

Federal Court



Cour fédérale

Date: 20220411

Docket: IMM-2308-21

Citation: 2022 FC 517

Ottawa, Ontario, April 11, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

**MUHAMMAD ASIM
RAIZA ASIM
AYAT FATIMA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muhammad Asim, his wife and their minor child, are citizens of Pakistan. They seek judicial review against a decision of the Refugee Appeal Division [RAD], dated March 16, 2021, confirming the decision of the Refugee Protection Division [RPD], that they are neither Convention refugees nor persons in need of protection.

[2] The Applicants claim to be in danger in Pakistan because associates of a mafia group are seeking out the Applicant so that he pays his deceased brother's gambling debt. The Applicants also fear an imam, whom they say has accused the Applicant of insulting Islam.

[3] Specifically, they allege that the Applicant started working in China in 2002. During that time, in Pakistan, his brother accumulated a significant gambling debt from the mafia group that he was unable to repay. His brother survived an attempt on his life in 2012, but later died from the injuries in April 2013. When the Applicant returned to Pakistan for his brother's funeral in April 2013, an associate of the mafia group met him and gave him two (2) years to repay his brother's debt, otherwise he would kill the Applicant as well. The Applicant resumed his work in China in July 2013.

[4] The Applicant came back to Pakistan in January 2014 to get married. He stayed there for two (2) months before returning to China alone. He returned to Pakistan again in February 2015. On March 1, 2015, the Applicant received a call from the mafia group, ordering him to pay a portion of his brother's debt. Four (4) days later, the Applicant was intercepted by unknown men requesting the money. When the Applicant informed them he did not have the money, he was beaten and hospitalized for two (2) days. The Applicant and his wife then left for China, while the rest of his family moved to another city.

[5] The Applicant returned to Pakistan between November 2015 and August 2016, and between December 2016 and July 2017. He stayed with his parents and attended the local mosque. On July 21, 2017, the Applicant received a call from the mafia boss, who threatened to

kill him should he fail to pay the entire debt. The same day, the local mosque imam demanded to receive payment of the debt owed, as he was working for the criminal organization. After a verbal argument, the Applicant went to a friend's house, but was attacked by armed men, who told him that he insulted Islam.

[6] Concerned for their safety, the Applicants went back to China on July 23, 2017. After learning that the Applicant was no longer employed, they travelled to Canada via the United States, and arrived on September 8, 2017, claiming refugee protection.

[7] On January 21, 2020, the RPD rejected the Applicants' claim. It found that the Applicant was not credible because his behaviour was incompatible with his alleged fear. The RPD also identified several inconsistencies and omissions in the Applicant's testimony that he was unable to explain to its satisfaction. The RPD concluded that the Applicants had failed to establish that they would face a risk to their lives in Pakistan.

[8] The Applicants appealed the decision to the RAD. They claimed that: (1) the RPD ignored the Applicant's explanations for returning to Pakistan; (2) it failed to consider that the Applicant was nervous, causing him to omit key facts from his oral testimony; and (3) it failed to consider properly their grounds for fear related to the religious complaint. The Applicants sought to introduce two (2) documents, one of which was a doctor's letter dated February 6, 2020. The letter stated that the Applicant was being treated for anxiety and depression, and that the anxiety could affect how he gives his testimony.

[9] The RAD dismissed the appeal and confirmed the RPD's finding that the Applicants were neither Convention refugees nor persons in need of protection. The RAD first refused to admit the Applicants' new evidence. Then, it agreed with the RPD's determination that the Applicants were not credible about the basis of their claim due to their multiple returns to Pakistan during the period they were allegedly at risk. Like the RPD, the RAD also found the Applicant's testimony about whether or not his parents or family had been threatened to be inconsistent and evolving, and determined that the contradiction between the Applicant's testimony and his Basis of Claim [BOC] narrative was major and not credibly explained by nervousness or anxiety. In addition, the RAD did not accept that the Applicant received a call from the local imam on behalf of the mafia's associates, nor that the Applicant spoke harshly to him about religious beliefs during the call. Finally, the RAD found that the Applicants' corroborative evidence did not establish the credibility of their claims.

[10] The Applicants raise two (2) issues in this application for judicial review. They submit that the RAD erred in both refusing to admit their new evidence and in assessing the Applicant's testimony.

II. Analysis

A. *Standard of Review*

[11] The RAD's credibility findings and conclusion not to admit the new evidence are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Canada (Citizenship and Immigration) v*

Huruglica, 2016 FCA 93 at para 35; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29 [*Singh*]).

[12] When the standard of reasonableness applies, the Court’s focus is on “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” (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court “must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

B. *New Evidence*

[13] While the Applicants sought to introduce two (2) new documents before the RAD, they only dispute the RAD’s inadmissibility finding in respect to the letter from the Applicant’s doctor.

[14] Before refusing to admit this new evidence, the RAD noted the letter indicated that the Applicant was being treated for anxiety and depression, that he can get anxious easily and that his anxiety can affect how he testifies. The RAD also considered the Applicant’s explanation that he could not provide this letter to the RPD because the issue of his ability to testify only arose at the hearing. The RAD stated that it did not accept this explanation and further indicated that it did not find that the letter was relevant, since the doctor did not provide any specific information as to how the Applicant’s testimony could be affected during a hearing. While the RAD accepted

that a person could have issues testifying and indicated that it would consider this in its analysis of the RPD's findings, it noted that the doctor's letter did not specify the type of problems the Applicant could face, such as memory loss, or confusion regarding dates. Since the letter did not help understanding any specific issues the Applicant could have had when testifying, the RAD refused to admit it as new evidence. The RAD further observed that, while the Applicant referred to item 8.1 of the *Chairperson Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB* [Guideline], he failed to make a request to be declared a vulnerable person. Acknowledging that a vulnerable person can be identified at any stage of the IRB's proceedings, the RAD opined that the evidence before it did not suggest that the Applicant was a vulnerable person requiring specific accommodations.

[15] The Applicants submit that the RAD was only required to determine if the evidence was relevant. A lack of specificity goes to weight, not admissibility. They claim that the letter was relevant to a central issue of the claim, namely credibility, and failing to admit this new evidence vitiates the decision.

[16] I disagree.

[17] Subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, stipulates that an appellant "may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection".

[18] In addition to the express statutory requirements, the RAD must ensure that the implied conditions of admissibility laid out by the Federal Court of Appeal are fulfilled, such as credibility, relevance, newness and materiality (*Singh* at paras 34-38; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13 [*Raza*]).

[19] In determining the relevance of the new evidence, the RAD was required to determine whether the evidence was “capable of proving or disproving a fact that is relevant to the claim for protection” (*Singh* at para 38; *Raza* at para 13). This is exactly what the RAD did when it concluded that the doctor’s letter was not relevant because it did not provide any specific information on how the Applicant’s condition could have affected his testimony. The RAD essentially found that the doctor’s letter did not prove or disprove the credibility findings of the RPD. In addition to the letter’s lack of specificity, I also note that the Applicants’ submissions on appeal do not explain either the specific issues the Applicant may have had in testifying.

[20] The onus was on the Applicants to convince the RAD that the new evidence was admissible (*Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54 at para 24). In the absence of any explanation of how the Applicant’s anxiety affected his testimony and hence, the RPD’s credibility findings, the RAD could reasonably find that the evidence was not relevant, and therefore inadmissible.

[21] The Applicants refer to *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 [*Khan*], to argue that while the new evidence may not have been entirely satisfactory to the RAD, one cannot say that it was irrelevant. In *Khan*, the Court concluded that it was necessary to

explain why evidence directly related to central elements of a refugee claim cannot be accepted (*Khan* at para 34). Upon review of the RAD's reasons, I am satisfied that it did so in this case.

[22] A RAD appeal is not a second chance to submit evidence to answer weaknesses identified by the RPD (*Khan* at para 28; *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 33; *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 15). According to the letter, the Applicant has been a patient of the doctor since June 22, 2019. The RPD hearing was held on December 20, 2019. The Applicant's issues with anxiety would have existed at the time of the RPD hearing. To the extent that his anxiety impaired his ability to testify, the Applicant could have made a request to be declared a vulnerable person following the Guideline, as reasonably noted by the RAD.

[23] Determinations of the RAD on the admissibility of evidence demand deference from this Court (*Khan* at para 32). In the circumstances of this case, I am not persuaded that the RAD's conclusion is unreasonable.

C. *Credibility Findings*

[24] The Applicants submit that the RAD did not consider their explanations about their multiple returns to Pakistan. They argue that the evidence clearly showed that most of the visits revolved around major life events, such as the Applicant's marriage to his wife, the birth of their child, and the wish to spend more time with the Applicant's father. They contend that there was nothing implausible about the reasons for the Applicants' return trips to Pakistan.

[25] The Applicants also allege that the RAD erred when analyzing the Applicant's testimony about the threats to his family. They submit that the RAD rejected the Applicant's entire story based on one answer about a discussion with his parents, following the assault in March 2015, that differed from his BOC. They argue that there was no real contradiction and that the RAD's analysis is unintelligible and reveals no logical chain of analysis.

[26] Finally, the Applicants claim that the RAD's analysis on the religious complaint is unreasonable. Instead of dismissing the Applicants' corroborative evidence on the basis that the prior testimony was not credible, the RAD should have considered the documentary evidence independently of its credibility concerns.

[27] The Applicants' arguments are unfounded.

[28] With respect to the Applicants' frequent return visits to Pakistan, it is trite law that voluntarily returning to a country where there is a fear of persecution is behaviour that is incompatible with a subjective fear of persecution (*Sujia Rodriguez v Canada (Citizenship and Immigration)*, 2021 FC 142 at para 19; *Hartono v Canada (Citizenship and Immigration)*, 2017 FC 601 at para 20; *Milovic v Canada (Citizenship and Immigration)*, 2015 FC 1008 at para 11).

[29] The Applicants rely on *Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2006 FC 547, and *Anwar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1077, to submit that a lack of subjective fear cannot be inferred simply because, in the face of adversity, a claimant is hopeful that the situation will improve or has weighed the risks

differently. They argue that the Applicant was acting on the belief that he had done nothing wrong and that he should not have to change the way in which he lived his life. They submit that their breaking point was reached when the mafia threats in July 2017 evolved into a blasphemy complaint.

[30] I agree that the Applicant's return trips could be reasonable prior to the expiration of the two-year deadline to reimburse the brother's debt to the mafia group. However, the RAD reasonably found not credible the Applicants' explanations for returning to Pakistan after the Applicant was threatened and beaten in March 2015 for refusing to make a payment with regard to his brother's debt. The RAD noted that his brother's creditors had followed through on their threat when the Applicant failed to pay the debt at the expiration of the two-year grace period. The RAD also noted that after April 2015, the Applicants spent mere months in China and were in Pakistan for long periods. The RAD simply did not find credible that they continued to return to Pakistan in the face of clear and reinforced threats. It considered all of the Applicants' explanations for frequently returning to Pakistan and provided in-depth and detailed reasons as to why it found them unacceptable and incompatible with their alleged fear. While the Applicants may disagree with the RAD's assessment of their explanations, they have not persuaded me that it committed a reviewable error in its analysis.

[31] Regarding the threats made to the Applicant's parents or family, the RAD did not reject the entirety of the Applicants' story based on one answer given by the Applicant in his testimony. It rejected their argument that the RPD had overzealously relied upon the Applicant's omission to mention during his testimony that his parents had relocated to another city to hide

after the March 2015 attack. The RAD noted that the Applicant had provided a different answer to the one he provided in his narrative and found it to be a major contradiction to state, on the one hand, that nothing of significance was discussed after the March 2015 attack and, on the other hand, that the threat prompted the family to relocate. The RAD also drew a negative inference from the Applicant's omission to mention that his parents had relocated to avoid other criminals who also bothered them to pay back his brother's debt. The RAD found it was important information to include, as it was linked to the motives that led the Applicants to claim asylum. Finally, the RAD agreed with the RPD's determination that the Applicant's testimony on this issue was both inconsistent and evolving.

[32] While the Applicants may not agree with the RAD's conclusion that these inconsistencies and omissions about his family's situation undermined the Applicant's credibility, it is not this Court's role to reassess the evidence in a manner that is favourable to the Applicants. The Applicants have failed to establish how the RAD's conclusion on this argument is unreasonable.

[33] Lastly, the RAD did not adopt a circular and inverted approach in assessing the Applicant's credibility. It did not reject the Applicants' corroborative evidence on the sole basis that the Applicant's prior testimony was not credible. Rather, the RAD concluded that the affidavit of the Applicant's friend, submitted to corroborate the incident with the imam, was not credible because the writer only had personal knowledge of the fact that the Applicant had hid at his house on July 21, 2017. The rest of the information reiterated the Applicants' allegations. The RAD found that the information of which the writer had personal knowledge was insufficient on its own to establish the remainder of the Applicants' claims.

[34] Likewise, the RAD found that the letter from the lawyer alone was not enough to support the Applicants' claim with respect to the imam or the debt of the Applicant's brother. The RAD considered that the RPD had noted that the lawyer indicated in his letter that he was hired to find out if there was a First Information Report [FIR] registered against the Applicant, yet the Applicant testified that neither he nor his father reported the March 2015 attack to the police, that neither considered seeking the advice of a lawyer and he did not inform the hospital of how his injuries occurred as he did not want to pursue the matter further. The Applicant also testified that they never considered either reporting the July 2017 attack to the police or seeking legal advice because they feared retaliation from the mafia group.

[35] The RAD also considered the content of the letter. While it suggested that an informal religious complaint had been made against the Applicant, there was no formal complaint pending and there was no FIR registered against the Applicant. The RAD further noted that the letter indicated that a local police officer was probably bribed and that the Applicant should stay away. The RAD found that even if the lawyer was correct and even if a local police officer was bribed, the Applicants had not provided credible evidence about why that would be the case. The RAD found that the letter from the lawyer was insufficient to establish the credibility of the claim with respect to the imam or to the gambling debt of the Applicant's brother.

[36] Upon review of the RAD's assessment of the evidence, I am satisfied that the RAD evaluated the credibility of each document separately and could reasonably find that they did not establish a sufficient link to the Applicants' claim.

[37] To conclude, I am satisfied that, when read holistically and contextually, the RAD's decision meets the reasonableness standard set out in *Vavilov*. It is important to recall that findings regarding a claimant's credibility and the assessment of the evidence command a high degree of deference from this Court. While the Applicants may not agree with the RAD's findings, it is not for this Court to reassess or reweigh the evidence in order to make a finding that would be favourable to the Applicants (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[38] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-2308-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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