Federal Court  Cour fédérale

Date: 20221202

Docket: IMM-1312-20

Citation: 2022 FC 1667

Ottawa, Ontario, December 2, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SAJID IMRAN

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Pakistan. He seeks judicial review of a decision made by the Refugee Protection Division (RPD) on February 5, 2020 denying his claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RPD found that the Applicant failed to adduce sufficient credible or reliable evidence to substantiate his claim.

[2] Although the Applicant appealed the Decision to the RAD, it refused to hear it based on section 167 of the *Economic Action Plan 2013 Act, No. 1*, SC 2013, c 33 [*ECA*].

[3] A previous refugee claim by the Applicant was denied on April 10, 2014. An application for judicial review was granted by Madam Justice McVeigh on June 12, 2015 and the matter was returned to the RPD for redetermination by another decision-maker.

[4] That redetermination is the subject of this judicial review.

[5] For the reasons that follow, this application is dismissed.

II. **Decision**

[6] The second RPD hearing took place, with the assistance of an Urdu translator, on January 14 and 15, 2019, August 15, 2019 and December 2, 2020.

[7] Although the Panel had the transcript of the first hearing, they indicated they did not rely on it.

[8] The Panel accepted the Applicant's identity based on his Pakistani passport.

[9] The Panel then set out their duty to assess the evidence beginning with the presumption that the evidence is true, but it can be rebutted.

[10] The Panel canvassed at length the testimony of the Applicant and his witnesses.

[11] The Panel found the Applicant could not provide details to support his claims and his testimony appeared to be memorized from his narrative rather than from actual events he experienced.

[12] Overall, the Panel found the Applicant was not a credible witness. His corroborative evidence was found to be questionable and without probative value to support his claim.

[13] The Panel found the determinative issue was the credibility of the Applicant's human rights convictions and activities.

III. **Issues**

[14] The Applicant raises three issues:

1. First, was the Decision reasonable?
2. Second, was the Applicant denied his right to procedural fairness?
3. Third, if the Applicant succeeds, should this Court decide the matter rather than remit it to the Tribunal?

[15] The Respondent agrees with the first two issues and submits that the third issue should be modified to ask what the appropriate remedy should be if the Decision is found to be unreasonable or there was a breach of procedural fairness.

[16] I agree with the Respondent's characterization of the third issue.

IV. **Standard of Review**

A. *Reasonableness*

[17] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. The presumption is rebuttable. Other than the issue of procedural fairness, none of the exceptions to the presumption are present in this application.

[18] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[19] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

B. *Procedural fairness*

[20] Issues of procedural fairness and natural justice involve a duty to act fairly. The reviewing Court is required to determine whether the process followed by the decision-maker achieved the level of fairness required by the circumstances of the matter and whether the

decision was the result of a fair process: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54.

[21] In *CPR*, the Federal Court of Appeal looked at whether a standard of review analysis is appropriate when addressing questions of procedural fairness. It determined that, although the terminology was awkward, and strictly speaking, no standard of review is applied, the review is "best reflected in the correctness standard": *CPR* at para 54.

[22] In any assessment of whether there has been a breach of procedural fairness, no deference is owed to the decision-maker. The question is whether the applicant knew the case to be met and had a full and fair chance to respond: *CPR* at para 56.

V. **The Decision is reasonable**

[23] The Panel began by outlining the allegations contained in the Applicant's Personal Information Form (PIF).

[24] These included the Applicant's allegations that he had been a long-time human rights activist in Pakistan who was friendly with and helped the Ahmadi community there with their human rights. The Applicant claimed he was targeted by religious extremists and authorities as a result.

[25] The Applicant also claimed to have worked with the International Human Rights Commission (IHRC) in December 2005, as an Information Secretary. He said he collected

evidence and information about human rights violations in order to raise awareness and money for religious minorities in Pakistan.

[26] The Decision notes the Applicant said in 2008 that he started speaking out against terrorist attacks against girls' schools. Then, in March 2009, when he was at home, three or four men took him, stating they were from Inter-Services Intelligence (ISI). He says they asked him to stop his human rights activities and assaulted him when he refused. He was later dropped off in the village and advised not to say anything about the incident.

[27] The Applicant said that in May 2010 he was part of a peaceful protest against attacks on Ahmadi prayer centres and was threatened over the telephone but the police refused to help him when he reported it to them.

[28] The Applicant also stated that a First Information Report (FIR) was registered against him alleging blasphemy under the Pakistan Penal Code. Three weeks later, he was pulled over by police officers while he was driving. He was detained and questioned but, with the intervention of the President of the IHRC, he was released the next day.

[29] The Applicant claimed he then received threatening calls from the ISI and Taliban against him and his family.

[30] Another FIR was registered by the police against the Applicant in July 2011 but it was not followed up.

[31] In February 2012, the Applicant alleged he was returning from an IHRC meeting when four men fired at his car. When the Applicant reported this incident to the police, they advised him to stop his activities and move to another area.

[32] In September 2012, the Applicant was arrested again while attending a protest against the arrest of a young Christian girl who was falsely accused of burning the Quran. His detention lasted approximately 1.5 hours.

[33] At that time, the Applicant decided to come to Canada to escape the violence and threats against him.

A. *The Panel's Analysis*

[34] The Panel set out, in detail, their duty to assess the evidence beginning with the presumption that the evidence is true, but can be rebutted.

[35] To support his claim, the Applicant called three witnesses: (1) Mr. Iftikhar Ahmad, (Ahmad) a family friend of the claimant who is now the claimant's employer in Saskatchewan; (2) Mr. Ahmed Rizwan, (Rizwan) the Union Council Chairman (local politician in Bhalwal); and, (3) Mr. Asif Mehmood, (Mehmood) a friend of the claimant and the President of the IHRC Bhalwal chapter.

[36] The Panel canvassed at length the testimony of the Applicant and his witnesses, as discussed below.

[37] The Panel found the Applicant was not a credible witness. His corroborative evidence was found to be questionable and without probative value to support his claim.

(1) The Applicant's Evidence

[38] The Panel thoroughly questioned the Applicant concerning his human rights work.

[39] After numerous questions, redirects and cautions to provide details about what issues he encountered and what he had done to help, the Panel found that the Applicant "continued to provide answers that reflected only his brief narrative statements and was unable to provide genuine details that had these relationships had (sic) existed he would have been able to convey to the panel."

[40] The Applicant relies on the presumption at paragraph 5 of *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA) [*Maldonado*] that his sworn testimony is presumed to be truthful.

[41] The presumption is rebuttable. In *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142, [*Janvier*] Mr. Justice Gascon noted at paragraph 30 that "if there is any reason to doubt the truthfulness of the allegations made in a refugee protection claimant's affidavit or sworn testimony, the presumption of truthfulness disappears."

[42] The Panel made many findings with respect to the Applicant's lack of credibility. For example, the Panel stated that "[t]he claimant was garrulous in his testimony, many times he was

advised to answer questions that were put to him by the panel and he continued to provide answers that mirrored his narrative and evaded the questions to illicit further details and motivations of the claimant."

[43] A review of the transcript of the hearing shows that the Applicant frequently also provided vague and evasive answers to questions from the Panel and from his counsel even after they each asked several follow-up questions pressing him for more details and clarification. The Panel cautioned the claimant on at least a dozen occasions that they needed more details beyond the narrative and put him on notice that an adverse inference may otherwise be drawn.

[44] The Panel found that the Applicant was able to recount his PIF narrative "almost verbatim" but "was unable to spontaneously speak to almost anything outside those events in his PIF".

[45] When the Applicant was questioned by his own counsel to provide "a specific instance of when an Ahmadi came for help" The Applicant said that "In our village there are Ahmadis, they are very poor people. Azef was also there. He personally helped them from the organization level as we helped."

[46] Counsel's follow up question was "I'm going to ask you again. Do you remember a specific person who came in that you helped?" The answer provided was "[a]nyone who would come to our organization would be special for us, irrespective of what religion or community they belong to."

[47] When Applicant's counsel pressed again for a specific name the Applicant said "There are many names, but over there we have a handicapper woman, and she has no one to help her. We helped her."

[48] Given the foregoing, I find that it was reasonable for the RPD to conclude that the presumption of truthfulness was rebutted in the circumstances.

[49] There are minor factual errors in the Decision about the February 2011 FIR. It is discussed at paragraph 30 of the Decision under the heading "Credibility of Arrest in 2012". The arrest at issue actually occurred in 2011. The Panel makes reference to the FIR being registered by the IHRC, but from the context of the rest of the paragraph, it is evident she understood the FIR was registered against the Applicant and led to his arrest.

[50] The decision also includes a factual error that the Applicant was held in custody for three weeks, but later accurately says that the arrest occurred three weeks after the FIR was registered. I agree with the Respondent that these errors were not material to the Decision. As stated in *Vavilov* at paragraph 100 "[i]t would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, 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." A holistic review of the decision reveals that the central issue was the Applicant's credibility with respect to his beliefs and human rights activities. Contrary to the Applicant's assertions, the details

surrounding the Applicant's arrest did not form the basis of the many credibility findings made by the Panel.

(2) Ahmad's Evidence

[51] The Panel found that the first witness, Ahmad, was not in Pakistan at the time of the events in question. He testified that he had only recently come to know about the two FIRs and he had read newspaper articles allegedly written by the Applicant.

[52] Overall, the Panel found that Ahmad's testimony supported the Applicant staying in Canada. But, as the source of the information was the Applicant's evidence, which was found to be not credible, and as Ahmad was the friend and employer of the Applicant, Ahmad's statements were given little weight by the Panel.

[53] This analysis by the Panel is reasonable. The witness had no first-hand evidence of the events to offer to the Panel.

(3) Rizwan's Evidence

[54] The Applicant asserts that the Panel erred in finding that "the claimant alleges to have had a high profile as a human rights activist". The Applicant states that nowhere during the hearing, testimony, or supporting documents did the Applicant claim to be a "high profile" activist. With respect, this is not entirely accurate. The Panel had before it a handwritten letter of support from Rizwan dated June 29, 2017. The letterhead showed Rizwan as Chairman of Union

Council No. 30. It stated the Applicant was "a prominent member of human rights of the locality," "as he took the points of sights (sic) of Figahs Ahmadi, Hindu and other minorities."

[55] I find there is little, if any, difference between being a high profile human rights activist and a prominent member of a human rights organization. As such, there is a basis in the evidence for the Panel's statement. The Panel's finding on this point must be considered in the context of the decision as a whole. The Panel did not ground its credibility findings in the Applicant's lack of detailed testimony as a "high profile" activist, but rather, his inability to provide spontaneous testimony about his convictions and the context of his human rights activities in general.

[56] The Panel noted that Rizwan had known the Applicant all his life, establishing him as a family friend. The Panel found his testimony and letter concerning the Applicant's human rights activities were considerably vague, similar to the claimant's own testimony.

[57] Rizwan testified that the Applicant's family was rarely seen, as they were scared to show themselves. However, the Panel noted the evidence contained a record of the Applicant's children's school fees for attendance from 2017 to 2018, which contradicted the statement made by Rizwan. The Applicant takes issue with this finding and states that neither the Applicant, nor Rizwan testified that his children were in hiding or not in school.

[58] At line 2902 of the transcript, this question was put directly to the Applicant by his counsel: "Mr. Sajid Imran, do you believe your family is in hiding right now?" Like many of his previous answers, the Applicant's answer was vague but implied that they were: "in the situation

that my family is living, you get information about it and see for yourself." The Applicant elaborates: "What else can be serious (sic) than that? My kids cannot go out and play like other kids do". Given this testimony, it was reasonable for the Panel to find that the evidence regarding the Applicant's family was inconsistent.

[59] As a result of these contradictions and inconsistencies, the Panel reasonably found that Rizwan was testifying to assist the Applicant in supporting his case. The Panel concluded that Rizwan was not genuinely or reliably testifying, placing almost no weight on his evidence.

(4) Mehmood's Evidence

[60] Mehmood was the President of the IHRC. He testified that he was active in the IHRC until 2015. The Panel contrasted that evidence with the Applicant's evidence that Mr. Mehmood was removed as President in 2012.

[61] After noting several problems with Mr. Mehmood's testimony, the Panel concluded that his testimony was not reliable in establishing the Applicant's allegations.

(5) Documentary Evidence

[62] The Applicant submitted a handwritten letter from the Presbyterian Church of Pakistan dated December 20, 2014. The Panel criticized the letter for being general and without detail, finding that it almost mirrored the Applicant's statements. As the letter was not written in the author's own voice, the Panel found it to be of little to no weight in establishing activities done by the Applicant to support the Presbyterian Church.

[63] The Panel also reviewed a letter from the Human Rights Commission Bhalwal, stating the Applicant worked with them from January 2010 to July 2012. The Panel observed this was a different name than the IHRC and the dates of activity were different than the Applicant's who was active from 2006 to 2012. The Applicant characterizes this as a minor error, citing *Bahati v. Canada (Citizenship and Immigration)* 2018 FC 1071 and *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 in support.

[64] I disagree with the Applicant's characterization of these issues as minor errors. The Applicant's activities with IHRC were central to his claim. This is not a matter of minor typographical errors as was the case in *Mohamud*, upon which the Applicant relies. I find that it was reasonable for the Panel to assign little weight to it in light of the issues identified on the face of the document.

[65] A handwritten letter was also submitted from Anjuman Asna Shria to support the Applicant's claims. The letter stated that the Applicant was the "secretary of information in the Organization of Human Rights." It said that the Applicant always supported the rights of the Shia community and took part in the processions. It added that he was tortured for his support of the Shia community and the Taliban was against him and created "so many difficulties for him."

[66] The Panel found the letter spoke to very generalized allegations put forward by the Applicant and the statements appeared to be replications rather than a genuine statement of the Applicant's activities. The Panel therefore assigned little to no weight to the letter in establishing the Applicant's activities with the Shia community.

[67] I find the Panel's analysis is reasonable based on the underlying record. The Panel found the documentary evidence was insufficient to overcome the credibility concerns.

(6) The Panel's Conclusion

[68] After considering all the documents submitted by the Applicant to corroborate his statements, the Panel concluded the Applicant was not a credible witness and the evidence he presented was not sufficient to overcome those issues. The Panel said there was a general lack of credibility, which extended to all relevant evidence emanating from the Applicant's testimony.

[69] The Panel found the Applicant failed to establish he had been a human rights activist and that he worked in defense of religious minorities.

[70] The Applicant's allegations of having been previously targeted by individuals, extremist groups or the Pakistani state had not been reasonably established with clear and consistent testimony and evidence. Therefore, the panel found that there was insufficient trustworthy evidence to determine that there was more than a mere possibility that the Applicant would be persecuted due to his activities should he be returned to Pakistan.

[71] Finally, as the Applicant had failed to establish his risk under section 96 the Panel held, based on the evidence before it, that he did not establish he would be subjected on a balance of probabilities to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture if he was removed to Pakistan.

VI. **The Decision was procedurally fair**

[72] To support his allegation that the Decision is procedurally unfair, the Applicant identifies eighteen *errors* [my emphasis] made by the Panel.

[73] The main complaints are that the Panel did not conduct a *de novo* hearing and relied on the erroneous reasons of the previous panel, engaged in rambling inquiries then arbitrarily limited the Applicant's opportunity for redirect and clarification and, in the Decision it ignored the last two days of testimony by the Applicant and his witnesses.

[74] The Panel stated in their opening remarks that they were not going to rely on the previous Panel's hearing or decision and there is no evidence they did so even though the Applicant filed them together with a copy of the transcript of the first RPD hearing and the entire Federal Court record that was before Justice McVeigh.

[75] The Panel's reference to materials that were before the first RPD hearing is consistent with the Immigration and Refugee Board (IRB) policy for addressing Court Ordered Redeterminations, is found at: https://irb.gc.ca/en/legalpolicy/policies/pages/PolOrderOrdon.asp policy/policies/pages/PolOrderOrdon.aspx.

[76] As Justice McVeigh did not make a finding in her 2014 Judgment that there was a denial of natural justice, the part of the Policy relevant to this application is section 5.1:

> 5.1 File content where the Court has not found a denial of natural justice
>
> Where the Court has provided no specific directions and has made no determination that there was a denial of natural justice in the original hearing, the redetermination case file will contain:
>
> - jurisdictional documents (for example: notice of appeal, referral to the RPD, request for admissibility hearing or detention review);
> - the Court order and any reasons;
> - the original decision(s) of the IRB and any reasons;
> - administrative documents (for example: notices to appear);
> - exhibits filed at the previous hearing(s);
> - any transcripts of the previous hearing (if available);
> - other evidence on the original file.

[77] The Applicant has not persuaded me that the Panel failed to conduct a *de novo* hearing. The evidence considered in the Decision is far more detailed and extensive than in the prior RPD decision.

[78] The Applicant also submits that the Panel arbitrarily limited the time for witnesses and advised his counsel that their time for clarification would be limited.

[79] The Applicant states the Panel's citation of testimony was "blatantly wrong, taken out of context, arbitrarily selected to support a conclusion that otherwise has no factual foundation, or are wholly misconstrued to paint the Applicant's testimony as disingenuous."

[80] Overall, the Applicant states the Panel disregarded the materials and record they had before them to conclude that the Applicant has no documentation to support his relationship with at-risk and marginalized minorities in Pakistan and arbitrarily ignored the testimony of the Applicant and the witnesses as to why he engaged in human rights work in Pakistan.

[81] The Applicant also repeatedly attributes malice to the Panel saying several times, that "the Panel Member purposely misconstrues and arbitrarily ignores . . ." and "the Panel Member arbitrarily ignores the testimony of the Applicant and witnesses".

[82] I disagree with the Applicant's assertions in this regard. I can find no instance where the Panel made a conclusion in the absence of a factual foundation.

[83] I find there was no procedural unfairness in the manner in which the hearings were conducted. The transcript reveals that the Panel gave the Applicant ample opportunity to put forward his case, and to provide explanations and clarifications where his evidence was problematic. The Panel also put the Applicant on notice that his inability to elaborate on various points in his testimony would lead to a negative inference being drawn.

VII. **Summary and Conclusion**

[84] The critical finding by the Panel was that the Applicant lacked credibility as he could not testify with any reasonable level of detail to show he had a genuine relationship with the Christian and Ahmadi communities.

[85] The Panel reasonably found the Applicant could not provide any genuine testimony regarding the daily issues faced by the communities he claimed to support. The Panel said it would have reasonably expected such evidence given that it was the Applicant's role as information secretary to gather that information.

[86] The Applicant has pointed to various errors made by the Panel but the Decision is to be considered holistically, not piecemeal. As stated in *Vavilov* at paragraph 102, "[r]easonableness review is not a "line-by-line treasure hunt for error." However, the reviewing Court must be able to trace the decision-maker's reasoning without encountering any fatal flaws in its overarching logic and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived."" (internal citations removed.)

[87] The underlying record supports the Panel's findings. While the Applicant would prefer a different interpretation of the evidence, the reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[88] While a reviewing court should ensure the decision under review is justified in relation to the relevant facts, deference to a decision maker includes deferring to their findings and assessment of the evidence.

[89] For the reasons set out in this Judgment and Reasons, this application is dismissed. The Applicant has not met his onus to prove the Decision is either unreasonable or it was procedurally unfair.

VIII. **Certified Question**

[90] The Applicant proposed the following question for certification:

> Does the Federal Court of Canada have jurisdiction to substitute its decision for that of the Refugee Protection Division and make a decision on granting refugee status that the Refugee Protection Division could have made, in order to avoid an endless merry-go-round of judicial reviews, in circumstances where a particular outcome regarding refugee status is inevitable and remitting the case would serve no useful purpose, and considering that the ECA, s. 167 has removed extra-judicial appellate authority to ensure the proper implementation of IRPA, s. 3(2)(e) so that such supervision now resorts (sic) with the Federal Court?

[91] The test for certification is set out in *Lunyamila v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46:

> The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[92] The Respondent submits the question proposed does not meet the test because, “first and foremost, this question would not be dispositive of the appeal. This is not a circumstance where

refugee status is inevitable and remitting the claim would serve no useful purpose. In addition, this question is not of general importance as the Supreme Court of Canada and the Federal Court of Appeal have already provided direction on when it is appropriate for a reviewing court to substitute its view for that of the administrative decision maker."

[93] I agree with the Respondent. The proposed question for certification is dismissed for the two aforementioned reasons.

JUDGMENT IN IMM-1312-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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