

Federal Court



Cour fédérale

**Date: 20210407**

**Docket: IMM-5843-19**

**Citation: 2021 FC 299**

**Fredericton, New Brunswick, April 7, 2021**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**KASHIF RAZA  
SANA KASHIF**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, Kashif Raza and Sana Kashif, are husband and wife, and seek review of the decision of the Refugee Appeal Division (RAD) who confirmed the Refugee Protection Division (RPD) decision denying their claims for refugee protection.

[2] The Applicants are citizens of Pakistan and claim refugee protection on the grounds that they are the target of religious persecution from their family because of their interfaith marriage. Mr. Raza is a Sunni Muslim and Ms. Kashif is a Shia Muslim.

[3] For the reasons that following I am dismissing this judicial review as the decision of the RAD is reasonable and no procedural fairness issues arise.

### **Background**

[4] The Applicants met in 2012 at a wedding in Pakistan and were married on May 15, 2016, in a Muslim marriage ceremony (Nikah) via a Skype call.

[5] Prior to their marriage, Mr. Raza lived in Italy, having been sponsored by his brother, Murtaza Ghulam, who lived in Italy. Mr. Raza resided in Italy from 2013 until February 2018. His temporary residency permit was valid until April 2019.

[6] On February 12, 2018, Mr. Raza travelled to Pakistan to participate in a ceremony with his wife, following which, Ms. Kashif officially left her family home.

[7] Mr. Raza says the members of his family, with the exception of his father, disapprove of his marriage. On February 14, 2018, Mr. Raza's family ordered that he either divorce Ms. Khasif or insist that she convert to Sunni Islam.

[8] On February 16, 2018, Mr. Raza claims to have been attacked by “hooligans” who, he says, were hired by his family. He reports that they threatened to kill him if he did not get a divorce. Mr. Raza reported this attack to the police but he says the police advised that these men were known criminals, and the police could not provide protection. The February 16 incident and the report to the police are central to the Applicants’ claim that they have been persecuted by Mr. Raza’s family.

[9] Following this attack, the Applicants relocated to Islamabad because they feared for their lives. In the Basis of Claim (BOC) the Applicants state that the local police tortured Ms. Kashif’s brother trying to get information on the Applicants’ whereabouts. The Applicants also claim that Mr. Raza’s father received threats from other family members because he assisted the Applicants’ when they relocated.

[10] The Applicants planned to stay in Islamabad while awaiting an Italian visa for Ms. Kashif, however they say that as a result of the increasing threats of violence, they decided to flee Pakistan. Although Mr. Raza had temporary residence status in Italy until 2019, he states in his BOC that they did not go to Italy because his brother, Murtaza Ghulam, who resides in Italy, does not agree with his marriage and is an agent of persecution.

[11] The Applicants arrived in Canada on April 12, 2018, and made a refugee claim.

### **RPD Decision**

[12] In denying their refugee claim, the determinative issue for the RPD was credibility.

[13] The RPD drew adverse credibility inferences in relation to the amended BOC as the original BOC did not explicitly mention the interfaith aspect of their marriage.

[14] As well, the RPD drew a negative inference because of the sender's name on a package of identity documents sent to Mr. Raza from Italy. Mr. Raza testified that he had no contact with his family except for his father. However, the packing slip sent to Mr. Raza has the name of his brother, Murtaza Ghulam, as the name of the sender. Mr. Raza denied that the person who sent the package was his brother, claiming that many Pakistani nationals reside at that address in Italy, and that another Murtaza Ghulam sent the package.

[15] The Applicants appealed the RPD decision to the RAD.

### **RAD Decision**

[16] On September 5, 2019, the RAD denied the Applicants' appeal. The RAD noted that the Applicants did not request the admission of new evidence therefore an oral hearing was not necessary pursuant to section 110(6) of the *Immigration and Refugee Protection Act*, SC 2001 c27 [IRPA].

[17] Unlike the RPD, the RAD determined that the amended BOC did not "give rise to meaningful inconsistencies, contradictions, omissions or implausibilities." The RAD concluded that the amendments to the BOC did not undermine the general credibility of the Applicants with respect to the interfaith aspect of their marriage and that the inconsistencies that arose were a result of Mr. Raza completing the BOC with the assistance of an interpreter.

[18] However, the RAD concluded that the Applicants lacked credibility on a number of core issues.

[19] On the issue of the letter to the police regarding the February 16, 2018 attack, the RAD noted a contradiction. The RAD noted that in the letter to the police Mr. Raza states that the attackers were “riding a Honda Motorcycle of white colour” whereas in his BOC, he states that the attackers were “in a white Honda Accord.”

[20] The RAD found that it was reasonable to expect Mr. Raza to know the difference between a sedan and a motorcycle. The RAD noted that Mr. Raza prepared both the letter to the police and the BOC. The RAD concluded that this inconsistency was “meaningful” as the attack goes to the core of the claim of persecution. The RAD assigned reduced weight to the police letter due to this inconsistency.

[21] Further to this finding, the RAD noted that as the RPD had already identified credibility issues with the police letter, the RAD’s finding did not constitute a new issue.

[22] On the identity of the sender of the documents from Italy, the RAD accepted “that it is possible that there are two Murtaza Ghulams residing at the same address in Italy.” However, the RAD found that it was a meaningful omission that the Applicants did not submit “readily available” evidence to confirm that the sender, “Murtaza Ghulam”, was not his brother. As the issue of persecution by Mr. Raza’s family was core to the Applicants’ claim for protection, the

RAD determined that if the documents were sent by Mr. Raza's brother, this suggested that Mr. Raza's family are not agents of persecution.

[23] The RAD also considered the supporting Affidavit evidence and noted that while the Affidavits from a friend and family members did not "attract any specific concerns with regard to credibility" they did not outweigh the significant credibility concerns with the Applicants' contact with their alleged agents of persecution as well as the police letter inconsistency.

### **Issues**

[24] The Applicants raise two main issues:

- A. Was the RAD's treatment of evidence reasonable?
- B. Should the Applicants' have had an opportunity to respond to contradictory evidence?

### **Standard of Review**

[25] The parties agree that issue of the RAD's treatment of evidence is reviewed on the reasonableness standard. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 99 the Supreme Court states that "the reviewing court asks whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision."

[26] The second issue raised by the Applicants' is a procedural fairness issue. The standard of review on procedural fairness issues is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43-44; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

## **Analysis**

A. *Was the RAD's treatment of evidence reasonable?*

[27] The Applicants argue that the RAD erred in its treatment of evidence with respect to the documents from Italy and the supporting Affidavits. I will address each of these issues below.

### Documents from Italy

[28] The Applicants argue that the RAD erred by upholding the RPD's finding that Murtaza Ghulam, whose name is on the packing slip of documents sent from Italy, was likely Mr. Raza's brother, an alleged agent of persecution.

[29] The Applicants argue that this is a misapplication of the principles of plausibility findings from *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776. They made the same submissions to the RAD.

[30] On this issue, the RAD accepted that it was "plausible" that there are two Murtaza Ghulams residing at the same address in Italy but found that "... evidence corroborating the existence of a second Murtaza Ghulam living at the same address as Mr. Raza's brother should

be readily available. It is therefore a meaningful omission that the [Applicants] did not submit evidence of this nature to the RAD.”

[31] The Applicants allege that Mr. Raza’s family including his brother, Murtaza Ghulam, are their agents of persecution. The fact that the identity of the sender of the documents from Italy has the same name and the same address as Mr. Raza’s brother was an issue for the RPD. The ability to provide proof that Mr. Raza’s brother did not send the documents from Italy was an issue wholly within the Applicants’ control. The Applicants could have easily, and without risk, have provided evidence on this issue if the sender is not Mr. Raza’s brother.

[32] In my view, this is not an implausibility finding by the RAD. Rather, the RAD was not prepared to accept the Applicants’ explanation that someone with same name as his brother lives at the same address as his brother in Italy without evidence to substantiate this assertion. As noted by the RAD, if Mr. Raza knows this person well enough to rely upon him to send “vital identity documents related to his refugee claim”, then it was reasonable to expect evidence to confirm his identity.

[33] Even if the RAD’s finding on this issue can be characterized as an implausibility finding, as noted in *Valtchev* at para 7: “a tribunal may make adverse findings of credibility based on the implausibility of an applicant’s story provided the inferences drawn can be reasonably said to exist”. In my view, it was reasonable to infer that the Applicants could have provided evidence to confirm who sent the documents.



[34] I would also note that this is not a case where there is a contradiction between the documentary evidence and the Applicants' evidence (*Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 16). Nor is the RAD expressing views or applying assumptions to the actions or behaviours of the Applicants' agents of persecution or other parties. However, the RAD was not prepared to accept the Applicants' assertion that someone with the same name as the brother, and residing at the same address as the brother, was not the brother.

[35] In my view, it was open to the RAD to require corroborating evidence regarding Murtaza Ghulam's identity due to the other contradictions in the Applicants' testimony on the record.

[36] Accordingly, the RAD's finding on this issue is reasonable.

#### Supporting Affidavits

[37] The Applicants argue that the RAD failed to properly consider the Affidavit evidence of their friend and family members regarding the risk they face in Pakistan because of their interfaith marriage. There are four supporting Affidavits from the following:

- Salman Nawaz, a friend of Mr. Raza
- Bati Khan, the father of Mr. Raza
- Shafiq Ahmed, the mother of Ms. Kashif
- Salman Sjaifiq Butt, the brother of Ms. Kashif.

[38] The Applicants argue, relying upon *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 [*Oranye*], that since the RAD accepted the Affidavits as credible, it was unreasonable for the RAD to then disregard the Affidavits as supporting their claims for refugee protection.

[39] On the issue of the Affidavits, the RPD noted:

... the letter and affidavits contradict the findings made by the panel regarding the agents of persecution in this case...however, the claimant presented viva voce evidence that is not in keeping with his narrative such that it undermined the claim...the panel prefers the viva voce evidence as provided over the few written affidavits that are untestable through questioning.

[40] The RAD assessed the Affidavits but placed little weight on them. The RAD found the Affidavits “do not attract any specific concerns with regard to credibility” but held that the Affidavits do not “outweigh the significant credibility concerns with regard to the [Applicants’] contact with their alleged agents of persecution as well as the inconsistency in the letter to the police.” Accordingly, like the RPD, the RAD concluded that the Affidavits could not outweigh the Applicants other credibility issues.

[41] The Applicants’ reliance on *Oranye* does not assist their position. In *Oranye*, the Court held that it was unreasonable for the RAD to “mask authenticity findings by simply deeming evidence to be of ‘little probative value’” (para 27). Here, the RAD is not masking an authenticity finding by placing reduced weight on the Affidavits. The RAD did not raise any credibility, or authenticity, issues with these Affidavits. Nonetheless, the task of the RAD is to weigh these Affidavits in the context of the Applicants’ full evidentiary record. Further, it is

well established that “weight assigned to evidence is the domain of the administrative tribunal, and not the Court’s on judicial review” (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at para 19).

[42] As this Court has stated in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paragraph 25 that:

If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it...evidence of third parties who have no means of independently verifying the fact to which they testify is likely to be ascribed little weight, whether it is credible or not.

[43] This is precisely what the RAD did here. The RAD accepted the evidence of the Affidavits but found that they did not outweigh the Applicants’ contradictory evidence. It was open to the RAD to do so. Once a credibility finding was made, it was reasonable for the RAD to find that this corroborating evidence was not sufficient to outweigh the credibility concerns with the Applicant’s direct evidence, or, to put it another way, the corroborating evidence was not sufficient to make the case for the Applicants.

[44] In essence, the Applicants’ are challenging the weighing of evidence by the RAD, however, that is not an issue subject to reconsideration on judicial review.

B. *Should the Applicants’ have had an opportunity to respond to contradictory evidence?*

[45] The Applicants argue that the RAD raised a new issue when it made a negative inference on the discrepancy between the description of the Honda car and the Honda motorcycle in the

police report and the BOC. The Applicants argue that they should have had an opportunity to respond to this issue.

[46] At paragraph 21 of its decision, the RAD quotes from para 13 of *Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 (*Corvil*) as follows:

...it is now a well-established fact that when the credibility of a refugee protection claimant is at the heart of the RPD's decision and the grounds for appeal before the RAD, the RAD is entitled to make independent findings in this regard without having to question the applicant or giving the applicant another opportunity to make submissions.

[47] The Applicants argue that the RAD erred by relying upon *Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 because they say the RAD in drawing a negative inference on the contradiction, was in fact, identifying a new issue and making a new finding and thus should have given the Applicants an opportunity to respond.

[48] The RAD notes at para 20: "I am mindful of the fact that the RAD must not make independent findings based on new issues without first notifying the parties to the appeal and giving them an opportunity to respond. In this case, I do not think that this finding constitutes a new issue."

[49] At para 22, the RAD concludes: "I find that all of the information I have relied upon in this finding was the [Applicants'] own and should therefore be known to them. Credibility was also at the heart of the RPD's reasons and the [Applicants'] appeals to me."

[50] The RAD was clearly aware of its obligation to allow the Applicants to respond if it was to make a finding on a new issue. The question becomes whether the contradiction on the identity of the “Honda” as described in the police report and as described in the BOC was a “new” issue.

[51] In considering this, it is important to note that the documents containing the contradiction, being the report to the police about the February 16, 2018 attack, and the BOC, were documents prepared by Mr. Raza. These are the Applicants’ own documents filed in support of their claim for refugee protection. Accordingly, it is disingenuous for the Applicants to complain about the RAD noting a factual discrepancy between two of their own documents. Furthermore, the reliability of the letter to the police to support their claim was already in question by the RPD. The Applicants were therefore on notice that the reliability of this document to corroborate their claim was in question. Therefore, the contradiction identified by the RAD does not constitute a new or an unknown issue.

[52] Further, I would note that the Applicants’ submissions on this issue largely overlook the fact that their lack of credibility was the determinative issue for the RPD and the RAD. As such, the RAD was entitled to rely upon inconsistencies in their evidence without affording the Applicants an opportunity to explain. As noted by Justice Ahmed in *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600, a decision relied upon by the Applicants, at paragraph 24:

... the RAD is entitled to make independent findings of credibility or plausibility against an applicant, without putting it before the applicant and giving him or her the opportunity to make submissions, but this only holds for situations where the RAD does

not ignore contradictory evidence or make additional findings or analyses on issues unknown to the applicant.

[53] I do not agree with the Applicants that the RAD made presumptions about the contradictory evidence. Rather, the RAD found the Applicants' own evidence to be contradictory. In support of this finding, the RAD did not rely upon extrinsic information and did not make assumptions about the actions or motivations of third parties. The RAD simply scrutinized the material details of the Applicants' own documents, which purport to provide the key details of the attack of February 16, 2018, which attack forms a critical event in their claim for refugee protection.

[54] In my view, the RAD was reasonable in concluding that its treatment of this contradictory evidence did not constitute a new issue. Therefore, the RAD correctly applied *Corvil* and there was no obligation to provide the Applicants with an opportunity to address this inconsistency.

**JUDGMENT IN IMM-5843-19**

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

1. The application for judicial review of the Refugee Appeal Division decision is dismissed;  
and
2. No question of general importance is proposed by the parties and none arise.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-5843-19

**STYLE OF CAUSE:** KASHIF RAZA ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
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BRUNSWICK

**DATE OF HEARING:** FEBRUARY 8, 2021

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**DATED:** APRIL 7, 2021

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