Federal Court  Cour fédérale

**Date: 20240820**

**Docket: IMM-9869-22**

**Citation: 2024 FC 1279**

**Ottawa, Ontario, August 20, 2024**

**PRESENT: Madam Justice St-Louis**

**BETWEEN:**

**ROHIT KUMAR KAMRA**
**AARTI KAMRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] The Applicants, Mr. Rohit Kumar Kamra and Ms. Aarti Kamra, seek judicial review of the decision dated October 3, 2022 [Decision], whereby the Refugee Appeal Division [RAD] dismissed their appeal and confirmed the Refugee Protection Division's [RPD] decision that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the application for judicial review will be dismissed. I am satisfied the Applicants have not demonstrated the Decision is unreasonable. On the contrary, the RAD reasonably concluded that the evidence adduced before it was new evidence governed by subsection 110(4) of the Act and that no oral hearing could be held per subsection 110(6) of the Act. The RAD also reasonably concluded that numerous inconsistencies and contradictions in regards to four particular issues, as well as the Applicants' delay in claiming protection once in Canada, rendered the Applicants' claim not credible. I am convinced the RADs findings and conclusions are reasonable given the record before the Court and the applicable law.

## II. Context

[3] The Applicants are Indian citizens. On April 6, 2018, they each were granted a multiple entry Canadian visitor's visa valid until 2027. On May 9, 2018, they were admitted into Canada as visitors for two weeks. They sought an extension of their visitor's status, but on July 24, 2018, their application was denied. On November 6, 2018, the Applicants claimed refugee protection based on allegations of fear of the Punjab police who allege the Applicants support militants.

[4] The RPD denied the Applicants' claim, having found that the Applicants had not credibly established their claim. The RPD found inconsistencies, contradictions and omissions in the Applicants' evidence about (1) the arrest of the Applicants' father/father-in-law in July 2017; (2) Mr. Kamar's arrest in September 2017; (3) the lawyer's letter and three medical reports submitted due to, *inter alia*, the absence of stamps and signatures on some documents and error in the letterhead; and (4) the lack of details provided about the terrorists with whom the police accuse the Applicants of having links.

[5] The Applicants appealed the RPD decision before the RAD. Along with the record they filed before the RAD, the Applicants included a stamped and signed version of the four documents that had been presented to the RPD without those stamps and signatures, i.e., the lawyer's letter and the three medical reports. The Applicants submitted to the RAD that these documents were not, in fact, new evidence per subsection 110(4) of the Act.

[6] The RAD rejected the Applicants' appeal and confirmed the RPD decision.

[7] The RAD considered the four documents as new evidence and found them inadmissible as the documents did not meet the subsection 110(4) threshold. The RAD subsequently noted credibility issues with those documents. In addition, citing subsection 110(6) of the Act, the RAD denied the Applicants' request for a hearing since no new evidence had been admitted.

[8] In its analysis, the RAD found that (1) the accumulation of contradictions, inconsistencies and omissions regarding four crucial elements of the Applicants' claim supported a negative credibility conclusion; and (2) the Applicants' delay in claiming refugee protection supported the negative credibility finding.

[9] Before the Court, with respect to the four documents submitted to the RAD, the Applicants submit that (1) the RAD did not study properly the proof; (2) subsection 110(4) of the Act did not apply as the evidence was not new; (3) the RAD's credibility assessment of the evidence was not necessary considering its conclusion on the admissibility of the new evidence;

and (4) the RAD erred in law in denying a new hearing as subsection 110(6) of the Act refers to subsection 110(3) and not to subsection 110(4).

[10] With respect to the RAD's analysis, the Applicants submit that the RAD (1) did not properly evaluate the proof; (2) should not have considered that the Applicants were represented by a lawyer or that they confirmed their Basis of Claim form was complete, true and correct at the start of the hearing as doing so creates two categories of applicants; (3) did not respect the rule of balance of probability in judging the Applicants' credibility; and (4) did not study properly the appeal and adopted the conclusions of the RPD.

[11] The Minister of Citizenship and Immigration [the Minister] responds that the RAD reasonably concluded that the documents submitted by the Applicants on appeal were not admissible and the Applicants could have submitted the signed versions of the medical reports to the RPD after the hearing, when they became aware that the versions they had previously submitted were not signed. The Minister stresses that since the Applicants did not do so, submitting the documents to the RAD instead, concluded in having the admissibility of this evidence ruled by subsection 110(4) of the Act. The Minister adds that the RAD also reasonably concluded that the Applicants had not credibly established their claim, given the multiple issues with their evidence.

## III. Decision

[12] The Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] established a presumption that the standard of

reasonableness applies when reviewing the merits of administrative decisions (see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]). Particularly, the jurisprudence has confirmed the reasonableness standard applies to assessments of credibility made by the RPD and the RAD (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 13 citing *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4; *Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 at para 20; *Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 17).

[13] On judicial review, the role of the Court is to examine the reasons and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at paras 8, 65), and whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 83, 87, 138).

[14] The onus is on the Applicants to establish the Decision as unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision: the Court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[15] In this case, the Applicants have not met this burden.

[16] The Applicants' argument that the four stamped and signed documents filed in the RAD record, is not "new" evidence has no merit. At the hearing before this Court, the Applicants

confirmed that these documents were not before the RPD; they thus self-evidently qualify as new evidence before the RAD. At the hearing, the Applicants also confirmed that those four documents, in the format presented to the RAD, were indeed available at the time of rejection of their claim by the RPD. In light of subsection 110(4) of the Act, the RAD's conclusion that these documents are inadmissible is thus reasonable.

[17] The RAD discussed certain issues of credibility regarding the new evidence after having found it inadmissible per subsection 110(4) of the Act. It was probably not necessary for the RAD to add these comments, but I do not see how the RAD can be faulted for providing them, particularly as the credibility of new evidence is an implied condition for its admissibility (*Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96 at paras 38-49 [*Singh*]).

[18] As no new evidence was admitted before the RAD, no oral hearing could be held per the language of subsection 110(6) of the Act. Therefore, there is no error on the part of the RAD (*Singh* at paras 47-48).

[19] I am also satisfied the RAD reasonably concluded that the Applicants had not credibly established their claim given the multiple issues, omissions, and inconsistencies with their evidence. Where the RAD is unsatisfied with an applicant's explanation for various inconsistencies, it is open to the RAD to draw a negative credibility finding and the Court must demonstrate significant deference to the RAD's decisions relating to credibility and assessment of evidence (*Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at paras 8, 19). In this

case, the omissions, contradictions and inconsistencies are found in the record and pertain to elements that are central to the Applicants' claim.

[20] The RAD's reference to the Applicants being represented by counsel clearly stemmed from the testimony the Applicants offered to attempt and explain the omissions. At paragraphs 27 and 28 of its Decision, the RAD outlines the Principal Applicant's testimony that he "tried to mention everything" and at that time he was "in a lot of depression because we had already lost [his] father-in-law and [they] could not really understand anything." The RAD did not impeach the balance of probability standard and, on the contrary, reasonably inferred that the presence of counsel is likely to help Applicants understand.

[21] Finally, the RAD noted that the Applicants could not satisfactorily explain the three-month delay in claiming refugee protection, particularly in light of the fact that they had been able to ask for an extension of their visitor's status. I agree with the Minister that this unexplained delay, although not determinative, reasonably contributed to undermine their credibility (*Chen v Canada (Citizenship and Immigration)*, 2019 FC 334 at paras 24, 26).

## IV. Conclusion

[22] The Applicants have not shown the RAD Decision to be unreasonable and I will consequently dismiss their application for judicial review.

[23] No question of general importance is proposed, and I agree that none arises.

**JUDGMENT in IMM-9869-22**

**THIS COURT'S JUDGMENT is that**:

1. The Applicants' application for judicial review is dismissed.

2. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent.

3. No question is certified.

4. No costs are awarded.

"Martine St-Louis"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-9869-22 |
| **STYLE OF CAUSE:** | ROHIT KUMAR KAMRA ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | AUGUST 13, 2024 |
| **JUDGMENT AND REASONS:** | ST-LOUIS J. |
| **DATED:** | AUGUST 20, 2024 |

**APPEARANCES:**

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|---|---|
| Alain Vallières | FOR THE APPLICANTS |
| Julien Primeau-Lafaille | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |