

Federal Court



Cour fédérale

Date: 20211122

Docket: IMM-4046-20

Citation: 2021 FC 1275

Ottawa, Ontario, November 22, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ZAHEER ALI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Zaheer Ali, is a citizen of Pakistan who filed for refugee protection based on his fear of persecution from Lashkar-e-Jhangvi [LeJ], a militant Sunni group in Pakistan. He claims that members of the LeJ repeatedly assaulted him because he was outspoken about his faith. After receiving death threats, he fled to the United Kingdom on a student visa in August 2011. When his visa expired in December 2013, he continued to live there without status. In

January 2017, he came to Canada with the assistance of a smuggler and made a claim for refugee protection.

[2] The Refugee Protection Division [RPD] heard and dismissed the Applicant's claim in October 2018. The RPD concluded that the Applicant lacked credibility.

[3] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD] and submitted new documents to address the RPD's concerns. On August 10, 2020, the RAD dismissed the appeal on the basis that the Applicant was not credible. Although it accepted most of the Applicant's new evidence and conceded that the RPD had made errors in its assessment of the claim, the RAD nevertheless found that there were inconsistencies in the Applicant's evidence and that some of his supporting documentation was not authentic. The RAD also determined that the Applicant's failure to claim asylum in the United Kingdom, despite living there for six (6) years, demonstrated a lack of subjective fear and undermined his credibility. The RAD concluded that the Applicant had not credibly established that he was assaulted or was being pursued by the LeJ.

[4] The Applicant seeks judicial review of the RAD's decision. He argues that the RAD's refusal to accept the affidavits of his brother and sister as new evidence is unreasonable. He also objects to the RAD's finding regarding his failure to claim asylum in the United Kingdom and to its treatment of corroborative evidence.

[5] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[6] When the standard of reasonableness applies, the Court’s focus is on “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). The burden is on the party challenging the decision to show that it is unreasonable and the Court “must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

[7] Upon considering the written and oral submissions of the Applicant and reviewing the evidence in the Certified Tribunal Record, I see no reviewable error on the part of the RAD in dismissing the Applicant’s appeal.

[8] The RAD considered all the arguments put forward by the Applicant and provided detailed reasons for rejecting them. It reasonably concluded that the Applicant’s post-hearing evidence was not credible on the basis that the underlying events lacked plausibility and did not establish the Applicant’s allegations. Additionally and contrary to the Applicant’s submissions, the RAD did not consider the Applicant’s failure to claim asylum in the United Kingdom to be determinative of his refugee claim. The RAD explicitly noted that his failure to do so was not

determinative, but reasonably found that it demonstrated a lack of subjective fear and undermined his credibility. It was reasonable for the RAD to find that the Applicant's explanation regarding his lawyer's advice was not credible and unsupported by corroborative evidence. It was also open to the RAD to reject the Applicant's explanation for failing to mention his fear of persecution by the LeJ in his application for permission to stay in the United Kingdom, given that he explicitly referenced threats to his life in the application. Finally, the RAD provided detailed and rational reasons for rejecting the Applicant's supporting documents. The Applicant has failed to persuade me that the RAD's assessment is unreasonable.

[9] It is important to recall that findings regarding a claimant's credibility and the assessment of the evidence command a high degree of deference from this Court. While the Applicant may not agree with the RAD's findings, it is not for this Court to reassess or reweigh the evidence in order to make a finding that would be favorable to the Applicant (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[10] To conclude, I am satisfied that, when the RAD's reasons are read holistically and contextually, the decision meets the reasonableness standard set out in *Vavilov*.

[11] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-4046-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4046-20

STYLE OF CAUSE: ZAHEER ALI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 18, 2021

JUDGMENT AND REASONS: ROUSSEL J.

DATED: NOVEMBER 22, 2021

APPEARANCES:

John Savaglio FOR THE APPLICANT

Idorenyin Udoh-Orok FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Savaglio FOR THE APPLICANT
Barrister and Solicitor
Pickering, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario