

Federal Court



Cour fédérale

**Date: 20151127**

**Docket: IMM-2699-15**

**Citation: 2015 FC 1324**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, November 27, 2015**

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

**BETWEEN:**

**DHARMVIR PAUL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Preliminary comments

[1] It should be noted that the Court owes deference to findings of credibility made by the RPD. In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 42 [*Rahal*], Justice Mary J. L. Gleason set out the following principle:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence.

## II. Introduction

[2] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, dated June 2, 2015, rejecting the applicant's claim for protection as a refugee or as a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

## III. Facts

[3] The applicant, Paul Dharmvir, is a 33-year-old citizen of India.

[4] He alleged that he had to leave India following persecution he reportedly suffered at the hands of police authorities, who believed that the applicant was harbouring his brother, who was accused of being involved in a bombing in October 2007.

[5] On October 21, 2007, the applicant was arrested and held for four days, during which he was purportedly beaten and tortured. Following his detention, the applicant was harassed by the police and was forced to pay a bribe to the authorities.

[6] On January 27, 2008, the applicant was arrested once again, detained for three days and tortured. He was released with conditions, which included having to pay a bribe to the authorities.

[7] Finally, on April 27, 2008, equipped with a Canadian work visa, the applicant left India and travelled to Canada, via England. It was not until February 6, 2012, that the applicant claimed refugee protection in Canada.

[8] In a decision dated June 2, 2015, the RPD rejected the applicant's refugee protection claim, determining that he was neither a Convention refugee (section 96 of the IRPA) nor a person in need of protection (section 97 of the IRPA).

[9] The RPD's findings are largely based on the blatant lack of credibility on the part of the applicant. In particular, the RPD found that during his testimony the applicant had provided a narrative that was fundamentally implausible; the applicant occasionally contradicted himself with respect to the dates on which significant incidents in his narrative had supposedly occurred; the applicant provided explanations that were not credible; and the applicant became embarrassed when the contradictions in his testimony were pointed out to him. In addition, the RPD found that the lengthy delay between the applicant's arrival in Canada and his submitting a refugee protection claim undermined his credibility and showed behaviour that was contrary to that of someone with a genuine fear of persecution. Lastly, the RPD dismissed the applicant's documentary evidence, finding that it was not credible.

IV. Analysis

[10] The applicant submits, primarily, that the RPD erred in its assessment of his credibility and made factually incorrect conclusions. The Court must dismiss the applicant's arguments on this point.

[11] In light of the fact that the RPD's findings with respect to credibility must be reviewed on a standard of reasonableness, the Court finds the RPD's decision to be reasonable.

[12] The RPD, as was noted above, based its conclusion that the applicant lacked credibility on a number of factors: implausible explanations, contradictions with regard to important dates, the prolonged delay in claiming refugee protection in Canada, and documentary evidence that was not credible.

[13] It should be noted that the Court owes deference to findings of credibility made by the RPD. In *Rahal*, above, at para 42, Justice Gleason set out the following principle:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence.

[14] The RPD made negative findings with regard to the applicant's credibility based specifically on the behaviour of the applicant when his own contradictions in his testimony were pointed out to him. Given the privileged role of the RPD in being able to hear and observe the

witness, the Court must recognize that it has only a limited role in assessing the applicant's credibility.

[15] In addition, the delay in claiming refugee status, while not determinative in and of itself, is a factor that must be taken into consideration and may affect the applicant's credibility (*Exantus v Canada (Minister of Citizenship and Immigration)*, 2015 FC 39 at para 29). It is true that there is no obligation to claim refugee protection immediately upon arriving in Canada (*Papsouev v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 769, 168 FTR 99); however, a claimant's failure to regularize his or her status as soon as possible, though not decisive in and of itself, remains a relevant element (*Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259 at paras 24-25).

[16] In this case, it appears from the evidence that the applicant was in Canada for nearly four years before he claimed refugee protection. The applicant's work visa was valid only until May 15, 2009, yet he felt no need to regularize his status before his work visa expired. The RPD also did not accept the applicant's explanations.

[17] Given all of the evidence in the record, the Court finds the RPD's decision to be reasonable. Thus, the application for judicial review is dismissed.

## V. Conclusion

[18] The Court finds the RPD's decision to be reasonable. Accordingly, the application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. There is no question of general importance to certify.

“Michel M.J. Shore”

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Judge

Certified true translation  
Sebastian Desbarats, Translator

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

**DOCKET:** IMM-2699-15

**STYLE OF CAUSE:** DHARMVIR PAUL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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**JUDGMENT AND REASONS:** SHORE J.

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