

Federal Court



Cour fédérale

Date: 20210728

Docket: IMM-180-21

Citation: 2021 FC 799

Ottawa, Ontario, July 28, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**ABDULLAH SHABBIR CHAUDHRY
UMAIRA ABDULLAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [the “Panel”], dated December 15, 2020 [the “Decision”], dismissing the Applicants’ appeal of a decision of the Refugee Protection Division [the “RPD”], dated June 17, 2019, which denied their claim for refugee protection on the basis of a lack of credibility.

II. Background

[2] The Applicants, Abdullah Shabbir Chaudhry [the “Principal Applicant”] and Umaira Abdullah, are citizens of Pakistan. They allegedly fear persecution by the Panchayat, the village council, because their marriage is between different castes. The marriage occurred in secret on April 4, 2014.

[3] The Applicants arrived in Canada on October 16, 2018 by irregularly crossing the border. They made a claim for protection, which was referred to the Immigration and Refugee Board of Canada.

[4] A hearing was held before the RPD on May 14, 2019. The decision of the RPD, dated June 17, 2019, refused the Applicants’ claim, finding that the determinative issue was the Applicants’ lack of credibility. The RPD found omissions, inconsistencies, and contradictions between the Applicants’ testimony at the hearing, their basis of claim narrative and point of entry forms.

[5] The Applicants filed an appeal with the Refugee Appeal Division on June 26, 2019. The appeal was dismissed by the Panel in the Decision dated December 15, 2020.

[6] The Applicants seek an Order setting aside the Decision and making a determination that the Applicants meet the requirements for a refugee claim. In the alternative, the Applicants seek

an Order setting aside the Decision and referring the matter back to a different Panel of the Refugee Appeal Division for redetermination in accordance with directions from this Court.

III. Decision Under Review

[7] The Panel dismissed the appeal and confirmed the decision of the RPD.

[8] The Panel first considered the admissibility of new affidavit evidence from a friend of the Principal Applicant, claiming to be a witness to certain events involving the Applicants' persecutors. The Panel found that the evidence failed to meet the requirements of subsection 110(4) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the "IRPA"] and determined that it was inadmissible.

[9] The Applicants further did not request an oral hearing and having admitted no new evidence, the Panel found that it did not have jurisdiction to convene an oral hearing, pursuant to subsection 110(6) of the *IRPA*.

[10] The Panel then stated that the determinative issue is credibility and following its own independent analysis of the evidence, the RPD's credibility findings were correct, noting three areas of the Applicants' evidence.

[11] First, the Panel considered the evidence concerning the cause of the Principal Applicant's father's death. The Principal Applicant stated on the basis of claim form that his father had died

of a heart attack, but testified that he believed his father had been murdered and his death was suspicious.

[12] Second, the Panel turned to the allegation that armed men had come to the Principal Applicant's family home while he was present. The Principal Applicant testified that after his mother died, four to five armed individuals came after him when he was alone at his family's home. This was not mentioned on the basis of claim form.

[13] The Panel found that "[t]hese are omissions of important and crucial details of events that are central to the [Applicants'] claim and significant in relation to their fear of the alleged persecutors". The Panel was not satisfied by the Applicants' explanations concerning the omissions, which were significant and critical to their allegations.

[14] Third, the Panel considered the time that the Applicants spent hiding in Pakistan. The Applicants testified that they hid in hostels, a friend's house, and shrines for about a month before leaving Pakistan. This was not mentioned in the Applicants' basis of claim form or in the Schedule A forms, completed at the point of entry, where they were instructed to list all addresses where they had lived for the past ten years. The Applicants' explanation for omitting from their Schedule A forms any reference to the addresses where they stayed was not reasonable.

[15] The Panel further found that the RPD correctly assessed all the documentary evidence. As it relates to the RPD's consideration of the National Documentation Package on Pakistan

regarding honour killings, the Panel stated that “it was not necessary in this case for the RPD to analyze the objective country condition evidence due to its finding that the Appellants’ allegations were not credible”.

[16] The Panel upheld the RPD’s credibility findings and found that the Applicants were neither Convention refugees nor persons in need of protection.

IV. Issues

[17] The issues are:

- A. Did the Panel breach the duty of procedural fairness owed to the Applicants?
- B. Was the Panel’s Decision reasonable as it relates to its credibility findings?

V. Standard of Review

[18] The standard of review as it relates to the first issue, a question of procedural fairness, is that of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77 [Vavilov]).

[19] The second issue is reviewed on the presumptive standard of reasonableness (*Vavilov*, above at para 25).

VI. Analysis

A. *Procedural Fairness*

[20] The Applicants submit that the Panel breached the duty of procedural fairness by failing to allow the Applicants to make oral submissions (*Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177 at para 59):

59. I should note, however, that even if hearings based on written submissions are consistent with the principles of fundamental justice for some purposes, they will not be satisfactory for all purposes. In particular, I am of the view that where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing. Appellate courts are well aware of the inherent weakness of written transcripts where questions of credibility are at stake and thus are extremely loath to review the findings of tribunals which have had the benefit of hearing the testimony of witnesses in person: see *Stein v. The Ship "Kathy K"*, 1975 CanLII 146 (SCC), [1976] 2 S.C.R. 802, at pp. 806-08 (per Ritchie J.) I find it difficult to conceive of a situation in which compliance with fundamental justice could be achieved by a tribunal making significant findings of credibility solely on the basis of written submissions.

[21] The Panel did not err in not convening an oral hearing. Pursuant to subsection 110(3) of the *IRPA*, the Panel is required to proceed without an oral hearing:

Procedure

(3) Subject to subsections (3.1), (4) and (6), *the Refugee Appeal Division must proceed without a hearing, on the basis of the record*

Fonctionnement

(3) Sous réserve des paragraphes (3.1), (4) et (6), *la section procède sans tenir d'audience en se fondant sur le dossier de la Section de*

of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.

la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

[Emphasis added]

[22] The Panel may, however, convene an oral hearing under subsection 110(6) of the *IRPA* in certain prescribed circumstances:

Hearing

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

(b) that is central to the decision with respect to the refugee protection claim; and

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

Audience

(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[23] This possibility of an oral hearing is an exception to the general rule, where the Panel is required to proceed without an oral hearing and “[t]he parties have limited rights to present new evidence under subsection 110(4) and to benefit from an oral hearing under subsection 110(6)”

of the *IRPA* (*Khudeish v Canada (Citizenship and Immigration)*, 2020 FC 1124 at paras 46-47, citing *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093).

[24] The documentary evidence did not satisfy the requirements of subsections 110(4) and 110(6) of the *IRPA*. As such, there was no breach of the Panel's duty of procedural fairness in not holding an oral hearing. Moreover, the Applicants did not request an oral hearing.

B. *Reasonableness of the Decision*

[25] The Applicants argue that several of the Panel's findings were unreasonable. As it relates to the Panel's credibility findings, the Applicants submit the following errors:

- A. The oral evidence given at the RPD hearing was not inconsistent with what was stated in the basis of claim form, as it relates to the Principal Applicant's father's death. The basis of claim form addressed facts, while the Principal Applicant's testimony addressed his opinions and suspicions;
- B. The Panel failed to rely on objective facts to support its negative credibility assessment;
- C. The Panel made negative credibility assessments on the basis of the Principal Applicant's inability to recall specific addresses in Pakistan, when the Applicants resided in undisclosed locations in short and intermittent intervals before leaving Pakistan; and

D. Further, the Panel did not carefully consider which aspects of the Principal Applicant's story could be true.

[26] Lastly, the Applicants allege that the Panel erred in its consideration of the RPD's failure to consider the National Documentation Package evidence regarding honor killings in Pakistan.

[27] Credibility inferences must fall within a scope of possible, acceptable outcomes. The consistency of a claimant's story can form the basis of credibility findings (*Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 [*Vall*] at para 16; *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at paras 10-11 [*Jin*]).

[28] The Federal Court in *Vall* referenced the main principles governing credibility assessments of refugee applicants, as enumerated in the decision *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraphs 20 to 26 [*Lawani*] (*Vall*, above at para 16). Of particular relevance to this Application are the following principles (*Lawani*, above at paras 22, 24):

... [E]ven though they may be insufficient when taken individually or in isolation, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 19; *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1). I pause to underscore the well-accepted statement that the RPD is best positioned to assess an applicant's credibility, as it has the benefit of hearing his or her testimony (*Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 10).

... [A] lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, 1990 CanLII 8017 (FCA), [1990] FCJ No 604

(FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 [*Brahim*] at para 17).

[29] The Panel was not unreasonable in making the credibility findings it did. Its findings are supported by the record and the factual and legal constraints that bear upon the decision (*Vavilov* at paras 99, 125-126). The RPD has jurisdiction to determine the plausibility of an applicant's testimony and to draw negative inferences from omissions and inconsistencies (*Jin*, above at paras 10-11). The submissions of the Applicants do not undermine the factual findings of the Panel, which bear the requisite degree of justification, transparency and intelligibility.

[30] The Panel was entitled to rely on the inconsistencies and omissions of the Applicants, which it found were significant and critical to the Applicants' allegations in upholding the credibility assessment of the RPD.

[31] In such circumstances, I do not find that the Panel was required to or failed to rely upon objective evidence. The Panel further did not fail to consider which aspects of the Applicants' story could be true.

[32] In *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraph 45, the Federal Court found that the RPD may legitimately have regard to witness demeanor, but it is preferable in such cases that there are additional objective facts to underpin a credibility finding.

The Panel in this case relied on inconsistencies and omissions in the Applicants' evidence, not on witness demeanour.

[33] Neither did the Panel err in finding that the RPD did not fail in its consideration of the National Documentation Package evidence regarding honor killings in Pakistan. As found in *Lawani* at paragraph 26, where there is a lack of credibility concerning central elements of a refugee protection claim, it can be generalized to documentary evidence presented to corroborate a version of facts.

[34] For the reasons above, this Application is dismissed.

[35] There is no question for certification.

JUDGMENT in IMM-180-21

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed; and
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-180-21

STYLE OF CAUSE: ABDULLAH SHABBIR CHAUDHRY AND UMAIRA
ABDULLAH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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