *IRB Gender Guidelines* in assessing the Applicant's testimony. Overall, however, the RAD reasonably found that the RPD's adverse credibility findings made against the Applicant were justified.

## JUDGMENT in IMM-1857-23

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

1.  The application for judicial review is dismissed.

2.  There is no question of general importance for certification.


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| "Michael Battista" |
| Judge |

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| **DOCKET:** | IMM-1857-23 |
| **STYLE OF CAUSE:** | RAVEENA KUMAR v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JULY 22, 2024 |
| **JUDGMENT AND REASONS:** | BATTISTA J. |
| **DATED:** | JULY 23, 2024 |

**APPEARANCES:**

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| John O. Grant | FOR THE APPLICANT |
| Aneta Bajic | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |