

Federal Court



Cour fédérale

Date: 20240318

Docket: IMM-5358-22

Citation: 2024 FC 421

Ottawa, Ontario, March 18, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

NUPUR SINGLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Nupur Singla, seeks judicial review of the decision of the Refugee Appeal Division (“RAD”), dismissing her appeal of the denial of her refugee claim by the Refugee Protection Division (“RPD”). Both the RAD and RPD found that the Applicant lacked credibility. The Applicant seeks judicial review of the RAD decision, arguing that the assessment of her credibility is unreasonable.

[2] For the reasons that follow, the application for judicial review will be dismissed.

I. Background

[3] The Applicant is a citizen of India, who came to Canada on a study permit in November 2017. She filed a refugee claim in October 2019, based on the following narrative. She said that she had been sexually assaulted by one of her father's friends, Sahil, a police officer who served as Station House Officer at the local police station. She did not reveal this to her family at that time.

[4] In 2017, as her parents sought to make arrangements to support her education in Canada, her father approached Sahil to seek his assistance in arranging a loan to pay for her studies. With Sahil's help, her father obtained a loan from a local member of parliament (hereafter referred to as Ravneet). The Applicant entered Canada on a study permit in November 2017.

[5] The Applicant's father was unable to repay the loan when it came due in September 2018, due to a decline in his business and some health issues. By November 2018, both Sahil and Ravneet were pressuring her father to repay the loan, but he was unable to do so. In 2019, the Applicant decided to pause her studies. In April 2019, she told her mother about the sexual assault by Sahil, and her mother told her father about the incident. The Applicant's father then confronted Sahil in May 2019.

[6] On May 30, 2019, goons sent by Ravneet attacked the Applicant's father for not paying back the loan. He sought medical treatment and was put on bed rest for one month. The father then approached the authorities to complain about Sahil and Ravneet, and the Applicant says that things deteriorated after that.

[7] In July 2019, the Applicant's father, who is a professional photographer, took photographs at the wedding of a Muslim client. Later that month police detained and interrogated him, asking about his connections to Muslim militants. He was detained for four days and only released after the payment of a bribe. Before he was released, Sahil told him that this was a warning. The father again sought medical treatment and was put on bed rest.

[8] The Applicant's parents then decided to leave India, but before they could do so the father was detained again, and he was subjected to harsher interrogation about his connections to Muslim militants. Her father said he was also questioned about the Applicant. He was detained for six days before his release was secured by the payment of a bribe. During this period, police searched the family home and took their passports and belongings. Police also detained and questioned the Applicant's mother. The father was released in August 2019, and her parents were advised to present the Applicant for questioning. Following these incidents, the Applicant's father told her to stay away from India. She claimed refugee status in Canada in October 2019.

[9] The Applicant subsequently updated her Basis of Claim form, describing further police harassment of her father, including his arrest at the Nepal-India border when he tried to escape India. Her mother hired a lawyer to help them, but the lawyer was forced to halt his inquiries after being threatened by the police. In January 2020, her mother went to see her father in police custody, but was told that he had been taken by the National Investigation Agency (“NIA”). The Applicant’s father has not been heard from since that time.

[10] In February 2020, the local Indian police delivered a Notice to Appear under the Applicant’s name, accusing her of violating their orders and ordering her to report. The Applicant says that her mother continues to face harassment from Sahil and Ravneet. She submitted an affidavit from her mother and a letter from a lawyer in support of her claim, as well as medical documents about her father’s treatment.

[11] The RPD dismissed the Applicant’s claim, finding her not to be credible. The RAD dismissed her appeal; its decision is discussed in more detail below. At this stage, it is sufficient to note that although the RAD found that some of the RPD’s credibility findings were not sound, it went on to conclude that a number of inconsistencies in the Applicant’s evidence undermined her credibility. In particular, the RAD found that:

- the Applicant’s evidence did not support her claim that her father was in financial difficulties, because that was contradicted by the forms she completed when she

requested an extension of her study permit in which she stated that her parents would pay the \$45,000 in tuition and living expenses;

- her claim that her father was under investigation by the NIA at the request of Sahil and Ravneet was not plausible, in light of the documentary evidence about that institution showing it focuses on more serious matters such as international terrorism;
- the Applicant's evidence was inconsistent about whether the dispute between her father and Sahil was caused by the accusation of sexual assault or the failure to repay the loan; and
- the RPD's findings regarding the authenticity of the documentation she submitted was correct.

[12] Based on these findings, the RAD dismissed the Applicant's appeal and confirmed the decision of the RPD that she was not a Convention refugee or a person in need of protection.

[13] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[14] The only issue in this case is whether the RAD decision is reasonable.

[15] The Applicant submits that it is not, because the RAD's credibility assessment was arbitrary and capricious and made without regard for all of the evidence. In particular, the Applicant challenges: (a) the RAD's finding that she failed to establish that her father's problems were due to the nonpayment of the loan; (b) the conclusion regarding her father's financial difficulties in light of her student visa extension application; (c) the involvement of the NIA; and (d) the authenticity of the Notice to Appear and the rejection of the other documents she submitted.

[16] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[17] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at paragraph 102).

III. Analysis

A. *The findings on the source of the father's problems*

[18] The Applicant's testimony about her father's problems with Sahil did not mention the sexual assault or any claim by Sahil that the accusation amounted to blackmail against him in order to escape the debt. Instead, she testified that the difficulties were linked to the loan repayment. The RPD found that this weighed against her credibility.

[19] On appeal to the RAD, the Applicant submitted that this was an overly microscopic finding on a peripheral fact. She asserts that whether or not Sahil had in fact made the blackmail claim, it was logical that the accusation of sexual impropriety would motivate him to mount the case against her father in order to protect his honour.

[20] The RAD rejected this argument, finding that the RPD had asked the Applicant many questions about what gave rise to the problems between her father and Sahil, and she never raised the sexual assault claim at any point in her testimony. The RAD found that her claim that Sahil had denied the allegation and accused her father of attempting to blackmail him to escape from the debt was not a trivial detail and her failure to mention it added to the accumulation of omissions and inconsistencies that undermined the Applicant's credibility.

[21] The Applicant submits that this is an overzealous finding, because the RAD did not take into account the Applicant's age and cultural background in its assessment of her reluctance to mention the sexual abuse. Furthermore, the Applicant argues that accusing a police officer of sexual abuse would be sufficient grounds to provoke retribution, especially in light of the level of corruption and human rights abuses committed by the police in India.

[22] I am not persuaded that the RAD's assessment of this aspect of the case was unreasonable. The Applicant referred to the sexual assault in her Basis of Claim form, and her mother included it as an important part of the narrative in her affidavit. The fact that the Applicant did not mention it during her testimony, despite the RPD's questioning about the conflict between her father and Sahil, could reasonably be found to count against her credibility. This is not a microscopic or overzealous finding, given the importance of this allegation to the Applicant's refugee claim.

B. *The evidence regarding the father's financial difficulties*

[23] The Applicant's narrative stated that her father's problems with Sahil and Ravneet were caused by his failure to repay the loan because he ran into financial difficulties. The RAD contrasted her evidence on this point with her application for an extension of her study permit, in which she had declared that her parents would pay the \$45,000 she needed to continue her studies in Canada. The RAD also mentioned that the Applicant stated in her Basis of Claim form that she had paused her studies in Canada because of her father's financial problems, but as of

April 2019, her mother had assured her that everything was fine, and so she applied for a visa extension.

[24] The RPD found the contradictions in the evidence undermined the Applicant's credibility and the RAD agreed with that assessment. The Applicant's request for a study permit extension had been approved, and the RAD noted that this required proof that she had the necessary funds to support herself during her studies. This is also consistent with the permit extension form submitted by the Applicant, in which she indicated that her parents would pay her tuition and living expenses. The RAD found that this contradicted the Applicant's claim that her father was in financial difficulties, and it agreed with the RPD that her explanation for the discrepancy was not satisfactory.

[25] The Applicant submits that the RAD confused the original study permit application with the request for an extension, and in any event she claims that the alleged inconsistency in her evidence should not have undermined her credibility in light of the evidence that she was being sought by the police in India.

[26] I am not persuaded that the RAD's assessment of this element of the Applicant's claim is unreasonable. The record remains unclear as to how her study permit extension application was approved, but the evidence she submitted in support of the two applications (for refugee status

and a study permit extension) did contain an obvious contradiction. The Applicant claimed that she would face persecution if she returned to India because her father had not repaid the loan as a result of the financial difficulties he experienced. However, when she applied for a study permit extension, the Applicant signed a form stating that her parents would pay the \$45,000 she needed to cover her costs.

[27] The RPD and RAD both rejected her explanation that her cultural background prevented her from questioning her father, because this did not explain the contradiction in her evidence. The Applicant had signed the permit extension application in April 2019, around the same time that she claimed her father was facing persecution from Sahil and Ravneet because he could not repay the loan due to his financial difficulties. The RAD's finding that the Applicant's student visa declaration undermined her refugee claim on this point is supported in the evidence and its conclusion is clearly explained in its reasons. That is sufficient to meet the requirements of reasonableness in accordance with the *Vavilov* framework.

C. *The plausibility that the NIA was involved*

[28] The RAD noted that the RPD had not believed that Sahil would implicate the NIA by accusing the Applicant's father of involvement with Muslim militants simply to recover the debt or to maintain his reputation with Ravneet. The RAD rejected the Applicant's argument that it was entirely plausible that Sahil would act in this manner in order to seek to protect his honour.

[29] On this point, the RAD's key findings are set out in the following passage:

[55] Upon referring to the documentary evidence, I find it difficult to see how the NIA, the leading foreign terrorism investigation agency in India, would deploy its resources to investigate a photographer for having worked at a Muslim wedding. Also according to the documentary evidence, that Agency allegedly opened its investigations on the order of the central or state government. Consequently, like the RPD, I find it implausible that a simple police officer or member of parliament like [Sahil] or [Ravneet] could have, in order to save face or recover a loan, implicate the NIA on false allegations, especially considering that this would certainly result in the impossibility of said loan being repaid.

[translation]

[30] The Applicant submits that this finding is unfounded, because the RAD failed to recognize that Sahil was not an ordinary police officer, but rather served as Station House Officer. The RAD also did not take account of the fact that the other agent of persecution was a Member of Parliament. In light of this, it was not implausible that the NIA would become involved at the request of such influential people. In addition, the documentary evidence shows that police corruption is common in India, as is arbitrary and extra-judicial arrest and detention. The Applicant submits that plausibility findings should only be made in the clearest of cases and must be explained based on the evidence in the record.

[31] This aspect of the RAD's decision is somewhat troubling, because the plausibility finding rests both on the evidence about the role of the NIA – which is amply supported in the record – and on an assumption about what Sahil and Ravneet may have done – which is based on

speculation. However, I am not persuaded that the RAD's conclusion is unreasonable, in light of the particular circumstances of this case. The Applicant said her father was persecuted because he failed to repay a loan, had accused Sahil of sexually assaulting the Applicant, and was wrongly suspected of involvement with Muslim militants because he took pictures at a Muslim wedding. He was unlawfully detained on several occasions and released on the payment of a bribe. That appears to have been the extent of his interaction with police or security authorities. There is no evidence of any formal charges being brought against him, nor of any other criminal or legal proceeding being launched.

[32] The RAD reviewed the evidence on the NIA in the National Documentation Package, noting that it was focused on combatting international terrorism, and its investigations were conducted at the direction of the central or state governments. Given this, the RAD found it implausible that the NIA would be engaged in the Applicant's father's case, given the nature of the accusations against him.

[33] On balance, I am not persuaded that this finding is unreasonable. Moreover, even if I accept that the RAD was mistaken on this point, I am not persuaded that it is sufficiently central to the RAD's reasoning as to cast doubt over the entire decision (*Vavilov* at paragraph 100). The RAD's conclusion was based on an accumulation of negative credibility findings, and erasing this one from the record would not affect the other reasons for the RAD to doubt the Applicant's refugee narrative.

[34] I find the RAD's implausibility finding to be reasonable, and in the alternative I find that even if the RAD erred on this point, the mistake was not sufficiently serious as to make the rest of the decision unreasonable.

D. *The Notice to Appear and the other documentary evidence*

[35] The RPD found several anomalies in the version of the Notice to Appeal submitted by the Applicant: it came from a police station not listed on the official list of stations for the province where the Applicant had lived; the logo at the top of the document did not match the one the RPD found by an internet search; and the document was titled "Notice to Appear" but the body of the text used "summons". The RPD also noted that such a document was to be delivered to a male member of a household, but the Applicant said it was given to her mother.

[36] In the absence of further information about the existence of the police station or any explanation for the other anomalies noted by the RPD, the RAD gave no weight to the document. This, in turn, cast doubt over the Applicant's other documentary evidence.

[37] The Applicant had submitted an affidavit from her mother to confirm her narrative, but the RPD had doubts about its authenticity because the affidavit was signed using the mother's maiden name. The RAD disagreed with the RPD's reliance on the name, noting that the mother may have used her married and single name for different documents. However, the RAD found

that the mother's affidavit was not sufficient to overcome its credibility concerns regarding the Applicant's evidence.

[38] The RPD gave the lawyer's letter no weight because the police station he said he visited did not exist and he had not seen the Notice to Appear but rather relied on the mother's description of it. The RAD upheld this finding, noting that the Applicant had not challenged it in her appeal submissions.

[39] Finally, on the letter describing the father's medical history, the RPD and RAD both questioned how the letter dated October 2021 was obtained, given that the Applicant's evidence was that her father had disappeared in 2019.

[40] The Applicant submits that the RAD's conclusion on the authenticity of the Notice to Appear is unreasonable, and that its rejection of the other documents was an egregious error. The Applicant points to the evidence that was before the RAD showing that police must issue Notices to Appear and that a summons must be in writing, and says that minor typographical mistakes in a document are not a basis to reject it (*Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170).

[41] In addition, the Applicant submits that the RAD erred in rejecting her mother's affidavit, the lawyer's letter and the medical evidence, solely on the basis that it had doubts about the authenticity of the Notice to Appear. She says that the RAD's reasoning is based on a fatal flaw, and that it should have analyzed the documents individually.

[42] I am unable to find any reason to question the RAD's findings on the Notice to Appear, or the other documents. The Applicant submitted further information before the Court regarding the list of police stations, but this is inadmissible on judicial review. The RAD did not have the benefit of this evidence, and so cannot be faulted for failing to consider it. In addition, the RAD's findings regarding the anomalies in the version of the Notice to Appear submitted by the Applicant are based on a careful analysis of the document in light of the objective documentary evidence. This is exactly what is demanded of a decision-maker, and it is not the role of a reviewing court to re-weigh the evidence.

[43] On the rejection of the other documents, I disagree with the Applicant's argument that the RAD's analysis was simply based on its finding on the authenticity of the Notice to Appear. To the contrary, I find the RAD examined each of the documents and stated its reasons for questioning them. The RAD found the mother's affidavit was not sufficiently persuasive to overcome its other credibility concerns, and it explained why it had doubts about the lawyer's letter. As for the medical evidence about the father, the RAD was not provided with an

explanation for how a document about the father was obtained two years after he was said to have disappeared, and I can find no fault with its reasoning on this point.

[44] For all of these reasons, I am not persuaded that the RAD's analysis of the Notice to Appear and other documentary evidence was unreasonable.

IV. Conclusion

[45] For the reasons set out above, the application for judicial review is dismissed. The RAD's decision is reasonable, when measured against the framework set out in *Vavilov*. It bears repeating that the question is not whether the Court would have reached the same conclusion, or weighed all of the evidence in the same way as the RAD did. Instead, *Vavilov* requires that the RAD's findings be based on the evidence, measured against the applicable legal standards, and that its conclusions are explained in a way that justifies the result it reached. I find the RAD decision meets this test.

[46] There is no question of general importance for certification.

JUDGMENT in IMM-5358-22

THIS COURT'S JUDGMENT is that:

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

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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