

Federal Court



Cour fédérale

**Date: 20241001**

**Docket: IMM-5042-23**

**Citation: 2024 FC 1542**

**Ottawa, Ontario, October 1, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**TARWINDER SINGH DHALIWAL  
BHAGWANT KAUR DHALIWAL  
PRABHNOOR KAUR DHALIWAL  
SUKHMANJOT KAUR DHALIWAL  
BOOTA SINGH DHALIWAL  
RAMJIT KAUR DHALIWAL  
BHAVSIMRAN DHALIWAL  
MANRAJ SINGH DHALIWAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are two related families of four, each family comprising two parents and two minor children – the Associate Applicants are sisters, thus making the Principal Applicants brothers-in-law. The Principal Applicants otherwise are unrelated.

[2] All the Applicants are citizens of India who are Sikh and hail from the Punjab area. The families live in different villages. Both families claim fear of persecution by the police on the basis of their political opinion as supporters of the Akali Dal Badal [ADB], a political party in India.

[3] Although the Applicants argue that each family's claim involves different facts, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] joined their claims, over the Applicants' objection, and found that credibility was the determinative issue in concluding that they were neither Convention refugees nor persons in need of protection.

[4] The Refugee Appeal Division [RAD] of the IRB initially dismissed the appeal for lack of perfection but agreed to reconsider the matter upon the Applicants' request. On the reconsideration, the RAD conducted its own independent assessment of the evidence. Despite the Applicants' argument that their claims should be heard separately, the RAD found the RPD was correct in two respects, namely, (i) joining the claims because they involve similar questions of fact and law, and (ii) determining that the claims lacked credibility because of their striking

similarities, resulting in the rebuttal of the presumption of the Applicants' truthfulness. The RAD thus dismissed the Applicants' appeal [Decision].

[5] The Applicants seek to have the Decision set aside on this judicial review, arguing that the RAD erred by incorrectly keeping the claims joined and by failing to consider the extent to which similarly situated individuals likely would have comparable experiences.

[6] The Respondent counters that there was nothing procedurally unfair about the RAD's determination that it was appropriate for the claims to continue as joined claims and, further, the RAD's credibility finding was reasonable.

[7] For the reasons below, I find that the Applicants have not met their onus of demonstrating that the Decision was procedurally unfair and unreasonable in these respects. Their judicial review application thus will be dismissed.

[8] See Annex "A" for applicable legislative provisions.

## II. Analysis

### A. *The RAD's continued joinder of the claims was not procedurally unfair*

[9] The Applicants have not persuaded me that the RAD's continued joinder of their claims was procedurally unfair.

[10] Questions of procedural fairness attract a correctness-like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[11] The Applicant's reliance on *God v Canada (Citizenship and Immigration)*, 2019 FC 1483 does not assist them. Unlike in *God*, the RAD here recognized that the joined claims were made separately (i.e. that there originally were two separate claims).

[12] Contrary to the Applicants' contention, the RPD and the RAD did not treat the claims as though they were identical. The transcript of the RPD hearing disclosed that the RPD Member specifically asked the Principal Applicant and Associate Applicant of each family about the persecution they faced and referred to their differing accounts in making credibility and implausibility determinations.

[13] Further, the Applicants also say that the RPD, and hence the RAD, misinterpreted subrule 55(1) of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*]. This provision mandates that, unless impracticable, a claimant's claim must be joined with the claim of a spouse or common-law partner, child, parent, legal guardian, brother, sister, grandchild, or grandparent.

[14] The Applicants assert that, while the Associate Applicants are sisters, the Principal Applicants are otherwise unrelated and it is their lack of relationship that should have been the focus of whether the claims should have been joined or not. The fact that the Associate Applicants are sisters is coincidental and irrelevant, say the Applicants. They have not provided any authority for this proposition, however.

[15] More to the point, subrule 55(1) of the *RPD Rules* makes no distinction between principal and associate applicants. As this Court previously has held, it is a presumptive rule that the refugee claims of family members are to be joined: *Chiwara v Canada (Citizenship and Immigration)*, 2011 FC 188 at para 5, relying on former rule 49 of the previous *Refugee Protection Division Rules*, SOR/2002-228.

[16] The Applicants also take issue with the RAD upholding the RPD's dismissal of their application to separate the claims under subrule 56(2) of the *RPD Rules*. I disagree that the RAD erred in its consideration of whether to sever the claims.

[17] Subrule 56(5) guides that in determining whether to join or separate claims, the RPD "must consider any relevant factors," including whether (a) the claims involve similar questions of fact or law, (b) allowing the application to separate would promote efficient administration of the RPD's work, and (c) allowing the application to separate would cause injustice. The RAD was satisfied that the RPD properly conducted the mandated analysis, finding that the refusal to separate the files would not cause injustice.

[18] In addition, contrary to the Applicants' contention that injustice arose because the RPD and RAD were preoccupied with the similarities between the claims, the RAD, in my view, did consider the Applicants' explanations for the similarities in their narratives. This issue will be considered again in connection with the issue of whether the RAD's credibility assessment was reasonable, to which I turn next.

B. *The RAD's credibility finding was not unreasonable*

[19] I am not persuaded that the RAD's credibility and implausibility assessment was unreasonable, including the RAD's determination that the presumption of truthfulness was rebutted.

[20] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Vavilov*, above at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[21] I find that the RAD reasonably concluded the similarities between the families' claims were implausible and undermined the Applicants' credibility. The RAD also found, not unreasonably in my view, that the presumption of truth was rebutted. The RAD thus did not need to consider individual elements of the Applicants' claims further, including their documentary evidence to which the RAD gave no evidentiary weight, citing *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 (see para 24).

[22] The RAD, as did the RPD before it, intelligibly identified the events giving rise to implausibility concerns in the families' narratives, both in terms of content and timing (i.e. striking similarities or the degree of similarity). Further, the RAD acknowledged the differences and considered the Applicants' explanations for the similarities deriving from the fact that they are similarly situated. I am not convinced that it did so unreasonably.

[23] Justice Aylen recently noted that narratives may at times be broadly similar, but if central and peripheral details are strikingly similar between two allegedly unrelated claims, it is open to the RPD and RAD to make negative credibility and plausibility findings and to use their common sense in doing so, provided that they account for, as occurred here, the asserted explanations for the similarities: *Liu v Canada (Citizenship and Immigration)*, 2023 FC 765 at paras 7-9.

### III. Conclusion

[24] For the above reasons, the Applicants' judicial review application will be dismissed.

[25] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-5042-23**

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

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

"Janet M. Fuhrer"

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Judge



**Annex “A”: Relevant Provisions**

***Refugee Protection Division Rules, SOR/2012-256.  
Règles de la Section de la protection des réfugiés, DORS/2012-256.***

<p><b>Claims automatically joined</b></p> <p><b>55 (1)</b> The Division must join the claim of a claimant to a claim made by the claimant’s spouse or common-law partner, child, parent, legal guardian, brother, sister, grandchild or grandparent, unless it is not practicable to do so.</p>	<p><b>Jonction automatique de demandes d’asile</b></p> <p><b>55 (1)</b> La Section joint la demande d’asile d’un demandeur d’asile à celle de son époux ou de son conjoint de fait, de son enfant, de son père, de sa mère, de son tuteur, de son frère, de sa sœur, de son petit-fils, de sa petite-fille, de son grand-père et de sa grand-mère, à moins qu’il ne soit pas possible de le faire.</p>
<p><b>Application to separate</b></p> <p><b>56 (2)</b> A party may make an application to the Division to separate claims or applications to vacate or to cease refugee protection that are joined.</p>	<p><b>Demande de séparation</b></p> <p><b>56 (2)</b> Toute partie peut demander à la Section de séparer des demandes d’asile, d’annulation ou de constat de perte de l’asile qui sont jointes.</p>
<p><b>Factors</b></p> <p><b>56 (5)</b> In deciding the application to join or separate, the Division must consider any relevant factors, including whether</p> <ul style="list-style-type: none"> <li>(a) the claims or applications to vacate or to cease refugee protection involve similar questions of fact or law;</li> <li>(b) allowing the application to join or separate would promote the efficient administration of the Division’s work; and</li> <li>(c) allowing the application to join or separate would likely cause an injustice.</li> </ul>	<p><b>Éléments à considérer</b></p> <p><b>56 (5)</b> Pour statuer sur la demande de jonction ou de séparation, la Section prend en considération tout élément pertinent, notamment la possibilité que :</p> <ul style="list-style-type: none"> <li>a) des questions similaires de droit ou de fait découlent des demandes d’asile, d’annulation ou de constat de perte de l’asile;</li> <li>b) l’accueil de la demande de jonction ou de séparation puisse favoriser l’efficacité du travail de la Section;</li> <li>c) l’accueil de la demande de jonction ou de séparation puisse vraisemblablement causer une injustice.</li> </ul>

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5042-23

**STYLE OF CAUSE:** TARWINDER SINGH DHALIWAL, BHAGWANT  
KAUR DHALIWAL, PRABHNOOR KAUR  
DHALIWAL, SUKHMANJOT KAUR DHALIWAL,  
BOOTA SINGH DHALIWAL, RAMJIT KAUR  
DHALIWAL, BHAVSIMRAN DHALIWAL, MANRAJ  
SINGH DHALIWAL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 24, 2024

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** OCTOBER 1, 2024

**APPEARANCES:**

Chaitanaya Ghai FOR THE APPLICANTS

Brendan Stock FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ghai Law FOR THE APPLICANTS  
Brampton, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario