

Federal Court



Cour fédérale

Date: 20211108

Docket: IMM-735-21

Citation: 2021 FC 1199

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 8, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**HARDIAL SINGH
BHUPINDER KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION OF CANADA**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD]. This application for judicial review is made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The decisions of the two administrative tribunals were determinative of the issue of the applicants' credibility. On judicial review, the decision was rendered on the basis that the burden on the applicants to show that the credibility findings were unreasonable was not discharged. As a result, the application for judicial review must be dismissed.

I. The facts and decision for which judicial review is sought

[3] The applicants are citizens of India who came to Canada in May 2019 to seek refuge. They complained about a variety of incidents that allegedly took place in their native village and that created sufficient fear to seek refuge in Canada.

[4] In the Basis of Claim Form (BOC Form), the applicants recount incidents of which they were allegedly victims. They state that they feared a local politician who they say was also a drug trafficker and who had a stake in a business that was in competition with the principal applicant's business. The two applicants are in a lower caste and lived in a village dominated by a higher caste, to which the agent of persecution belonged.

[5] In their short Memorandum of Fact and Law, the applicants challenge the three negative inferences drawn by the RAD. The RAD stated in its decision that of the six incidents the RPD officially ruled on to come to a finding of lack of credibility, the RPD erred in dismissing the three of the six allegations made by the applicants. However, with respect to three other allegations, the RAD concluded that the RPD was right and that it was necessary, in the circumstances, to conclude that the applicants were not credible.

[6] The three negative inferences rejected by the RAD are as follows. With respect to the rivalry between the local politician and the applicants over businesses that could compete with each other (cable installation companies for television broadcasting), the RAD found against what had been decided by the RPD. Despite the confusion over the explanations given by the principal applicant, Mr. Singh, it was unclear that, in the BOC Form, he had alleged a business rivalry as a source of conflict between him and the local politician. Thus, there was not necessarily any conflict between the version provided at the hearing and that found in the BOC Form.

[7] The RPD also considered what it saw as a discrepancy between a statement in the BOC Form and the principal applicant's testimony about the presence of "mafias". The account in the BOC Form spoke of "drug mafia" and "cable mafia". At the hearing before the RPD, clarification from the principal applicant never came. Despite that, the RAD considered that it was more a question of semantics than anything else and stated that it therefore disagreed with the RPD that a negative inference should be drawn about the principal applicant's overall credibility.

[8] Finally, another disagreement between the two administrative tribunals resulted from the RPD's finding that if the applicants had truly been in danger, they would have been intercepted at the Delhi airport when they were leaving their country of origin. The RAD rather considered that the evidence was such that individuals like the applicants were not the subject of such monitoring. Therefore, it should not have been inferred that the ease of leaving India led to the

conclusion that there was no real danger at the hands of the agents of persecution. This factor is, rather, neutral.

[9] In addition, three other findings of the RPD regarding the principal applicant's credibility were confirmed by the RAD. While the applicants, in particular the principal applicant, placed the emphasis on his anti-drug campaigns that were allegedly displeasing to the local politician, he was unable to explain, after a few questions from the RPD in this regard, what the messaging he claimed to have conveyed for a certain period time was. Indeed, the principal applicant was never able to elaborate on that messaging, which, according to his testimony, was practically at the heart of the challenges he faced in his native village.

[10] Also, the principal applicant's credibility was tainted by his own account of an interaction with police on January 2017, just before an election. In this case, the principal applicant did not state in his BOC Form that he was subjected to police violence when police officers attempted to pressure him into aligning himself with the local politician. However, during his testimony, he claimed that he was beaten and subjected to considerable pressure. He had to withdraw that statement later in his testimony. For the RPD, this was an evolving narrative, and it was held against the applicant. The explanation for failing to provide that information in his BOC Form was not accepted. Thus, it was submitted that the applicant had little education (Grade 10 education) and that he was nervous. The RAD rather considered that this was an evolution of his testimony, and agreed with the RPD in this respect.

[11] Finally, the RAD was surprised that the principal witness failed to mention at the hearing an incident indicated in his account in his BOC Form that men fired guns at his house in August 2018. The RPD also attempted to suggest in its questions that there was perhaps another incident the principal applicant wished to speak about. It was to no avail. The principal applicant said nothing after three attempts by the RPD. Such a slip of the mind casts doubt on such an incident, one that should have been striking and that should have made for a lasting memory. The RAD also stated that such an omission was inexplicable. The applicants' credibility was affected.

[12] The principal applicant's credibility was seriously undermined by his vague testimony about the anti-drug message that he claimed to have promoted for a while, the complete failure during the RPD hearing to describe the circumstances of an attack involving firearms at his home, and his inconsistent testimony about an interaction with the police just before the 2017 election. As a result, the refugee protection claim was rejected owing to the applicants', specifically the principal applicant's, lack of credibility.

II. Arguments and analysis

[13] Everyone agreed that the application for judicial review for which the determinative issue is credibility is the standard of reasonableness. The onus to demonstrate that the decision is unreasonable is on the applicant, and the applicant must persuade the reviewing court that there are sufficiently serious shortcomings in the decision under review. Indeed, these shortcomings must lead to the conclusion that the requirements of justification, intelligibility and transparency for a reasonable decision are not present. As the Supreme Court stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], “[i]nstead, the court must be

satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”. (para 100). Indeed, flaws presented as demonstrating a failure of internal rationality or that a decision is untenable will be relied upon to show the unreasonableness of a decision. This means that the applicants must persuade the Court of these serious shortcomings that would lead to the conclusion that the hallmarks of reasonableness—transparency, intelligibility and justification—in relation to the factual and legal constraints, are not present in this case.

[14] However, we have nothing of the sort from the applicant. What is more, the reviewing court must show judicial deference, adopt a posture of respect and show deference to the decision made by the administrative decision maker. Indeed, the applicants readily accept that.

[15] The applicants’ submissions merely disagreed with the RAD’s pronouncements. For instance, while the RAD considered the principal applicant’s testimony as being vague with respect to the messaging he claimed to be conveying to the members of his village about drug use, the applicants’ reading is different; the applicants’ see certain details. Again, it is necessary to elaborate and identify those details to lend credibility to their story. At the hearing, the argument became that the message was to not take drugs. This was sufficient. This is what the principal applicant said during submissions on the subject. No explanation was offered in this regard either in argument or in the memorandum of fact and law submitted on behalf of the applicants. This is short. Indeed, the narrative made this a central issue, which involved participation in gatherings where the principal applicant spoke of the “ills of drugs”. He and his wife indicated that they were very active anti-drug campaigners. There had to be a narrative of

some sort to support the anti-drug messaging that was disseminated by the applicants. Despite the opportunities to elaborate, the principal applicant remained vague and evasive other than to claim success for his campaign. As noted by the RAD, it would be surprising if such a bland anti-drug campaign could have aroused the reaction alleged by the applicants. The absence of details rendered their credibility questionable at best.

[16] As for the police intervention in January 2017, and the attack on the applicants' residence when gunshots were fired, the applicants simply argued that omissions regarding the two events did not suffice to reject the applicants' claim for refugee protection.

[17] Thus, the applicants provided more details in the BOC Form with respect to the 2017 pre-election interaction with police. At the RPD hearing, their version became more elaborate, as they claimed that they were beaten by the police. The improved version was subsequently withdrawn when it was pointed out to the principal applicant that there was no mention of this in the BOC Form.

[18] Finally, the fact that there was no testimony as to a significant incident such as gunshots being fired at the applicants' house strongly suggests that the incident did not occur.

[19] The applicants argued that the three negative inferences did not suffice to reject the claim for refugee protection. I do not share that view.

[20] Credibility refers to the truthfulness of the alleged events, as well as to openness and honesty. This can lead to a finding that the testimony in general is not credible or trustworthy given the significance of the incidents in relation to a claimant's overall allegations. It was open to the RAD to find that the principal applicant's testimony was not trustworthy because of three adverse inferences on important topics.

[21] It is of course necessary that the inconsistencies and implausibilities be articulated in clear and explicit terms. A microscopic assessment does not result in a negative inference. However, the accumulation of these implausibilities and inconsistencies matters. The relative weight of the credibility issues is certainly based on the importance of the aspects of the story. The fact that these elements are central to the allegations of persecution make them all the more important. Conversely, if the issues were instead peripheral or marginal, their relative weight would be less important and could justify not rejecting a claim for refugee protection.

[22] In this case, there is an accumulation of serious credibility issues, and they involve major elements. The applicants had to show that despite judicial deference, the Court's intervention was warranted. The Court is of the view that there is no reason for not showing respect for the decision under review, which leads to the exercise of judicial deference.

III. Conclusion

[23] There is no explanation as to how there are serious deficiencies in the manner in which the RAD arrived at the conclusion it did on the applicants' credibility. To simply state one's disagreement with the RAD's findings is not enough to satisfy the reviewing court that a

decision is unreasonable when it must show deference to the RAD. Indeed, the issues described by the RAD are major, and it was open to the RAD to see a reason to dismiss the appeal of the RPD's decision. In any event, the applicants did not discharge their burden of demonstrating that the RAD's decision was unreasonable.

[24] Accordingly, the application for judicial review must be dismissed. There is no question for certification.

JUDGMENT in IMM-735-21

THIS COURT ORDERS AS FOLLOWS:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Yvan Roy”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-735-21

STYLE OF CAUSE: HARDIAL SINGH, BHUPINDER KAUR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 6, 2021

**JUDGMENT AND REASONS
BY:** ROY J.

DATED: NOVEMBER 8, 2021

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