

Federal Court



Cour fédérale

**Date: 20131129**

**Docket: IMM-9790-12**

**Citation: 2013 FC 1205**

**Ottawa, Ontario, November 29, 2013**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**MOHSIN IRSHAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD] dated 28 August 2012 [Decision], which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of Pakistan who came to Canada in April 2010 on a student visa. He studied in Toronto briefly from May to July 2010 before ending his studies due to stress, and filed a refugee claim in November 2010. His claim was heard by the RPD on 23 August 2012 with the aid of an Urdu-English interpreter, and was refused five days later on 28 August 2012, as the RPD did not find his claim to be credible.

[3] The Applicant claims to have suffered threats and violence from an extremist religious organization in Pakistan, the Sepah-E-Sehaba (SSP), after he became romantically involved with the daughter of one of the organization's leaders, named Faiza. He says that his life will be in danger if he is returned to Pakistan.

[4] The Applicant says he was not viewed as an acceptable suitor for Faiza because of religious differences, but was in love and did not wish to end the relationship. After Faiza told her mother of their relationship, they were both subjected to threats and violence, as was the Applicant's family. He claims that Faiza was badly beaten by her father on 8 July 2009 and again in late September 2009, suffering a broken leg on the second occasion. On 15 July 2009, the Applicant says gunmen shot at him and his father while they were returning from morning prayers, killing his father on the spot. Members of the SSP allegedly beat him and threatened his life on 12 February 2010, after which he went into hiding until he obtained a student visa and fled to Canada in April 2010. Finally, in November 2010, after the Applicant was already in Canada, he claims his family's home was shot at and set on fire by members of the SSP who came there looking for him. He claims that the

SSP continues to threaten him because Faiza refuses to marry someone else of her father's choosing. He says SSP members came to his family's home to threaten him in February 2011, and that Faiza advised him when they last spoke, in July 2012, that he was still in danger from the SSP.

[5] The Applicant also claims that he was brutally beaten by members of his own extended family, after refusing to marry a cousin to whom he had become betrothed against his will in December 2008 at the insistence of the family's elders. After the Applicant broke off this betrothal due to his relationship with Faiza, his cousin's father, brothers, and their friends beat him in May 2009 because of the embarrassment he had caused them. He claims that his uncle continues to make threats against his life through his mother, most recently in March 2012.

#### **DECISION UNDER REVIEW**

[6] The RPD stated that credibility was the determinative issue in refusing the Applicant's refugee claim, and pointed to a number of purported inconsistencies and weaknesses in the Applicant's evidence. The RPD found that, on a balance of probabilities, the Applicant did not have the problems he described at the hands of his relatives, Faiza's relatives and the SSP.

[7] The RPD observed that the narrative portion of the Applicant's Personal Information Form [PIF] states that the gunmen "chased" him on the morning of 15 July 2009 when his father was killed. However, he testified at the hearing that the men stepped out of a car suddenly and started shooting, that his father was shot and fell on him, and that he remained there with his father lying on him while the men ran away. The RPD found that, based on the Applicant's testimony, "there was

no chasing involved because the claimant stayed where he was, with his father on him.” The RPD did not accept the Applicant’s explanation that the men “came from behind.” The police report of the incident raised a similar inconsistency because it stated that the Applicant “saved his life by running.” The RPD rejected the Applicant’s explanation that he was disoriented when his father fell on him, and “pushed him away and wove a little bit and then... fell on myself.” The RPD found that “moving a little bit is not tantamount to running away.” The RPD found that the Applicant had provided inconsistent evidence about these significant events and had failed to provide reasonable explanations when asked about it. This detracted from his credibility.

[8] The RPD also found that the Applicant provided inconsistent evidence regarding the number of times he sought police assistance in Pakistan. In his PIF narrative, the Applicant mentioned seeking police help on 10 May 2009 and 13 February 2009, but made no mention of seeking police help on 15 July 2009 – the day his father was killed. At the hearing, the Applicant testified that he sought police help three times, including on 15 July 2009. The RPD rejected the Applicant’s explanation that he did not mention in his PIF personally seeking police help on this occasion because he had stated in the PIF that his “uncle had gone to the police”. Noting that the inability or unwillingness of police to protect him was an important part of his refugee claim, and that the PIF instructs applicants to detail efforts to seek state protection and the result, the RPD found that this was a “material omission” that undermined the Applicant’s credibility.

[9] The RPD also observed an inconsistency as to whom the police report, or “FIR” (meaning First Information Report or First Investigation Report), was filed against on 15 July 2009. The Applicant’s PIF stated that his uncle filed a FIR “against [the] SSP,” when in fact the FIR was filed

against “unknown persons.” The RPD rejected the Applicant’s explanation at the hearing that his uncle “had filed a report for unknown people but I knew that it was their doing.”

[10] The RPD observed an inconsistency in the evidence regarding when Faiza’s leg was broken. While an affidavit from one of Faiza’s friends stated that this occurred in July 2009, the Applicant testified that it occurred in late September 2009. The RPD noted that the Applicant disclosed the friend’s affidavit on his own initiative, and “it does not make sense why his oral and written evidence are not consistent with respect to this incident.”

[11] The RPD observed an inconsistency in the evidence regarding who was present when the Applicant’s father was shot. While the PIF stated that the Applicant and his stepfather went out for a walk that morning, his testimony at the hearing was that he, his father and his uncle were together. The RPD rejected the Applicant’s explanation that “my uncle was coming behind us because he is a little bit obese so he walks slowly.” The RPD observed that “[i]f the panel were to accept [this] explanation, then it would mean that people are only considered as having gone for a walk together if they walk side by side”.

[12] The RPD observed an inconsistency in the evidence regarding how Faiza’s parents came to know of her relationship with the Applicant. The PIF narrative states that the Applicant “many time (sic) encouraged Faiza to inform her parents about her love affair but she was scared because of [the] stubbornness of her father.” It continues, “[b]y one way or the other it came to her father’s knowledge that she was in love with me.” At the hearing, the Applicant testified that Faiza told her

mother about the relationship at his insistence, and that her mother then told her father. When asked about this apparent inconsistency, the Applicant simply responded that Faiza informed her mother at his insistence and because she was close to her mother, and that her mother said that she would talk to her father.

[13] The RPD observed an inconsistency regarding the number of times the Applicant left his place of hiding after allegedly being beaten by SSP members in February 2010. The Applicant testified that he went into hiding at a friend's uncle's home in Defence, approximately one hour's drive away from the site of the alleged beating, later that same day, after receiving medical treatment. Later in the hearing, when asked if he ever left his friend's uncle's home in Defence until he left Pakistan on April 27, 2010, he replied that he only left to go to the postal courier to apply for and receive his Canadian study permit. Yet he had testified earlier that he made a report to police back in the district where the attack allegedly occurred, the day after its occurrence. The RPD found this to be contradictory, and rejected the Applicant's explanation that his friend took him back the next morning to file the police report, and that "it was the same day while I was moving in ... ." The RPD found that this amounted to shifting testimony regarding whether he left his friend's uncle's house to go to the police.

[14] The RPD observed an inconsistency arising from the Applicant's failure to note in his PIF narrative that police told him, following the alleged beating in February 2010, that they had orders from their superiors not to file FIRs against the SSP. He testified at the hearing that the police refused to file a FIR "[b]ecause they said I did not have any evidence... [a]nd they said they have orders from above to... not to write... FIR's against this organization." The PIF states that the

“police officer made excuses not to write a FIR against the SSP,” with a hand-written amendment reading “because I did not have evidence.” The RPD found that the unwillingness of the state to provide protection is a significant part of a refugee claim, and the failure to mention a refusal of the police to issue a FIR because they have orders to that effect was a material omission that detracted from the Applicant’s credibility.

[15] The RPD observed an inconsistency regarding the events of 11 November 2010, when the Applicant’s family home in Pakistan was allegedly burned. The PIF states only that “fanatics of the SSP came, tried to find my whereabouts and fired shots at my house in order to kill me.” It does not mention a fire. The RPD rejected the Applicant’s explanation that his English language skills were poor and he intended to state both that shots were fired and the house was set on fire. The RPD noted that the Applicant was assisted by counsel, that it was open to him to complete his PIF narrative with the assistance of an interpreter, and that he had declared in writing at the start of the hearing that the PIF was “complete, true and correct.”

[16] With respect to this same incident, the RPD noted that a newspaper report of the fire submitted by the Applicant made no mention of the SSP, and rejected the Applicant’s explanation that this was because “common people do not know who they are.”

[17] The RPD observed an inconsistency in the Applicant’s testimony regarding whether he knew anyone else who had been threatened by the SSP. When initially asked, the Applicant testified that he had seen reports of such threats in the news media, but did not know anyone personally who

had been threatened. However, an affidavit from a friend of the Applicant states that he was personally threatened by the SSP because of the assistance he provided to the Applicant. The RPD found that the Applicant did not provide an adequate response when asked about this inconsistency, stating only that he “thought [the Member] had asked a general question.”

[18] The RPD also raised concerns about the authenticity of several documents submitted by the Applicant in support of his claim. The RPD cited objective evidence that fraudulent documents are prevalent in Pakistan (National Documentation Package for Pakistan (June 4, 2012), item 3.3). While acknowledging that this does not mean that the Applicant’s documents are false, the RPD stated that it does justify some scrutiny, and noted concerns about the authenticity of several documents submitted as evidence, including: affidavits allegedly sworn by persons in Pakistan; the death certificate and accompanying post-mortem report regarding the Applicant’s father’s death; medical notes relating to the Applicant’s treatment after the alleged beatings; and medical notes regarding the treatment of his mother and sister following the alleged attack on the family home in November 2010. With respect to the medical notes and reports, the RPD also observed that they did not identify who had caused the injuries or in what circumstances. The RPD therefore assigned “no weight” to each of these documents in terms of establishing the Applicant’s allegations. With respect to the newspaper articles submitted by the Applicant regarding the death of his father and the fire at his family home, the RPD noted “significant irregularities on the face of these newspapers,” including misaligned and overlapping text and pictures, and that the Applicant was unable to provide an explanation. While not making an explicit finding that the articles were fraudulent, the RPD quoted this Court’s observation that “[t]he Board should not be treated as a training school in which counterfeiters can practice their craft” (quoting *Farooqi v Canada*



(*Minister of Citizenship and Immigration*), 2004 FC 1396 at para 10 [*Farooqi*]), and assigned no weight to these documents.

[19] The RPD further found that the Applicant's behaviour in waiting four months after ceasing his studies before applying for refugee status was inconsistent with the subjective fear he claimed to have for his life and safety. The RPD observed that someone who is truly fearful can be expected to claim refugee status at the first opportunity. The Applicant's explanation that he thought things would improve for him and he could return to Pakistan was not reasonable in light of the seriousness of what he alleges took place in Pakistan.

[20] Based on these cumulative credibility concerns, the RPD found that there was not a serious possibility that the Applicant would be persecuted in Pakistan, or that he would be subjected to a risk to his life, a risk of cruel and unusual treatment or punishment, or a danger of torture.

## **ISSUE**

[21] The issue raised in this Application is whether the RPD's Decision was unreasonable, taking into account the RPD's credibility findings, treatment of the documentary evidence, and findings on the issue of subjective fear.

## **STANDARD OF REVIEW**

[22] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the

standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48 [*Agraira*].

[23] The parties agree that the appropriate standard for reviewing the RPD's decision in this case is reasonableness. I agree.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

## **STATUTORY PROVISIONS**

[25] The following provisions of the Act are applicable in these proceedings:

**Convention refugee**

**Définition de « réfugié »**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

#### **Person in need of protection**

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

#### **Personne à protéger**

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le

cas suivant :

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|--|---|
| <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p>                               | <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p>  |
| <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> | <p>(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p>                                 |
| <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p>            | <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> |
| <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p>  | <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p>   |

## ARGUMENTS

### Applicant

[26] The Applicant argues that the RPD's Decision was unreasonable. He says that the RPD was over-zealous in finding that the Applicant's refugee claim lacked credibility, and conducted both a microscopic examination of the allegations supporting his claim and an equally microscopic comparison of his oral testimony and his PIF narrative, despite the fact that this Court has cautioned against such an approach: *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 69; *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694. The RPD unreasonably rejected all of the documents submitted in support of the application based on pure

speculation, without any evidentiary basis to question their authenticity. In addition, the RPD raised the issue of the Applicant's delay in claiming asylum in Canada despite dealing with this issue only "curtly" during the hearing, and despite the Applicant's reasonable and plausible explanation for the delay.

[27] The Applicant argues that his claim was based squarely on the issue of religious beliefs, honour, and culture in Pakistan as it relates to romantic relationships, and that the RPD failed to be alert to cultural differences affecting "how things operate in Pakistan, versus Canada." Evidence and allegations that may seem thoroughly implausible and non-credible in the Canadian context may be quite plausible and credible in the context of Pakistan: *Ye v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 584 (CA); *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 (CA); *Divsalar v Canada (Minister of Citizenship and Immigration)*, [2002] FCT 653.

[28] In addition, the RPD unreasonably failed to take note of and give proper weight to factors that were supportive of the Applicant's credibility: *Gjergo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 303; *Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155 [*Aguilar Zacarias*]. The Court has stated that positive credibility findings are possible even where there are evidentiary inconsistencies, omissions and contradictions; otherwise, there would be little need for an oral hearing: *Canada (Minister of Citizenship and Immigration) v Chen*, 2004 FC 1403. Here, the Applicant testified in a forthright and spontaneous manner, exhibited the emotional demeanour and comportment of someone testifying to actual events,

including his highly emotional state when testifying about his father's death, and marshalled supporting documentary evidence in support of most, if not all, of his key allegations.

[29] Applicants are presumed to be telling the truth, and a failure to provide corroborating documents on a particular point cannot be used to impugn an applicant's credibility in the absence of evidence to contradict the allegations: *Triana Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at para 15; *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 at para 45. The Applicant argues that the RPD's focus on his failure to provide documentation suggests that it improperly used the absence of corroborating documents to impugn his credibility.

[30] Nor can the credibility of documents themselves be rejected without a good reason for doing so. Documents that are "official in capacity" are considered to be genuine unless there is a clear evidentiary basis to impugn their credibility: *Masongo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 39 at paras 8, 11-12; *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10 (QL); *Sitoo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1513. Here, the RPD impugned the credibility of police reports, medical reports and supporting affidavits without any evidentiary basis for doing so. The RPD's observation that the affidavits lacked "security features" and that there was no way to assess their origins was sheer speculation. Furthermore, the RPD's reliance on *Farooqi*, above, to support its findings about fraudulent documents is misplaced and unreasonable. In that case, the refugee claimant's documents were sent out to CBSA officials for analysis and verification, and the analysis showed they had been chemically washed, altered, and cut and pasted, including the insertion of new photographs and

signatures. Here, by contrast, the RPD strayed far from the evidence before it and engaged in speculation, unfairly raising credibility and plausibility concerns that were simply not valid:

*Numbi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1037.

[31] The Applicant submits that the discrepancies noted by the RPD do not amount to real or material inconsistencies. With respect to the manner in which Faiza's father learned of their relationship, while the statement that he learned by "one way or the other" is a bit vague, the point of the hearing is to permit the Applicant to expand on key written allegations and be confronted with questions and issues in greater detail. The crux of the allegation – the relationship, Faiza's parents' knowledge and the subsequent threats and attacks – was included in the PIF and told by the Applicant in the hearing.

[32] With respect to the Applicant's account of the morning his father was killed, even leaving aside the reasonable and plausible explanation that the English word "chase" may correspond to a number of Urdu words and phrases, the description is accurate even when the English term is considered. Few could disagree that the experience of walking home only to be approached by a car and then shot at from behind could correspond to a feeling of being chased.

[33] The Applicant argues that the RPD's focus on a PIF omission regarding the Applicant's efforts to seek police protection is perverse. The events of 15 July 2009 were described in the PIF, and the original police report (or FIR) describing the incident in detail was disclosed. The Applicant stated in the PIF that it was his uncle who reported the incident to police, and the FIR confirms this.

While it was an omission not to state that he personally sought police protection on this occasion, it was not a material omission: *Bingrou Xu v Canada (Minister of Citizenship and Immigration)*, Order of March 4, 2011 in Federal Court file IMM-4394-10 (per Justice Crampton, as he then was); *Hilo v Canada (Minister of Employment and Immigration)* (1991), 15 Imm LR (2d) 199 (FCA) [*Hilo*]. Not every omission will be determinative of credibility; rather, the nature of the omission and the context in which the new information is brought forward must be examined: *Akhighbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 (TD). The totality of the evidence provided to the RPD disclosed the full picture of what occurred, and it was perverse and unreasonable to base a negative credibility finding on this omission.

[34] The RPD's negative credibility findings based on other supposed discrepancies in the Applicant's evidence were equally unreasonable. The Applicant reasonably explained that his uncle was trailing behind him and his father on the morning his father was shot because he is obese. He also reasonably explained that while he did not state in the PIF that the police told him in February 2010 that they had orders not to file FIR's against the SSP, he did state that they refused to file one.

[35] The Applicant argues that he cannot reasonably be expected to resolve purported inconsistencies that result from the actions or mistaken recollections of others. While the FIR filed on 15 July 2009 did not specifically mention the SSP, the Applicant did not file the complaint, and his uncle was not present in the hearing room to testify as to what he told police. The RPD cannot expect the Applicant to explain how and why the FIR was drafted in the manner it was or why certain wording was used: *Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001]



FCT 776 (TD). The same applies with respect to a third-party affiant's testimony that Faiza's leg was broken in July 2009, while the Applicant recalls that this occurred in late September 2009.

[36] The Applicant further argues that a delay in claiming asylum is not, in itself, indicative of a lack of subjective fear or a lack of credibility in the claim, and that a claimant has to be given an opportunity to offer an explanation for the delay: *Huerta v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 271 (FCA); *Sinnathurai v Canada (Minister of Citizenship and Immigration)*, 2005 FC 515; *Adul Jabar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 602; *Gavrushenko v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1209 (TD). Here, the Applicant was asked one question about the delay, and provided a reasonable explanation: he hoped that things might improve for him in Pakistan and that he could simply go home. In the meantime, he had a valid student visa and there was no evidence the Canadian Border Services Agency (CBSA) would quickly learn of his cessation of studies and issue a removal order.

[37] Based on these alleged errors in the RPD's reasoning, the Applicant argues that the RPD failed in its duty to provide reasons embedded in transparency, intelligibility and justification (*Nintawat v Canada (Minister of Citizenship and Immigration)*, 2012 FC 66 at para 27), and that nothing in *Newfoundland & Labrador Nurses' Union v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] removes that obligation.

## Respondent

[38] The Respondent argues that the Applicant's claim was reasonably dismissed due to a lack of credibility: he omitted, and was inconsistent on, numerous important facts in his oral and written testimony. His documentary evidence did not establish his allegations, and in fact contradicted his own testimony at times.

[39] The Respondent notes that credibility determinations are within the RPD's expertise. The RPD had the benefit of observing the Applicant directly, and was thus in the best position to assess the credibility or plausibility of his account. It is not for this Court to substitute its findings on credibility for those of the RPD, even if it might have reached a different conclusion: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) para 4 [*Aguebor*]. The RPD may make reasonable findings based on implausibility, common sense and rationality (*Araya v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 626 at para 6), and the presumption that an applicant's sworn testimony is true can be rebutted if there is reason to doubt his or her truthfulness: *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114; *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302; *Hilo*, above. Here, there were reasons to doubt the Applicant's truthfulness, and the RPD set out its credibility findings in clear and unmistakable terms, based on numerous inconsistencies between his oral testimony and his documentary evidence. While the Applicant argues that other conclusions might have been possible on the facts, the existence of an alternative interpretation of the evidence does not, in itself, indicate reviewable error: *Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at para 11; *Liu v Canada (Minister of Citizenship and Immigration)*,

2011 FC 262 at para 7; *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 at para 28 [*Ma*].

[40] The Applicant's highly emotional state when testifying about his father's death does not assist in establishing his credibility. On the contrary, while it is appropriate to consider "demeanour" in the sense of hesitation or uncertainty in responding to questions, and to draw negative inferences when a witness has difficulty giving adequate and direct answers, overly subjective conclusions based on posture or perceived attitude "are not within the appropriate purview of a credibility assessment": *Aguilar Zacarias*, above at para 24.

[41] The RPD's credibility findings went to the heart of the Applicant's claim. For example, the RPD reasonably found that the Applicant was not consistent in describing the shooting of his father, which was a critical event. There is a considerable difference between running away (i.e. being "chased") and lying on the ground unconscious underneath another body. The RPD also reasonably rejected the Applicant's explanation for failing to state in his PIF narrative that his uncle was present during this important event: it made no sense that three family members leaving morning prayers would not be considered to be going for a walk together simply because one of them was walking slower than the other two.

[42] The RPD's credibility findings based on other omissions from the PIF and inconsistencies between the PIF and the Applicant's oral testimony were also reasonable, especially considering that section 31 of the PIF directs claimants to "set out in chronological order all the significant

events and reasons that have led you to claim refugee protection in Canada.” The omission of the alleged burning of the family home, the omission of a reference to seeking police help on 15 July 2009, and the inconsistency regarding how Faiza’s parents came to know of the relationship all reasonably support negative inferences about the Applicant’s credibility. The same is true of the inconsistency regarding when and where the Applicant reported the alleged February 2010 beating to police, and the omission from the PIF of any reference to the fact that, on that occasion, police refused to file a report against the SSP because they had orders from their superiors to that effect. Viewed in context, it made no sense that the Applicant would omit the latter fact from his PIF.

[43] The Respondent reminds the Court that contradictions are not the sole basis upon which the RPD may draw a negative credibility inference; the failure to initially put forward critical information underpinning a claim for protection can also support a negative inference. The RPD is entitled to consider whether a claimant is embellishing or adding significant facts in order to bolster their alleged fear of persecution: *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668 at para 18; *Gimenez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1114 at para 6; *Khalifa v Canada (Minister of Citizenship and Immigration)*, 2004 FC 369 at para 18. Furthermore, there is generally no obligation on the RPD to signal its conclusions on the general credibility of the evidence: *Dehghani-Ashkenzari v Canada (Minister of Citizenship and Immigration)*, 2011 FC 809.

[44] Contrary to the Applicant’s contention that the RPD made hasty findings that documents were fraudulent, the RPD gave them appropriate scrutiny, noted their lack of security features along with the inconsistencies in the Applicant’s evidence and, based on the totality of this evidence,

reasonably assigned the documents in question no weight in establishing the Applicant's claim. In support of the RPD's finding on the newspaper articles, the Respondent notes that the article about the Applicant's father's death uses almost the exact same wording as the police report of the event: *Newfoundland Nurses*, above, at para 16.

[45] In response to the contention that the RPD could have requested authentication of documents, the Respondent argues that the onus is on the Applicant to present credible evidence in support of his claim: *Pepa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 581.

[46] The RPD's finding that the Applicant's delay in making a refugee claim indicated an absence of subjective fear was also reasonable, the Respondent argues. Delay in claiming refugee status is an important factor which the RPD is entitled to consider: *Heer v Canada (Minister of Employment and Immigration)*, [1988] FCJ No 330 (CA). It points to a lack of subjective fear of persecution, based on the rationale that someone who was truly fearful would claim refugee status at the first opportunity: *Hernandez Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para 16; *Llorens Farfan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 123 at paras 14, 16. Given the severity of the events the Applicant alleges, and the inherent insecurity of his status in Canada (given that his visa required him to attend school full-time), it was reasonable for the RPD to find that the Applicant should have made his claim at the first opportunity, and to reject his explanation for not doing so. The argument that the finding is in error because the Applicant was asked only one question on this point is groundless, as the Applicant has cited no authority requiring a minimum number of questions before the RPD can feel satisfied that it can make a finding on an issue.

## ANALYSIS

[47] This is the kind of decision that regularly comes up for review, in which a series of “cumulative credibility problems” taken together lead the RPD to conclude that a refugee claimant does not face the alleged risks that underpin the claim for protection.

[48] As is usual in such cases, the Applicant alleges that the Decision is unreasonable because the RPD conducted a microscopic examination of the evidence, rejected reasonable explanations for inconsistencies in the evidence, made speculative findings without an evidentiary basis, was not alive to the relevant cultural context, and ignored the full range of the evidence that the Applicant marshalled to support the basic tenets of his claim.

[49] The Applicant says that his evidence provided a consistent account of his “substantive allegations” that was supported by a wealth of documentary material that was ignored by the RPD when it proceeded to pick apart “specific wording used in oral and written evidence.”

[50] In this kind of application the Court is obliged to review each finding in turn in an equally microscopic way with a view to determining whether there is sufficient error to warrant a finding of unreasonableness. Much of this is an invitation for the Court to recast and reweigh evidence in a way that produces a favourable outcome for the Applicant.

[51] Before embarking upon such an exercise, a number of well-established principles and caveats have to be kept in mind.

[52] First of all, the RPD is in the best position to assess credibility and is entitled to significant deference from the Court in this regard. The Court cannot simply substitute its credibility assessment for that of the RPD even if it might have reached a different conclusion. See *Aguebor*, above.

[53] The Court also has to bear in mind that other reasonable conclusions might have been possible on the facts, but this does not, in itself, render the RPD's Decision unreasonable. See, for example, *Ma*, above, at para 28.

[54] Less deference is due in relation to plausibility findings, but even there, the RPD can make reasonable findings based upon implausibilities, common sense, and rationality, and may reject evidence that is not consistent with the probabilities affecting the case as a whole. See *Aguebor*, above, para 4.

[55] In the present case, the RPD had numerous credibility concerns that arose from inconsistencies between the Applicant's oral testimony, his PIF and his documentary evidence that went to central aspects of his claim. In this review application, the Applicant is asking the Court to review all of the RPD's findings in turn and, in effect, to reassess his evidence as a whole in its cultural context and find that the RPD reached unreasonable conclusions on each point.

[56] I have reviewed each point in turn and, for the most part, I think I have to conclude that, although it is possible to disagree with the RPD's findings, it is not possible to say that they fall outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The approach of the RPD in this case is the usual one of comparing oral testimony with the PIF narrative and with the other available evidence and documentation, in order to determine whether inconsistencies exist, and then giving the Applicant an opportunity to explain those inconsistencies. This approach to testing credibility has been endorsed by the Court on numerous occasions, and I find nothing in the RPD's reasoning in this instance that indicates a lack of attention or sensitivity to cultural context or conditions in the Applicant's country of origin.

[57] There were important, material inconsistencies in relation to the following:

- (a) The Applicant's oral account of the attack on himself and his father by the SSP was not consistent with the PIF narrative and the police report submitted as evidence. The Applicant could not adequately explain these discrepancies and the RPD was not unreasonable in rejecting his explanations;
- (b) The Applicant could not adequately explain why his oral allegation that the SSP had set his house on fire had not been included in his PIF narrative. The Applicant's failure to set out this important allegation in his PIF narrative, which is supposed to contain "all significant events and reasons" that have led to the claim, gave rise to credibility concerns in the same way that important omissions from the PIF have done on numerous other occasions that have come before this Court;



- (c) There was an obvious inconsistency between the Applicant saying in his PIF that Faiza's parents found out about the relationship "one way or another" and the Applicant's later oral assertion that he had pressured Faiza to tell her mother, who subsequently told her father. This was not reasonably explained;
- (d) The Applicant was also inconsistent about the number of times he sought police help and his explanation was, reasonably, rejected.

[58] The RPD also identified and raised numerous other issues with the Applicant which he could not explain to the RPD's satisfaction. It is not necessary for me to mention every individual instance here because my review of the Decision, the transcript and the record reveals that, although other conclusions may have been reasonably drawn, I cannot say that the RPD's findings, either individually or cumulatively, fall outside of the *Dunsmuir* range. It is possible to disagree with the RPD over these matters, but the jurisprudence is clear that unless the Court can find that the RPD's findings on credibility fall outside of the range of possible, acceptable outcomes that are defensible in respect of the facts and law, the Court cannot interfere with the Decision, even if the Court disagrees and would have found otherwise. This is what deference means. I may have given the Applicant the benefit of the doubt on each point of concern, but this does not mean that the RPD was unreasonable to fault him and, in the end, find his allegations lacked credibility. It is particularly important to bear in mind in this type of case that the Court has had no opportunity to observe the Applicant giving evidence.

[59] I will, however, refer to one illustrative example that demonstrates a general problem with the Applicant's approach to this review. The Applicant submitted to the RPD an affidavit sworn by a childhood friend of Faiza that contradicted his own evidence as to when Faiza's leg was allegedly broken. The Applicant had said it was in September but the friend said Faiza's leg was already broken in July. When asked for an explanation as to this discrepancy, the Applicant merely insisted that Faiza's leg was not broken in July. The RPD refers to this discrepancy in the Decision:

[22] The claimant testified that Faiza's father beat her and broke her leg at the end of September 2009 because of her relationship with the claimant and her refusal to marry someone else. He testified that he saw her broken leg when he met with her on October 4, 2009 and he could see the cast and the marks on her broken leg. He further testified that Faiza informed him that her father broke her leg and that she had never had a broken leg before.

[23] In support of his allegations, the claimant disclosed an affidavit from Faiza's childhood friend. According to this affidavit, when she visited Faiza in July 2009, she had injuries as a result of her father's physical violence and, in particular, a broken leg. When the panel noted that this affidavit provides that Faiza's father broke her leg in **July** whereas his testimony provides that Faiza broke it in **September**, the claimant replied that she did not have a broken leg in July. The panel is not satisfied by his explanation. The claimant disclosed this affidavit on his own initiative. It does not make sense why his oral and written evidence are not consistent with respect to this incident. His inconsistent evidence in this regard detracts from his credibility.

[60] This is simply one instance of a discrepancy that is not explained and, in my view, it is fairly minor. Taken alone, it would hardly be sufficient to reject the Applicant's refugee claim on the basis of lack of credibility. However, the claim is rejected on the basis of "cumulative credibility problems" and the discrepancy as to when Faiza's leg was broken is one of a long line of such problems. The friend's affidavit, as the RPD points out, is part of the Applicant's own evidence. He must have known of this discrepancy. If there was an explanation, it was up to the Applicant to find

out why the friend had said July and explain this to the RPD. Instead, he chose to submit evidence that did not support his other evidence that the father broke Faiza's leg at the end of September. This was the Applicant's choice. He now asks the Court to find that the RPD was unreasonable in its approach to this piece of evidence and in its approach to the cumulative problems it found in his evidence as a whole. He says that the RPD was overly microscopic and culturally insensitive. But timing issues are always examined in refugee claims, and there are no cultural implications to explain a difference between July and September with respect to when someone's leg was broken.

[61] I do accept that the RPD goes somewhat too far with some of its findings. For example, in looking at subjective fear and the Applicant's delay in making his refugee claim, the RPD says, *inter alia*, that

The panel recognizes that the claimant was in possession of a study permit. However, the claimant stopped attending school in Canada in July 2010 and part of his permit requisite is to attend school full-time. Therefore, the claimant would no longer have been in conformity with the requirement of his study permit and may have been deported at any time.

(Decision at para 40)

[62] There was no evidence to support this conclusion and, even if there was, there was no evidence that the Applicant knew he could be deported at any time. The issue was not put to him. So the RPD is, at this point in the Decision, being speculative and unreasonable. However, this is only a small part of the RPD's subjective fear finding and when this finding is read in full, the reference to a knowledge of deportation is not really material:

[41] The panel asked the claimant why he failed to make his refugee claim earlier. He stated that he thought things would improve for him. This is not a reasonable explanation because the claimant

says that he was fearful in Pakistan for one year prior to his departure and that his father was killed. His explanation that things would improve over a matter of a few months is not reasonable given the seriousness of what he alleges took place. Someone who is truly fearful can reasonably be expected to claim refugee status at the first opportunity. When a person risks being removed to a country where his life is at risk, one reasonably expects, regardless of any possible processes that may be available, that the person will tell the authorities that he faces danger in his country if he were to go back. In this case, the claimant waited about four months after having stopped school before seeking Canada's protection. His actions in this regard are inconsistent with his fear.

[63] The Applicant takes issue with this conclusion, but delay in making a claim is a regularly invoked factor in a subjective fear finding of which the Applicant, represented by experienced counsel, was fully aware.

[64] In any event, the lack of subjective fear is not the determinative basis for this Decision. As the RPD makes clear at paragraph 8 of the Decision, "The determinative issue in regard to this claim is credibility." The Applicant's delay in making his claim is just one more factor that does not support the core aspects of his claim. The jurisprudence of this Court accepts the rationale that it is not unreasonable for the RPD to conclude that someone who is truly fearful would claim refugee status at the first opportunity. Given the severity of the events that the Applicant alleged led up to his claim, it was not unreasonable for the RPD to conclude that his "actions in this regard are inconsistent with his fear."

[65] Generally speaking, I cannot find an error by the RPD that is material enough to render the Decision unreasonable.

[66] Counsel agree there is no question for certification and the Court concurs.

**JUDGMENT**

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

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

"James Russell"

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Judge

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

**DOCKET:** IMM-9790-12

**STYLE OF CAUSE:** MOHSIN IRSHAD v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 12, 2013

**REASONS FOR JUDGMENT  
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**DATED:** November 29, 2013

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