

Federal Court



Cour fédérale

Date: 20231024

Docket: IMM-1431-22

Citation: 2023 FC 1403

Ottawa, Ontario, October 24, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

VIJAY SHAROON SULTAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a 34-year-old citizen of Pakistan and a Christian. In May 2018, after entering Canada on a visitor visa, he submitted a claim for refugee protection. The applicant alleged that he had a well-founded fear of persecution because he had been targeted by an imam in his home town for allegedly having attempted to convert a Muslim family to Christianity.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the claim on credibility grounds and because, in any event, the applicant had a viable internal flight alternative (IFA) in Pakistan (two locations were identified by the RPD).

[3] The applicant appealed the RPD's decision to the Refugee Appeal Division (RAD) of the IRB. In support of his appeal, the applicant provided a number of items of new evidence. The RAD was satisfied that some of this evidence met the requirements of subsection 110(4) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*. Since the RAD was also satisfied that the admissible new evidence satisfied the requirements of subsection 110(6) of the *IRPA*, it held a hearing at which the applicant and other witnesses testified.

[4] The RAD dismissed the applicant's appeal in a decision dated January 21, 2022. The RAD found that the RPD had erred in several respects in its assessment of the applicant's credibility. Nevertheless, on the basis of its own assessment of the evidence (including the new evidence admitted on appeal), the RAD concluded that the claim should be rejected on credibility grounds. The RAD also concluded that, in any event, the applicant has a viable IFA. Accordingly, the RAD confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

[5] The applicant now applies for judicial review of the RAD's decision under subsection 74(1) of the *IRPA*. He submits that the RAD breached the requirements of procedural

fairness by precluding him from providing additional evidence following the hearing before the RAD. He also submits that the RAD's adverse assessment of his credibility is unreasonable.

[6] As I explain in the reasons that follow, I am not persuaded that the requirements of procedural fairness were breached or that the decision is unreasonable. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

A. *The applicant's narrative*

[7] The applicant was born in Gujranwala, Pakistan, in July 1989. He and his wife (who is also a Christian) were married in November 2016. Their son was born in December 2017. The son was born with a congenital heart defect but, according to the applicant, in February 2018, doctors informed him that the defect had been healed. The applicant attributed this miracle to their devout Christianity.

[8] The applicant shared the story of his son's healing with a Muslim neighbour whose 10-year-old son has epilepsy. On March 24, 2018, the neighbour, his wife, and their son came to the applicant's home and asked the applicant to pray for the boy. While they were there, the boy experienced a seizure. The applicant read from the Bible and prayed aloud for several minutes, asking Jesus for healing. The neighbours returned several times over the next week, asking the applicant to continue to pray for their son.

[9] On April 3, 2018, a local imam came to the applicant's home along with several men from his mosque. The imam told the applicant he had heard that he was trying to convert a

Muslim family to Christianity. The imam threatened the applicant that if he and his family did not convert to Islam, he would initiate blasphemy charges and have the applicant jailed. The imam said he would give the applicant some time to consider his position and would soon return.

[10] The applicant did not contact the police after this incident, fearing he would be charged.

[11] On May 13, 2018, the imam returned to the applicant's home with the same men from the mosque, reiterating the threat. The applicant requested more time to consider his position. The imam agreed.

[12] Shortly after the second incident, the applicant left Pakistan for Canada. His wife and son went into hiding at the home of a friend in Lahore.

B. The RPD decision

[13] The RPD rejected the applicant's claim for protection in a decision dated June 27, 2019. As noted above, it did so on credibility grounds and because the applicant has a viable IFA.

C. The appeal to the RAD

[14] The applicant's appeal to the RAD was initially dismissed due to non-perfection. However, on December 17, 2020, the RAD allowed an application to re-open the appeal.

[15] In his appeal, the applicant challenged the RPD's credibility and IFA findings on several grounds. Relying on new evidence, he also alleged that events subsequent to the RPD's decision provided further support for his claim. In particular:

- On August 4, 2019, the imam and his supporters attacked and vandalized the applicant's home in Gujranwala, which had been abandoned for over a year.
- On August 5, 2019, a local newspaper published an article about the attack. The article described the motive behind the attack (the applicant being accused of attempting to convert his Muslim neighbour to Christianity), noted that the applicant's family had "relocated to an unknown location for saving their lives," and stated that the imam had decided to file a blasphemy charge against the applicant.
- The applicant learned of the attack and the newspaper article from his friend, Roman John, who visited the applicant's home after reading the article.
- On August 11, 2019, the applicant's wife and son moved from their hiding spot in Lahore to Karachi, fearing they were no longer safe.
- On October 14, 2019, Samuel Gori, a pastor at the church to which the applicant belongs in Canada, visited the applicant's home in Gujranwala "to verify the severity of the matter" while he was on a mission trip to Pakistan. Three apparently Muslim men were sitting outside the house when he arrived. When the pastor approached and asked about the applicant's father, the men became agitated and threatened him with a gun. In his testimony before the RAD, the pastor Gori stated that the men were Muslim extremists who were affiliated with the imam who had targeted the applicant.

[16] The RAD admitted the new evidence relating to these matters. It also held a hearing on December 21, 2021, at which the applicant and other witnesses testified.

[17] At the conclusion of the hearing, the RAD asked the applicant to provide originals of the new evidence documents along with written submissions on the issues of credibility and IFA by January 7, 2022. The applicant's lawyer (not Ms. Desloges) was content with this proposal. Accordingly, the applicant's lawyer provided written submissions by letter dated January 7, 2022, along with proof that the original documents had been sent to the RAD registry by courier.

D. *The RAD decision*

[18] The determinative issues for the RAD were credibility and the availability of an IFA.

[19] The RAD agreed with the applicant that the RPD had erred in several of its credibility findings. There is no need to review these determinations here.

[20] With respect to the new allegations on appeal, the RAD did not find the applicant's evidence credible. In summary, the RAD found as follows:

- The timing and the details of the alleged attack on the applicant's home on August 4, 2019, were "unusually convenient" given the applicant's pending appeal of the negative RPD decision. So, too, was the allegation that the imam had finally decided to lay a blasphemy charge against the applicant. While these circumstances alone did not warrant a negative credibility finding, they did call for careful scrutiny of the new evidence.

- The information in the newspaper article describing the attack on the applicant's home is not credible. There were significant irregularities in the article. The article has no author, no sources for the information reported are cited, it was unclear how the author could have known many of the details reported (e.g. that the applicant's family is in hiding), the article conveniently restates the central elements of the applicant's narrative, and it helpfully fills a gap in the applicant's case at the RPD (the absence of a blasphemy charge).
- Furthermore, the article was provided by the applicant's friend, Mr. John. However, Mr. John's explanation for how he knew the article related to the applicant was inconsistent with the contents of the article as well as with the applicant's account of this. Relatedly, the applicant's failure to produce the Facebook messages he exchanged with Mr. John concerning the article raised further credibility concerns.
- The accounts of visiting the applicant's house provided by Mr. John and Pastor Gori are not credible because of unexplained material inconsistencies between these accounts concerning the condition of the house.
- Material inconsistencies in the evidence concerning the applicant's family's circumstances while hiding in Karachi warranted a "significant" negative credibility finding in this regard. These inconsistencies related to whether and for what reasons the applicant's wife would leave her home as well as the proximity of her home to the church she attended.
- The applicant's failure to take any steps to address the alleged outstanding blasphemy charge raised concerns about the credibility of this evidence. The applicant testified that

he had not even attempted to retain a lawyer in Pakistan because he knew no lawyer would take the case on. The RAD rejected this explanation.

[21] In sum, the RAD found that the applicant had failed to adduce credible evidence in support of his claim, stating as follows (at paragraph 82 of the decision):

The credibility problems described above are not the only credibility problems I noticed on the record, but they are the most serious. In my opinion, the various inconsistencies and omissions are so wide ranging (in that they affect so many different witnesses and documents) and so central to the core allegations that they undermine the reliability of all the Appellant's witnesses, testimony, and all the allegations of past harm. The credibility problems are serious enough that, even if I were to disregard any one of them, I would still find that the Appellant's other documents which I have not specifically impugned were not sufficient to overcome the credibility problems that remained on a balance of probabilities. While I may differ in my reasons, I agree with the RPD's overall conclusion on credibility. In my opinion the Appellant's presumption of truthfulness has clearly been rebutted. The Appellant has not credibly established that he has ever faced persecution and has not credibly established that he is being sought by anyone for the purposes of harm in Pakistan.

[22] The RAD also found that, in any event, the applicant had a viable IFA at two locations in Pakistan. Since the applicant has not challenged this determination, there is no need to set out the RAD's reasoning on this point.

[23] The RAD therefore dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

III. STANDARD OF REVIEW

[24] The applicant challenges both the fairness of the procedure by which the RAD dealt with his appeal and the RAD's decision on the merits of the appeal. There is no dispute about how the Court should approach these issues on judicial review.

[25] First, to determine whether the appeal was dealt with in accordance with the requirements of procedural fairness, the reviewing court must conduct its own analysis of the process followed and determine for itself whether that process was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; and *Perez v Hull*, 2019 FCA 238 at para 18. This is functionally the same as applying the correctness standard of review: see *Canadian Pacific Railway Co* at paras 49-56 and *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35. The determinative issue is whether the applicant knew the case to meet and had a full and fair chance to respond (*Canadian Pacific Railway Co* at para 56).

[26] Second, the RAD's decision on the merits of the appeal is reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that

displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). The onus is on the applicant to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

IV. ANALYSIS

A. *Did the RAD breach the requirements of procedural fairness?*

[27] The applicant submits that the RAD breached the requirements of procedural fairness by limiting him post-hearing to submitting only originals of documents he had already provided and thereby precluding him from submitting any additional evidence. According to the applicant, based on the RAD member's instructions at the conclusion of the hearing, neither he nor his lawyer believed that any new evidence could be provided post-hearing. The applicant submits, further, that this resulted in actual prejudice because the RAD drew an adverse inference from the fact that he had not provided his Facebook messages with Mr. John about the August 4, 2019, attack on his home when he would have provided them post-hearing, if only he had been permitted to.

[28] I begin by noting that the applicant did not raise any objection before the RAD to what he now claims is a breach of the requirements of procedural fairness. Strictly speaking, this precludes him from raising this objection now (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 26). That being said, for the following reasons, I am also satisfied that the objection fails on its merits.

[29] First, the applicant's argument is premised on an unreasonable interpretation of the RAD's directions regarding post-hearing submissions. As the respondent aptly stated, the RAD was dealing solely with a matter of housekeeping. Its directions in this regard cannot reasonably be understood as a ruling precluding (even implicitly) the filing of additional new evidence given that no one had raised this issue at the time the directions were given.

[30] Second, in his affidavit, the applicant purports to speak not only for himself but also for his lawyer in asserting that they both believed that the applicant would not be permitted to file additional new evidence post-hearing. There is no affidavit from the applicant's lawyer setting out his understanding of the RAD's directions. On an issue as central as this, I am not prepared to rely on the applicant's second-hand account of his lawyer's understanding of the RAD's direction. Moreover, I would presume that competent counsel did not share the applicant's unreasonable interpretation of the RAD's directions.

[31] Third, at the hearing before the RAD, both the applicant and Mr. John were questioned about their communications. In response to concerns expressed by the RAD about the applicant's failure to include their electronic communications with the other new evidence he

had provided, the applicant suggested that their Facebook messages may still be available. Given this, neither the applicant nor his lawyer could have had any doubt about the potential importance of this evidence yet neither the applicant nor his lawyer raised this issue during the discussion of next steps at the conclusion of the hearing.

[32] Fourth, the applicant did not even attempt to put this additional new evidence before the RAD post-hearing (for example, by way of an application under Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257). The post-hearing submissions by the applicant's lawyer (dated January 7, 2022) did not raise any concerns about having been prevented from providing additional new evidence. The absence of any attempt by the applicant's lawyer to adduce this additional new evidence strongly suggests that the applicant never raised the existence of the Facebook messages with him while the matter was still before the RAD.

[33] In short, the fact that the Facebook messages were not before the RAD was not because of anything the RAD did; rather, it was due entirely to the applicant's inaction. As a result, there was no breach of the requirements of procedural fairness. The applicant knew the case to meet and had a full and fair chance to respond. This ground for review must, therefore, be rejected.

B. *Is the decision unreasonable?*

[34] The applicant challenges the reasonableness of all of the RAD's adverse credibility findings summarized above (see paragraph 20) as well as its overall conclusion that he failed to provide sufficient credible evidence in support of his claim (see paragraph 21, above). I am not persuaded that there is any basis to interfere with the RAD's assessment of the evidence.

[35] For the most part, the applicant's submissions on review simply reargue his claim and invite me to substitute my view of the evidence for that of the RAD. As set out above, that is not the role of the Court conducting judicial review on a reasonableness standard. As well, in the present case, the RAD had the benefit of hearing directly from the applicant and his witnesses. This is an important advantage in assessing credibility, and one this Court does not share.

[36] The RAD provided detailed and cogent reasons explaining its findings concerning specific pieces of evidence as well as concerning the claim's overall lack of credibility. The reasons are transparent, intelligible, and justified in light of the record before the RAD. The applicant obviously disagrees with the RAD's assessment of the evidence but he has not established that any material part of that assessment is unreasonable. This ground for review must also be rejected.

V. CONCLUSION

[37] For these reasons, the application for judicial review will be dismissed.

[38] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-1431-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1431-22

STYLE OF CAUSE: VIJAY SHAROON SULTAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 22, 2023

JUDGMENT AND REASONS: NORRIS J.

DATED: OCTOBER 24, 2023

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