

Federal Court



Cour fédérale

**Date: 20221118**

**Docket: IMM-7181-21**

**Citation: 2022 FC 1578**

**Ottawa, Ontario, November 18, 2022**

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

**BETWEEN:**

**MIRZA JAHANZEB BAIG  
ZUNAIRA TARIQ  
MIRZA ALTAMASH BAIG  
MIRZA AURANGZEB BAIG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the “RAD”], dated September 23, 2021 [the “Decision”],

which dismissed the Applicants' appeal and upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board [the "RPD"], dated March 16, 2021.

[2] The RPD and the RAD found that the Applicants were neither Convention Refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## II. Background

[3] The Applicants, Mirza Jahanzeb Baig [the "Principal Applicant"], his wife Zunaira Tariq [the "Female Applicant"], their minor son Mirza Altamash Baig [the "Minor Applicant"] and the Principal Applicant's brother, Mirza Aurangzeb Baig [the "Associate Applicant"] are all citizens of Pakistan.

[4] The Applicants were born into Sunni Muslim families. They allegedly converted to the Shia sect of Islam in October 2018 in Pakistan, and consequently fear persecution at the hands of disapproving family members and Sunni extremist groups, such as Lashkar-e-Jhangvi [LeJ].

[5] The Associate Applicant left Pakistan on January 23, 2019 for the United States on a visitor visa. On April 3, 2019, the Principal Applicant, the Female Applicant and the Minor Applicant left Pakistan for Canada on visitor visas and on April 25, 2019 filed their refugee claims. The Associate Applicant entered Canada from the United States on July 8, 2019 and filed his refugee claim.

[6] At the adjudication of their claims at the RPD, the Minister intervened to provide written submissions on the issue of credibility. In a decision dated March 16, 2021, the RPD refused the Applicants' refugee claims. The RPD determined that the Applicants' story about their October 2018 conversion to Shia Islam was not credible. As they remained Sunni Muslims, they did not face risk of persecution. The RPD made the following relevant findings:

- i. The evidence did not support the Applicants' story of travelling to Pakistan in October 2018 to convert to Shia Islam. The Principal Applicant and the Associate Applicant claimed they were working in the United Arab Emirates at the time and travelled to Pakistan to convert. However, the Associate Applicant's passport did not have any entry or exit stamps for this alleged trip. When asked to explain this, the Associate Applicant claimed that the stamps had been mistakenly placed on a previous passport; however, he was unable to produce this old passport and there was inconsistent evidence about whether he had ever tried to locate it. The Associate Applicant's explanation for the missing stamps was not satisfactory and warranted a negative inference against the Applicants' credibility.
- ii. The Applicants' testimony about incidents relating to attending an Imam Bargah (a place of worship) in Pakistan, was inconsistent with the Basis of Claim [BOC]. In the BOC, the Principal Applicant had stated that he had attended the Imam Bargah less frequently after an attempted shooting on January 18, 2019, but in his testimony stated he stopped attending altogether. Further in his testimony he mentioned receiving targeted, threatening phone calls after the attack in February 2019, whereas in the BOC he mentioned having "no further problems until March 31, 2019" when he received a letter from the local Sector Commander of LeJ.

- iii. The Applicants never received threatening letters from anti-Shia extremist groups. The Applicants' evidence was inconsistent as to how many threat letters they were aware of and received before seeking protection from police in April 1, 2019; their evidence regarding another letter from September 2020 was not credible. Furthermore, the Applicants had not established the enclosed letters were genuine.
- iv. Evidence submitted to support the Applicants' Shia faith, including various letters, donation receipts to Shia institutions and photographs lacked probative value. The Applicants' supporting documents that referenced the story of their October 2018 conversion were not reliable, as those events never occurred. Many of the documents lacked security features.
- v. The Applicants have donated to Imam Bargahs in Pakistan and Canada. However, on a balance of probabilities, this was done to bolster their refugee claims.
- vi. The Minister intervened to submit evidence that the Associate Applicant had previously made refugee claims in the United Kingdom in February 2018. These claims were denied. The fact that the Applicants failed to disclose this, cast further doubt on their credibility.

[7] The Applicants appealed the RPD decision to the RAD. In a decision dated September 23, 2021, the RAD dismissed the appeal and upheld the decision of the RPD. The Applicants ask the Court to set aside the RAD decision.

III. Decision Under Review

A. *New Evidence and Oral hearing*

[8] On appeal to the RAD, the Applicants sought to include one item of new evidence: an airline ticket that purportedly established that the Principal Applicant and Associate Applicant were in Pakistan at the time of their October 2018 conversion and travelled back to the UAE afterwards.

[9] The RAD rejected this evidence because it did not meet the requirements for new evidence under subsection 110(4) of the *IRPA*. It further refused the Applicants' request for an oral hearing.

B. *Decision on the Merits*

[10] The RAD dealt with the merits of the Applicants' appeal on two grounds:

- i. Whether the RPD erred in finding that the Applicants were not credible and had not travelled to convert to the Shia faith as they claim; and whether the RPD was correct in its other credibility findings.
- ii. Whether the RPD erred in rejecting the documentary evidence.

[11] With respect to the first issue, the RAD endorsed the RPD reasoning.

[12] On the second issue, the RAD came to the same conclusion as the RPD but for different reasons. The RAD did not share the RPD's concerns with respect to the authenticity of the letters from religious institutions and supportive affidavits from family members, but found that the documents were of low probative value and did not cure concerns relating to the Applicants' credibility. The RAD did share the RPD's authenticity concerns with respect to enclosed police reports and threatening letters from Sunni extremists and found they were not genuine.

IV. Issues

A. *Was the Decision reasonable?*

B. *Was the duty of procedural fairness violated because of the Applicants had ineffective assistance of counsel at the RPD?*

V. Standard of Review

[13] The substantive standard of review is that of reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

[14] The standard of review for issues relating to procedural fairness is correctness or a standard of the same import [*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 34 to 35 and 54 to 55, citing *Mission Institution v Khela*, 2014 SCC 24 at paragraph 79].

VI. Analysis

A. *Was the Decision Reasonable?*

(1) New Evidence

[15] Under subsection 110(4), 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 RPD decision.

[16] The Applicants argue that the RAD erred by not allowing them to admit new evidence in the form of an airline ticket that establishes that the Principal Applicant and the Associate Applicant were in Pakistan in October 2018. The Applicants claim that they could not have reasonably expected that this evidence would be relevant.

[17] I find the RAD reasonably did not accept this evidence. Given the foundation of the Applicants' claim is their conversion to Shia Islam, they could reasonably be expected to have presented evidence that corroborated their conversion story to the RPD. It is not the role of the RAD to provide an applicant the opportunity to complete a deficient record [*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraph 35].

(2) Merits of the decision

[18] The Applicants further argue the Decision is unreasonable for two reasons. First, the RAD erred in its assessment of the Applicants' credibility and documentary evidence. Second, the RAD erred by failing to consider whether adequate state protection was available to Shia Muslims in Pakistan.

[19] I find no reviewable error with the RAD's analysis of the Applicants' credibility or in its weighing of the documentary evidence. As this Court held in *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at paragraph 15:

A high degree of deference is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant's story, given the RPD and the RAD's expertise in that regard and their role of trier of fact.

[20] The Applicants invite the Court to substitute its assessment of the evidence in place of the RAD's with respect to the Applicants' testimony and documentary evidence. It is not the appropriate role of a reviewing court to reweigh evidence on judicial review [*Vavilov* at paragraph 125].

[21] Moreover, there was obligation for the RAD to consider the issue of state protection given it had determined that the Applicants' conversion to Shia Islam had not taken place as described.

B. *Was the duty of procedural fairness violated because the Applicants had ineffective assistance of counsel at the RPD?*



[22] The Applicants claim to have received ineffective assistance of counsel in making submissions to the RPD. The Applicants claim that their previous lawyer told them that he did not need the Associate Applicant's old passport, which allegedly bore stamps proving he had been in Pakistan in October 2018. Further, the Applicants allege that this lawyer failed to include evidence of threat letters and calls in the Applicants' BOC.

[23] The Respondent disagrees with this claim for procedural and substantive reasons. The Respondent argues that, because the Applicants claim only that their counsel at the RPD was inadequate and failed to raise this issue at the RAD, action estoppel prevents them from pursuing this matter at this Court. In the alternative, the Respondent argues that the test for ineffective assistance of counsel is not met.

[24] While I generally agree with the Respondent that arguments relating to competency of counsel before the RPD are not relevant to competency of counsel before the RAD, regardless of the merits of the Respondent's procedural argument, I find that the Applicants have not met the substantive test for ineffective assistance of counsel. To establish a breach of procedural fairness based on ineffective assistance of counsel an applicant must:

- i. Establish that former counsel's act or omission constituted incompetence without the benefit and wisdom of hindsight; and
- ii. Establish that there is a reasonable probability the outcome would have been different but for the incompetence.

[*Nik v Canada (Citizenship and Immigration)*, 2022 FC 522 at paragraph 23]

[25] The Applicants have not met the first prong of the test. Other than the Applicants' allegations, there is no evidence that their previous counsel misled or misinformed the Applicants with respect to the documents that should be included with their refugee claim. There is no indication that the supposed evidence the Applicants claim was neglected by their previous counsel exists at all. In a letter included with the Applicants' reply memorandum, the Applicants' previous counsel vehemently denies the Applicants' allegations.

[26] There is no basis to find that the Applicants had incompetent representation at the RPD.

**JUDGMENT in IMM-7181-21**

**THIS COURT'S JUDGMENT is that**

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

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-7181-21

**STYLE OF CAUSE:** MIRZA AURANGZEB BAIG, ZUNAIRA TARIQ,  
MIRZA ALTAMASH BAIG, MIRZA AURANGZEB  
BAIG V THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 16, 2022

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** NOVEMBER 18, 2022

**APPEARANCES:**

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