

Federal Court



Cour fédérale

Date: 20240726

Docket: IMM-7630-23

Citation: 2024 FC 1176

Ottawa, Ontario, July 26, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SUKHDARSHAN SINGH BRAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sukhdarshan Singh Brar, applied for refugee protection in Canada. The Refugee Protection Division [RPD] determined his claim was abandoned when he did not appear at his scheduled hearing dates. Approximately two months later, Mr. Brar applied to re-open his claim, explaining that he had not received the notices for his refugee claim hearing or for the abandonment proceeding. The RPD dismissed Mr. Brar's application to re-open his claim,

finding that he had not updated his contact information as was required. Mr. Brar is challenging the RPD's dismissal of his application to re-open his refugee claim.

[2] Mr. Brar argued before the RPD on re-opening that he had not received the notices for his RPD hearing or the abandonment proceeding. Mr. Brar acknowledged that he had inadvertently not updated his mailing address with the RPD, but had with the Canada Border Services Agency [CBSA] and Immigration, Refugees and Citizenship Canada [IRCC]. He argued that there was a breach of natural justice because the RPD failed to email him at the address he provided. The RPD did not address Mr. Brar's argument about his email contact information in their decision, despite this being a key basis on which Mr. Brar was seeking that his refugee claim be re-opened. I find the re-opening application must be redetermined because the RPD's reasons fail to "meaningfully account for the central issues and concerns raised" by Mr. Brar (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 127).

II. Background to Refugee Claim Process

[3] Mr. Brar filed his refugee claim in November 2020. He was not represented by counsel at that time. Included with his refugee claim was the following contact information: mailing address, phone number and email address.

[4] The RPD sent a letter, dated July 8, 2022, to the mailing address on file. This letter indicated that Mr. Brar's hearing was to take place approximately six weeks later, on August 25, 2022 by videoconference. The letter advised Mr. Brar to email the RPD in order to obtain the link to participate in his hearing by video.

[5] The hearing took place on August 25, 2022. Mr. Brar did not attend. After 20 minutes, the RPD member scheduled an abandonment proceeding to take place two weeks later on September 8, 2022. Again, the RPD sent the letter to the same mailing address on file, indicating that an abandonment hearing was to take place on September 8, 2022.

[6] The abandonment hearing took place on September 8, 2022. Mr. Brar did not attend. After approximately 20 minutes, the RPD member declared Mr. Brar's refugee claim abandoned. In the member's reasons, they indicated the following: Mr. Brar had not attended either his RPD hearing or the abandonment proceeding, the notices for the hearings were sent to the mailing address on file, and the RPD had attempted to call the phone number on file on August 17, 2022 and August 23, 2022. The first call went to voicemail, where the RPD left a voice message; the second attempt to call the number on file was unsuccessful as the number was out of service.

[7] Approximately two months later, Mr. Brar received a letter from CBSA asking him to go to an interview. He attended and learned that his refugee claim had been abandoned. Mr. Brar then retained counsel and filed an application to re-open his refugee claim on November 14, 2022.

[8] In Mr. Brar's application to re-open his claim, he provided an affidavit that explained he had thought that updating his mailing address with IRCC would automatically update it with the RPD, and that he had not received any email from the RPD despite having provided his email address to the RPD with his refugee claim.

[9] In a decision dated May 16, 2023, the RPD refused the re-opening application. The RPD noted that Rule 62 of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules] provides that it must not allow the application “unless it is established that there was a failure to observe a principle of natural justice.” The RPD found that Mr. Brar, like all claimants, had been provided detailed instructions about keeping his address updated with the RPD, that he had failed to do this, had not been diligent in pursuing his refugee claim and therefore there was no basis to re-open the claim.

III. Issue and Standard of Review

[10] Both parties argued that this Court should apply a reasonableness standard of review when reviewing the RPD’s decision to not re-open Mr. Brar’s refugee claim. I acknowledge that there is recent jurisprudence where this Court considered this issue to be a matter of procedural fairness requiring the Court to apply a “fairness” standard, assessing whether the requirements of procedural fairness have been met (*Perez v Canada (Citizenship and Immigration)*, 2020 FC 1171 [Perez] at para 7). There are also a number of recent cases that apply a reasonableness standard to this question (See for example: *Reyes Chacon v Canada (Citizenship and Immigration)*, 2024 FC 140 and *Aguirre Meza v Canada (Citizenship and Immigration)*, 2022 FC 1275). Given that the parties did not address this divergence in the jurisprudence and that I would find that the matter has to be sent back to redetermined regardless of whether a reasonableness or fairness standard applied, I have found it unnecessary to examine this issue further.

IV. Analysis

[11] When considering whether to re-open a refugee claim, the RPD is required to dismiss the application “unless it is established that there was a failure to observe a principle of natural justice” (Rule 60(3) of the RPD Rules). This Court has interpreted “natural justice” in this context to be equivalent to procedural fairness (*Huseen v Canada (Citizenship and Immigration)* 2015 FC 845 [*Huseen*] at para 20). Procedural fairness encompasses the “overarching right to be heard” and cannot be denied unreasonably (*Huseen* at para 36, citing *Canada v Garber*, 2008 FCA 53 at para 40; *Perez* at para 22).

[12] The RPD found that Mr. Brar was the author of his own misfortune by not following the requirement to update his mailing address with the RPD. The RPD did not directly address Mr. Brar’s sworn evidence that he believed his mailing address would be automatically updated with the Immigration and Refugee Board [IRB] once he changed it with IRCC and that as soon as he learned that this had not happened, he took immediate steps to apply to re-open his claim. More critically, the RPD did not address Mr. Brar’s principal argument that he had provided his email address to the RPD and yet no effort had been made to contact him there. The RPD Rules identify email as a form of contact information, along with phone number and mailing address (Rule 1).

[13] The Respondent argued that the RPD did not need to address Mr. Brar’s argument about his email address because it is not required to address every argument. The Respondent argued

that the RPD's reasoning on this issue was essentially subsumed within its clear reasons for rejecting the application, which rested on the Applicant's failure to update his mailing address.

[14] I do not agree that it was unnecessary for the RPD to address Mr. Brar's argument about the failure to contact him at the email that was on file. This was the central argument Mr. Brar was making on his re-opening application and it is not addressed in any way. As noted by the Supreme Court in *Vavilov*, "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128).

[15] A procedural failing on an Applicant's part does not automatically mean they cannot obtain relief through a re-opening application. As noted by Justice Diner, "... the door should not slam shut on all those who fail to meet ordinary procedural requirements. Such a restrictive reading would undermine Canada's commitment to its refugee system and underlying international obligations" (*Huseen* at para 16).

[16] The full circumstances of the case must be considered (*Perez* at para 26). In this case, the full circumstances included that Mr. Brar was unrepresented, that he had erroneously believed that updating his mailing address with IRCC would result in it being updated with the IRB, and that he was not contacted at his email address which he continued to use and was on file with the RPD.

[17] As noted, the RPD Rules identify email as a form of contact information. In these circumstances, and given the arguments made by Mr. Brar, the RPD had to consider whether he could have been reasonably been contacted prior to denying him an opportunity to have his refugee claim heard on the merits (*Perez* at para 33).

[18] The consequences of denying Mr. Brar's application to re-open his refugee claim severely impact his rights and interests. The RPD's decision does not reflect the stakes that are at issue. The RPD's reasons do not grapple with central arguments raised by Mr. Brar, nor do they meaningfully address the full circumstances of his case. Accordingly, the matter must be redetermined.

[19] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-7630-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The RPD decision dated May 16, 2023 is set aside and sent back to be redetermined by a different member; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7630-23

STYLE OF CAUSE: SUKHDARSHAN SINGH BRAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 31, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JULY 26, 2024

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