

Federal Court



Cour fédérale

**Date: 20211110**

**Docket: IMM-5725-20**

**Citation: 2021 FC 1222**

**Ottawa, Ontario, November 10, 2021**

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

**BETWEEN:**

**BABAR ALI TARAR**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Babar Ali Tarar, is a Shia Muslim citizen of Pakistan. He reports he fears the *Tehrik-e-Taliban Pakistan* [TTP], a group that has accused him of spreading the Shia faith in an Islamic state. He reports the TTP have harassed and threatened him and his family.

[2] The Refugee Protection Division [RPD] was satisfied that Mr. Tarar had established he was a Shia Muslim but found his narrative not to be credible. The RPD further found that even if Mr. Tarar was at risk of harm, he had a viable Internal Flight Alternative in both Hyderabad and Islamabad. The RPD concluded Mr. Tarar was neither a Convention refugee nor a person in need of protection.

[3] On appeal, the Refugee Appeal Division [RAD] found the RPD had erred by failing to address Mr. Tarar's corroborating documentary evidence but nonetheless dismissed his appeal. The RAD found Mr. Tarar's failure to claim protection in the United States during a four-month visit to that country and subsequent return to Pakistan was incompatible with a genuine fear of persecution and undermined Mr. Tarar's credibility. The RAD determined that the corroborating documentary evidence was insufficient to overcome the RAD's significant credibility concerns and that Mr. Tarar had not established he fit the profile of a person likely to be targeted for extortion by the TTP. The RAD concluded that Mr. Tarar was neither a Convention refugee nor a person in need of protection.

[4] Mr. Tarar brings this Application for Leave and for Judicial Review of the RAD's October 12, 2020 decision pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He raises two issues: (1) did the RAD act unfairly by failing to give notice and an opportunity to respond to new issues arising from the RAD's analysis of his documentary evidence?; and (2) did the RAD reasonably assess his credibility?

[5] For the reasons that follow, the Application is denied.

## II. Standard of Review

[6] The standard of review to be applied where questions of procedural fairness arise is best described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). A reviewing court is required to determine for itself whether the administrative process satisfied the level of fairness required in all of the circumstances (*CPR* at para 54; also see *Hood v Canada (Attorney General)*, 2019 FCA 302 at para 25; *Hughes v Canada (Attorney General)*, 2021 FC 147 at para 50).

[7] Reasonableness is the presumptive standard of review that will be applied when reviewing an administrative decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10 and 23 [*Vavilov*]). This presumption is subject to narrow exceptions where respect for the rule of law requires a singular, determinative and final answer to a question before the court, circumstances that do not arise here (*Vavilov* at para 32).

[8] The RAD's credibility findings and evaluation of a refugee claimant's risk are reviewable on the reasonableness standard (*Qahramanloei v. Canada (Citizenship and Immigration)*, 2021 FC 422 at para 13). 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" (*Vavilov* at para 85).

III. Analysis

A. *The RAD did not act unfairly*

[9] Mr. Tarar submits that the RAD acted unfairly by rejecting his documentary evidence as fraudulent or by assigning it little weight. He submits that the RAD's authenticity concerns raised new issues, which triggered the obligation to give notice and the opportunity to respond. He submits that the RAD erred in relying on jurisprudence holding that it was not required to 'confront' him with authenticity concerns arising from documents he provided because the jurisprudence cited was limited to assessing inconsistencies in the evidence, not making new findings of fraudulent documentation. Mr. Tarar relies on *Cornea v Canada (Minister of Citizenship and Immigration)*, 2003 FC 972 [*Cornea*], in submitting that the RAD's failure to provide notice and an opportunity to respond in this instance is a determinative error.

[10] The Respondent argues that the probative value, including the genuineness, of Mr. Tarar's documentary evidence was in issue before the RAD and therefore notice was not required. I agree.

[11] In its decision, the RPD found that the "probative value of these documents is substantially undermined by the fact that the claimant has been found not credible in regards to the central allegation put forth." The RPD further found that "the documentary evidence indicates that fraudulent documents...are widely available in Pakistan." In his submissions to the RAD, Mr. Tarar specifically argues that the documentary evidence is relevant, credible and

highly probative and he refers to the RPD's reliance on the prevalence of fraudulent documents in Pakistan.

[12] This is not dissimilar to the circumstances addressed by Associate Chief Justice Jocelyne Gagné in *He v Canada (Citizenship and Immigration)*, 2018 FC 627 [*He*], where she states:

[21] Furthermore, the RPD stated that the “totality of the claimants’ documentary disclosure” was considered and “fraudulent documents are widespread in China.” These references should have prepared the Applicants to address the contents and the authenticity of their documents before the RAD. I find Justice Paul Favel’s comments from the *Oluwaseyi Adeoye* decision, above, to be equally applicable in this case:

[13] In this case, the RAD did not raise a new issue on appeal because the Applicant’s credibility was already at issue before the RPD. There is no procedural fairness issue when the RAD finds an additional basis to question the Applicant’s credibility using the evidentiary record before the RPD. The Applicant was already on notice that credibility was a live issue based on the RPD’s original decision

[13] As in *He*, the RPD’s reference to the prevalence of fraudulent documents in Pakistan was sufficient to notify the Applicant that the authenticity of the documents was in issue, distinguishing this circumstance from that in *Cornea*. The RAD did not act unfairly in assessing authenticity in respect of the ID card proffered by the Applicant or in assessing the weight to be attributed to Mr. Tarar’s remaining documentary evidence based on the evidentiary record before it.

[14] These issues were either identified by the RPD or put in issue by Mr. Tarar in his submissions to the RAD. Mr. Tarar cannot now take issue with the RAD having addressed them.

B. *The RAD's assessment of credibility and Mr. Tarar's profile was reasonable*

[15] Mr. Tarar submits the RAD's conclusion that he is not a Convention refugee or a person in need of protection was based on unreasonable credibility findings. He argues the RAD unreasonably rejected his explanation for not claiming asylum in the United States and submits a claimant's failure to seek protection in a third country and/or their reavilment should rarely be determinative. He submits the RAD was required to consider all of his personal circumstances in assessing the reasonableness of his explanation for not seeking asylum in the United States and that his explanation was plausible. He argues the RAD placed undue emphasis on the failure to claim asylum in the United States and in turn unreasonably concluded the events he reported having experienced in Pakistan did not occur. He submits that the RAD supplanted his reasonable explanation with its own personal judgment and in effect rendered a finding that is, at its core, an unreasonable plausibility finding.

[16] Mr. Tarar further argues that the RAD unreasonably presumed the Applicant had to be a prominent Shia to be targeted; this was a finding the RAD failed to explain and was inconsistent with the documentary evidence, which reports that militant groups target ordinary Shia Muslims. He also submits the RAD erred in finding he was not at risk as a businessperson simply because he had closed his businesses in Pakistan. He notes that neither the RAD nor the RPD were in a position to assume he would not recommence his business activity if required to return to Pakistan.

[17] In my opinion, the RAD reasonably assessed Mr. Tarar's credibility.

[18] The RAD acknowledged in its decision that a “failure to claim [asylum in a third country] should rarely be determinative on its own in rejecting a claim” but notes other concerns with Mr. Tarar’s credibility. The RAD did not treat the failure to claim and/or Mr. Tarar’s reavilment as determinative.

[19] The RAD did not rely on an unreasonable implausibility finding in assessing Mr. Tarar’s explanation for not claiming asylum during his first visit to the United States. Instead, the RAD set out its concerns with Mr. Tarar’s explanation for failing to claim protection in some detail. In doing so, the RAD provided a reasoned explanation grounded in identified inconsistencies in Mr. Tarar’s evidence to support the conclusion that the explanation provided was unreasonable in the circumstances.

[20] Nor am I convinced the RAD erred in assessing Mr. Tarar’s risk based on his profile.

[21] The RPD assessed the risk faced by Shias generally in Pakistan. The RPD recognized that members of the Shia population are subjected to ongoing sectarian violence and are targeted by militant groups, but further found that typically it is prominent members of the community who are targeted. The RPD recognized that Mr. Tarar was a Shia Muslim and had formerly owned and operated two businesses, but concluded Mr. Tarar did not fit the profile of a prominent or active Shia; a Shia professional or businessperson likely to be targeted by anti-Shia or militant groups in Pakistan.

[22] Before the RAD, Mr. Tarar did not take issue with the RPD's analysis and conclusions relating to the risk faced by Shias generally in Pakistan. Instead, his submissions to the RAD regarding the RPD's profile and risk analysis were limited to the RPD's finding that he did not fit the profile of Shias likely to be targeted. He submitted that the RPD "grossly erred" by finding he was not prominent or active in the Shia community and that the RPD had also erred by finding he did not fit the profile as a prominent business owner.

[23] Mr. Tarar now argues on judicial review that the RAD erred in its treatment of the risk faced by Shias generally in Pakistan and claims the RAD "simply adopted" the RPD's finding that lower-profile Shias are not typically targeted. The jurisprudence establishes that aspects of an RPD decision not raised before the RAD are not properly the subject of judicial review before this Court (*Dahal v Canada (Citizenship and Immigration)* 2017 FC 1102 at para 39).

[24] The RAD accurately detailed Mr. Tarar's submissions as they related to the RPD's assessment of his profile. The RAD agreed with Mr. Tarar that it is improper to conclude a claimant does not have a particular risk profile on the basis that they were not targeted earlier but then concluded that Mr. Tarar, having not credibly established his profile as a prominent Shia or businessperson, faced no serious risk.

[25] Mr. Tarar's submissions reflect disagreement with the RAD's credibility findings. However, for the reasons set out above, I am satisfied that the RAD's conclusions are reasonable, the RAD's reasoning addresses the issues raised and is rational and logical.



IV. Conclusion

[26] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT IN IMM-5725-20**

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

1. The Application is dismissed.
2. No question certified.

“Patrick Gleeson”

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Judge

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

**DOCKET:** IMM-5725-20

**STYLE OF CAUSE:** BABAR ALI TARAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 19, 2021

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 10, 2021

**APPEARANCES:**

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