

Federal Court



Cour fédérale

Date: 20240726

Docket: IMM-8056-23

Citation: 2024 FC 1190

Ottawa, Ontario, July 26, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SAIF UDDIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application brought pursuant to s. 72(1) of *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]. The Applicant, Mr. Saif Uddin, is contesting the decision of the Refugee Appeal Division [RAD], which confirmed the decision of the Refugee Protection Division [RPD], finding him to be neither a Convention refugee, nor a person in need of protection. The determinative issue for the RAD, like the RPD before it, was the credibility of the Applicant. The only issue before this Court is the reasonableness of the impugned decision.

[2] For the reasons that follow, the application must be dismissed.

I. Facts

[3] The Applicant is a citizen of Bangladesh who lived and worked in the United States of America (USA) from 2001 to 2005.

[4] In October 2005, the Applicant returned to his village in Bangladesh to be with his family. He alleges that, upon his return, he was targeted after refusing to pay extortionate bribes to political parties, police officers and locals who believed that he had become wealthy after his time in the United States.

[5] The Applicant additionally alleges that after having donated sewing machines to local women's empowerment organizations, he was targeted by the group Jamaat-e-Islami [Jamaat], members of which were affiliated with the then-ruling Bangladesh National Party (BNP). When he refused to return the sewing machines, the Applicant alleges that BNP-affiliated Jamaat members set his house on fire on January 10, 2006.

[6] The Applicant alleges that, following this incident, his brother made a complaint to the local police, who refused to provide assistance. Rather, he alleges that the police instructed his brother to seek damages from a leader of the Awami League, a political rival of the BNP who were not involved in the alleged attack and would not gain power in Bangladesh until 2009.

[7] The Applicant alleges that, instead of providing assistance, the Awami League leader began extorting his family for money, culminating in the Applicant's brother leaving Bangladesh for the United Arab Emirates out of fear for his life. In addition, the Applicant alleges that he fled to the capital city of Dhaka and subsequently returned to the United States on February 12, 2006.

[8] In April 2006, the Applicant's work permit in the United States expired, and he continued to live in the country without status. According to the Applicant's testimony, he believed that an immigration consultant had filed a green card application on his behalf. However, he heard nothing relating to the green card application from 2006 to 2015. In 2015, the Applicant consulted a lawyer, who informed him that he would be unable to help the Applicant. Moreover, in Schedule A to the Applicant's Basis of Claim form (BOC), he indicated that he had made a rejected asylum claim in the United States in 2005. However, during his testimony before the RPD, he alleged that he found out from the immigration lawyer in 2015 that such a claim was never made.

[9] In March 2018, after an additional three years of living without status in the United States, the Applicant attempted to cross the border to Canada. He was arrested at the Lacolle Border Crossing and subsequently made a refugee claim.

[10] The Applicant's hearing before the RPD was held on September 13, 2022.

[11] On October 19, 2022, the RPD rejected the Applicant's refugee claim, finding credibility to be the determinative issue. The RPD concluded that the Applicant lacked credibility, was unable to explain the various inconsistencies in his story and was unable to establish the central elements of his alleged persecution.

[12] On May 31, 2023, the RAD dismissed the Applicant's appeal and confirmed the decision of the RPD, finding the Applicant to be neither a Convention refugee as defined at s. 96 of the IRPA, nor a person in need of protection pursuant to s. 97(1) of the IRPA.

II. The Decisions under Review

[13] The RAD, like the RPD before it, found the determinative issue in this case to be the lack of credibility of the Applicant. Having considered the documentary and testimonial evidence, the tribunal concluded that the presumption of truthfulness had been rebutted. According to the RAD, the credibility issues centered around four elements: the likelihood that the Applicant disclosed fraudulent affidavits, the inconsistencies central to the Applicant's allegations of persecution, the Applicant's lack of diligence in regularizing his status in the United States undermining his allegations of genuine fear, and the likelihood that the Applicant was engaging in asylum shopping between the United States and Canada. The additional documentary evidence, as well as the explanations provided by the Applicant in his testimony, were insufficient to overcome these credibility issues.

[14] First the RAD found there were several issues with a series of affidavits submitted by the Applicant from two of his neighbours, his mother, his wife and his brother, all of which were

notarized in Dhaka on February 23, 2019 by three different notaries. The RAD concluded that the two affidavits submitted by the Applicant's brother were likely fraudulent, as they contained stamps "attesting that the affiant had declared and affirmed [their] contents before the notary public" in Dhaka, despite the fact that the Applicant had testified that his brother had fled Bangladesh for the UAE in 2006 (RAD Decision at para 11). The RAD found that the Applicant was unable to explain this discrepancy, as his story shifted from stating that his brother had dictated the affidavit over the phone, to stating that the documents had been sent to the UAE for the brother to sign and return. Moreover, the National Documentation Package (NDP) for Bangladesh indicated that the proper practice for obtaining an affidavit outside of the country was to have it sworn in person at a Bangladeshi mission. Taking into account all of these discrepancies, the RAD found that the brother's affidavit was likely fraudulent. As a result, the RAD also gave no weight to the affidavit sworn by one of the Applicant's neighbours, as it was prepared by the same notary who had failed to follow the proper procedures for preparing affidavits outside of Bangladesh.

[15] The RAD additionally accorded little weight to the affidavits sworn by the Applicant's mother, his wife and another one of his neighbours, because the Applicant was unable to explain why these individuals had all travelled four hours from Companigonj to Dhaka in order to have the affidavits prepared. The Applicant had testified that this travel was necessary because there were no notaries in Companigonj. However, the NDP indicated that there were 15 notaries working in the town of Noakhali, located 50 minutes away from Companigonj. Thus, the RAD found that the Applicant's explanation for the four hour trip was inadequate, and that this discrepancy "calls into question the genuineness of [the] affidavits" (RAD Decision at para 16).

The inconsistencies present with all of these affidavits led the RAD to draw negative inferences about the Applicant's credibility.

[16] The RAD further found that the Applicant's allegations contained important inconsistencies and contradictions. In particular, the RAD found that the Applicant had failed to explain why local police officers would tell him to seek reparations from the Awami League in 2006, who would not come into power in Bangladesh until 2009, when the alleged perpetrators of the January 2006 arson were affiliated with the then-ruling BNP. The Applicant argued that it was a period of political instability between the Awami League and the BNP, that the "terrorists" responsible for his persecution switched sides between the two parties depending on who was in power, and that the two parties were in fact linked. The RAD rejected these explanations.

[17] While recognizing there was a period of political instability between the Awami League and the BNP in Bangladesh starting in January 2007, the RAD concluded that this would not explain why local police officers would recommend seeking damages from the party who, in January 2006, were not in power and were not responsible for the alleged arson. Moreover, the RAD found that the objective documentary evidence contradicted the Applicant's claim that influential members of either political party would easily switch sides, or that the two parties, which are political rivals, were at all linked. The inconsistencies in the Applicant's story led the RAD to draw negative inferences about his credibility.

[18] The RAD additionally concluded that the Applicant's failure to demonstrate that he took steps to regularize his status in the United States between 2006 and 2018, as well as his delay in

coming to Canada between 2015 and 2018, undermined his credibility as it pertained to his allegations of genuine fear. According to the Applicant's testimony, he was able to acquire a social security number, a New York State identification card and a work authorization card that expired in April 2006 through an immigration consultant in the United States. He also alleged that this immigration consultant submitted a green card application on his behalf. However, the Applicant failed to provide any documentation related to this application. He failed to provide evidence that he had attempted to acquire such documentation or to show that he had made any additional efforts to regulate his status in the twelve years between the expiry of his work permit and his entry into Canada. Moreover, after consulting a lawyer in 2015, the Applicant waited an additional three years before coming to Canada. The RAD found this lack of diligence on two fronts to undermine the Applicant's credibility.

[19] In addition, the RAD concurred with the RPD that the Applicant's testimony had shifted as it pertained to whether he had previously made a rejected asylum claim in the United States in 2005. In Schedule A to the Applicant's BOC, the Applicant had indicated that he "applied for refugee claim in [the] USA in 2005[,] but they denied [his] claim" (Certified Tribunal Record, p. 141). However, during the hearing before the RPD, the Applicant testified that his immigration consultant had told him that he was applying for asylum, but that the lawyer he consulted in 2015 had told him that an asylum claim had never been submitted on his behalf. This explanation was rejected by the RAD, which concluded that if the Applicant were aware that an asylum claim had not been submitted, he would not have indicated that on a form completed in December 2018. Therefore, the RAD found, on the balance of probabilities, that the Applicant had made an unsuccessful claim for asylum in the United States in 2005. The RAD

found this “behaviour was consistent with that of a person who is engaged in asylum shopping” (RAD Decision at para 30).

[20] Having identified numerous credibility issues, the RAD then found that the various pieces of documentary evidence provided by the Applicant were insufficient to overcome these concerns. Firstly, the Applicant provided receipts for money transfers between himself and his wife, and testified that these transfers were sent to assist his wife in paying bribes to the Awami League. Secondly, the Applicant provided receipts, as well as a thank you letter acknowledging his donation of sewing machines to women’s empowerment organizations. Thirdly, the Applicant disclosed a newspaper article, dated January 14, 2006, which he alleged provided proof that he had been a victim of arson at the hands of members of BNP-Jamaat.

[21] However, the RAD, like the RPD before it, found that these documents failed to overcome the Applicant’s credibility issues. The RAD concluded that the money transfer receipts simply showed that a transfer had taken place, but did not provide any context on the purpose of the transfers. The RAD further concluded that the receipts and thank you letters related to the purchase of sewing machines did not provide any proof that the Applicant had been targeted as a result of these purchases. Moreover, the RAD concluded that, while the newspaper article provided information on the Applicant and the BNP-Jamaat, it failed to provide any information on the actual alleged arson event. In essence, due to the credibility concerns, the RAD concluded that the Applicant’s testimony was insufficient “to impute purpose to documents which cannot, on their own, establish their purpose” (RAD Decision at para 23). Being read on their face, these

documents said little and were insufficient to overcome the inconsistencies in the Applicant's narrative.

[22] The Applicant also disclosed an affidavit sworn by his daughter that details alleged extortion at the hands of the Awami League, and continued surveillance from local police. However, while assigning some weight to this affidavit, the RAD found it was insufficient to overcome the numerous credibility concerns caused by the inconsistencies and contradictions found in the Applicant's asylum claim. For all these reasons, the RAD rejected the Applicant's appeal and confirmed the decision of the RPD.

III. Arguments and analysis

[23] The standard of review applicable to this case is reasonableness. 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 (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 at para 85 [*Vavilov*]). Both the outcome and the rationale of a decision must be reasonable (*Vavilov* at para 15). Importantly, it is up to the Applicant to demonstrate that an administrative decision is unreasonable (*Vavilov*, at para 100).

[24] The Applicant's arguments can be summarized as expressing dissatisfaction with the manner with which the RAD assessed his credibility, arguing that this assessment was unreasonable. These arguments can be summarized as follows:

- The Applicant argues that the RAD's finding that his brother's affidavits were likely fraudulent is insufficient in itself to negate the Applicant's overall credibility.
- The Applicant argues that it was unreasonable for the RAD not to give weight to the affidavit submitted by his first neighbour because it was prepared by the same notary that prepared his brother's affidavits. He argues that "[t]he notary's failure to follow a procedure for affidavits outside Bangladesh does not imply his inability to do so for affidavits sworn within Bangladesh" (Applicant's memorandum at para 8).
- The Applicant further argues that it was unreasonable for the RAD not to give weight to the affidavits of his mother, his sister and the second neighbour simply because they had travelled to Dhaka to have them prepared.
- The Applicant submits that the RAD unreasonably had credibility concerns with the Applicant's allegations of persecution due to his assertion that his agents of persecution had switched allegiances from the BNP to their political rivals, the Awami League. The Applicant argues that "it is reasonable for any person to change political affiliation, and documentary evidence corroborating this should not be required" (Applicant's memorandum at para 17).
- The Applicant further argues that the RAD unreasonably found his lack of action to regularize his status in the United States negatively affected his credibility. He submits that he reasonably put trust in his immigration consultant to submit his green card application, and that he cannot have been expected to have produced this application as evidence as it appears to never have actually been filed.

- He further submits that the RAD unreasonably concluded that his asylum claim in the United States had been rejected in 2005, as the RAD was “speculating as to the average duration of an asylum claim in the USA and concluding that the entire process would take less than ten (10) months” (Applicant’s memorandum at para 27).
- He also argues that his three-year delay in deciding to come to Canada after consulting the immigration lawyer was unreasonably found to negatively affect his credibility, because it was reasonable that he would initially be unaware that he had other options outside the United States.

[25] All of these arguments must be rejected. The Applicant is essentially asking this Court to reweigh the evidence in this case. In *Vavilov*, the Supreme Court of Canada clearly outlined that a “reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, [2018] 2 SCR 230 at para 55). Interference into the factual findings of an administrative tribunal is only justified in cases where the decision-maker “has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126). The Applicant has failed to demonstrate that such circumstances exist in the present case.

[26] As helpfully summarized by Justice Vanessa Rochester, then a judge of the Federal Court, in *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 at paragraph 26 [*Ali*], a highly deferential approach must be adopted in assessing credibility determinations :

Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned “in the clearest of cases” (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12 [*Liang*]). Credibility determinations have been described as lying within “the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[27] It has long been established that “[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness” [emphasis added] (*Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA) at para 5 [*Maldonado*]). Contrary to what appears to be implied by some, there is nothing momentous in the *Maldonado* dictum. The case law of this Court is clear that “the accumulation of contradictions, inconsistencies, and omissions regarding crucial elements of a refugee claim can lead to a negative conclusion with respect to an applicant’s credibility” (*Garcia Serrano v Canada (Citizenship and Immigration)*, 2022 FC 153 at para 37, citing *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22 [*Lawani*]). It is only common sense. In the present case, the RAD assessed the evidence disclosed by the Applicant and found it to be riddled with several inconsistencies and contradictions. The Applicant evidently disagrees with the assessment, but much more is needed. He has failed to demonstrate that this assessment was unreasonable.

[28] Firstly, contrary to the Applicant's assertion, the conclusion pertaining to the fraudulent nature of the brother's affidavit was only one of several elements that led to the RAD's negative credibility findings and cannot be said to be the sole basis for the RAD's conclusion. Moreover, the Applicant's remaining arguments relating to the February 23, 2019 affidavits – i.e. that these documents should have been given “more” or “full” weight - are in essence “impermissibly asking this Court to reweigh the evidence and arrive at a different conclusion, which is not the role of the Court on an application for judicial review” (*Bokre v Canada (Citizenship and Immigration)*, 2024 FC 1094, citing *Vavilov* at para 125). Thus, these arguments must fail.

[29] Secondly, the Applicant's assertion that he was not obligated to provide proof that his agents of persecution had switched political allegiances must be rejected. It is the Applicant who bears the burden of demonstrating, on the balance of probabilities, that he faces a serious risk of persecution in Bangladesh. Faced with existing credibility concerns, the RAD reasonably found the Applicant's claims about his agents of persecution to be unreasonable, as they directly contradicted the objective country evidence outlining that the BNP and the Awami League are political rivals. The RAD is “entitled to draw conclusions concerning an applicant's credibility based on implausibilities, common sense and rationality” (*Lawani* at para 26). In this case, the RAD compared the Applicant's testimony to the objective country evidence and reasonably found that his explanation for the contradictions, absent corroborating evidence, was implausible.

[30] Thirdly, the Applicant's argument that it was unreasonable to expect him to produce his green card application must also be rejected. Even if the Applicant were unable to procure the green card application, the RAD's finding that the Applicant did not take sufficient steps to

regularize his status in the United States was also based on the fact that he failed to “show evidence of any diligence” in attempting to obtain confirmation of the application (RAD Decision at para 27). The RAD “[is] entitled to take into account the applicant's lack of effort to obtain corroborative evidence to establish [elements of his claim] and to draw a negative inference of his credibility based on this” (*Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 33. See also *Lawani* at para 25; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 300 at para 25). Thus, it is both the lack of evidence, and the lack of effort in trying to procure this evidence, which led the RAD to its conclusion on this point.

[31] Fourthly, the Applicant’s argument that the RAD’s conclusion on the 2005 asylum claim was founded on speculation as to the average length of a refugee proceeding in the United States must also be rejected. In its decision, the RAD clearly sets out that its conclusion that the Applicant likely had a rejected asylum claim in the United States was based on the Applicant’s own shifting testimony. This makes up part of the RAD’s assessment of the facts and is owed significant deference (*Ali* at para 26). The Applicant has failed to demonstrate a reviewable error in this analysis.

[32] Finally, the Applicant’s argument that his delay in coming to Canada between 2015 and 2018 was reasonable because he was unaware he had other options outside the United States cannot be accepted. It was not shown how it would be unreasonable for the RAD to find that the Applicant’s delay in coming to Canada between 2015 and 2018 undermined the credibility of his claims of genuine fear. (See *Tawalbeh v Canada (Citizenship and Immigration)*, 2023 FC 1543 at para 14). In fact, the essence of diligence in regularizing his status whether it be in the United

States or Canada tends to undermine the Applicant's whole case and the presence of genuine fear.

[33] In addition to challenging the RAD's credibility findings, the Applicant argues that the RAD failed to give adequate or "full" weight to the evidence and explanations provided by the Applicant that purportedly support the allegations underlying his refugee claim. This argument must equally fail. The Applicant argues that the newspaper article, money transfers receipts, sewing machine receipts and thank you note should have been given "full weight, independently of the applicant's testimonial evidence" because it was "the best evidence available to him" (Applicant's memorandum at paras 21-22). The contention that there is no better evidence does not enhance the quality of what is put before an adjudicator. It remains an applicant's burden to satisfy an adjudicator that their case meets the requirements in order to be successful.

[34] In its assessment of the evidence concerning a refugee claim, the RAD had no obligation to give certain weight to certain documents simply because they are the best evidence available to the Applicant. It is the Applicant's burden to demonstrate his serious risk of persecution on a balance of probabilities. Moreover, and determinately, it is not the role of the reviewing court to reweigh the evidence presented before an administrative tribunal (*Vavilov* at para 125). The fact that the Applicant disagrees with the manner in which the evidence was weighed does not in itself open an avenue for judicial review.

IV. Conclusion

[35] For the reasons outlined above, the application for judicial review must be dismissed. The Applicant has failed to demonstrate that the RAD made a reviewable error in its decision. The RAD's decision, namely its assessment of the Applicant's credibility, bears all of the hallmarks of a reasonable decision: it is transparent, intelligible and justified in light of the legal and factual constraints present in the case. There is no question for certification.

JUDGMENT in IMM-8056-23

THIS COURT'S JUDGMENT is that:

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

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8056-23

STYLE OF CAUSE: SAIF UDDIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 19, 2024

JUDGMENT AND REASONS: ROY J.

DATED: JULY 26, 2024

APPEARANCES:

Nilufar Sadeghi FOR THE APPLICANT

Rishma Bhimji FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates FOR THE APPLICANT
Barristers and Solicitors
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec