

Federal Court



Cour fédérale

Date: 20211230

Docket: IMM-2590-21

Citation: 2021 FC 1485

Ottawa, Ontario, December 30, 2021

PRESENT: THE CHIEF JUSTICE

BETWEEN:

PARMINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This application for judicial review concerns a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In its decision, the RAD rejected Mr. Singh's appeal from a decision of the Refugee Protection Division [RPD].

[2] The RAD's rejection of Mr. Singh's appeal was based solely on its finding that the allegations supporting Mr. Singh's claim for refugee protection were not credible. In this regard, the RAD relied upon several findings by the RPD. However, the RAD did not address a different issue that the RPD had identified as being determinative. That issue was whether an internal flight alternative [IFA] was available to Mr. Singh in Mumbai or Bangalore, India.

[3] Mr. Singh maintains that it was procedurally unfair for the RAD to reject his appeal on credibility grounds, without informing him that it intended to address the issue of his credibility, and without giving him an opportunity to address that issue. Mr. Singh also submits that the RAD erred in disregarding his arguments concerning the availability of an IFA.

[4] For the reasons that follow, I disagree with both of those submissions. Accordingly, this application will be dismissed.

II. Background

[5] Mr. Singh is a citizen of India. He is Sikh. He resided in Bhogpur, which is located in the state of Punjab, prior to entering this country on a student visa in August 2017. The following year, he made a claim for refugee protection.

[6] Mr. Singh's claim for refugee protection is based on his fear of harm at the hands of members of the Lawrence Bishnoi gang [the **LB Gang**]. His fear is rooted in multiple interactions that he allegedly had with members of that gang in the year prior to his departure for Canada.

[7] Specifically, Mr. Singh claims that in November 2016 a car occupied by four members of the LB Gang hit him while he was driving his motorcycle. After shouting at him and taking his address and phone number, one of them hit him with a hockey stick, which I am assuming was a field hockey stick. The police then demanded a large sum of money from him when he tried to file a report.

[8] The following month, he was contacted and asked to join the LB Gang and sell drugs. When he refused, he was asked to pay 4,000,000 Rupees. The same person later called him again and threatened him. Then, in March 2017, he was stopped on the way to the district of Jalandhar. At that time, he was warned that he would not be “spared” if he did not pay the above-mentioned 4,000,000 Rupees.

[9] Finally, Mr. Singh alleges that a friend in India recently informed him that people in a jeep had been inquiring about him.

III. **The RPD’s decision**

[10] As noted above, the RPD characterized the availability of an IFA as being “the determinative issue” in its proceeding. However, before addressing that issue, the RPD identified a number of credibility concerns with respect to aspects of Mr. Singh’s claim. In each case, it found that those concerns undermined his overall claim.

[11] Regarding the specific allegation that he was targeted by the LB Gang, the RPD found that the absence of any mention of the LB Gang in his Basis of Claim Form constituted “a

serious material omission.” The RPD did not accept his explanations, including that he was not sure whether he should “let out all of his cards” at that particular time, instead of later in the process. After noting that Mr. Singh’s counsel declined to make any amendments to that form at the beginning of its hearing, the RPD stated as follows:

I find that it is unlikely that the claimant would have omitted the identity of the gang that targeted him if what he alleges is true, given that he has emphasized the notoriety of this gang and their presence throughout the country. Moreover, I find that it is unlikely that the claimant would not have taken greater precautions for his safety from December 2016 onwards if he had actually been targeted by this violent gang.

IV. **The Decision Under Review**

[12] At the outset of its decision, the RAD noted that the RPD identified problems with Mr. Singh’s credibility before determining that, in any event, a viable IFA was available to him in Mumbai or Bangalore. In brief, based on the various adverse credibility findings made by the RPD, the RAD stated that it agreed with the RPD “that it is not credible that [Mr. Singh] was targeted by the Bishnoi gang.”

[13] Given that finding, which it characterized as being “determinative,” the RAD concluded that the RPD’s IFA analysis was unnecessary. It characterized the IFA analysis as having been “in the alternative.” This is because that part of the RPD’s decision began with the observation that “even if the claimant was targeted by members of the Lawrence Bishnoi gang there is insufficient credible evidence to establish that they have the resources or presence in Mumbai or Bangalore to find him” [emphasis added].

V. **Issues**

[14] The two issues raised in this application are as follows:

- i. Was it procedurally unfair for the RAD to reject Mr. Singh's appeal on credibility grounds, without informing him that it intended to address that issue, and without giving him an opportunity to address it?
- ii. Did the RAD err in disregarding Mr. Singh's arguments concerning the availability of an IFA?

VI. **Standard of Review**

[15] The first issue, concerning procedural fairness, has traditionally been understood to be reviewable on a standard of correctness: see e.g. *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. More recently, the Federal Court of Appeal has characterized the meaning of the word "correctness" in this context in terms of "whether the procedure was fair having regard to all of the circumstances": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

[16] The second issue concerns the merits of the RAD's IFA assessment and is reviewable on a standard of reasonableness. In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis"

and be “justified in relation to the facts and law that constrain the decision maker”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [**Vavilov**] at paras 85 and 99.

VII. **Assessment**

A. *Was it procedurally unfair for the RAD to reject Mr. Singh’s appeal on credibility grounds, without informing him that it intended to address that issue, and without giving him an opportunity to address it?*

[17] Mr. Singh maintains that it was procedurally unfair for the RAD to have failed to inform him that his appeal could be determined on the basis of an issue other than the availability of an IFA. Given that the RPD characterized the IFA issue as being “determinative,” Mr. Singh asserts that he focused his submissions to the RAD entirely on that issue. However, the facts suggest otherwise.

[18] At the outset of his submissions to the RAD, Mr. Singh acknowledged that “[t]he RPD did mention some concerns relating to the credibility of the appellant.” He then spent 1.5 pages addressing that topic, before spending the remaining 8.5 pages of his submissions on the IFA issue. Accordingly, the issue of his “credibility” was “in play” and squarely before the RAD.

[19] In dismissing Mr. Singh’s appeal on credibility grounds, the RAD relied entirely on adverse credibility findings that had been made by the RPD.

[20] In these circumstances, it was not procedurally unfair for the RAD to have failed to notify Mr. Singh in advance that his appeal could be decided on the basis of his credibility. This is so

even though that issue was distinct from the IFA issue that had been identified as “determinative” by the RPD, and that was the primary focus of his submissions to the RAD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [**Huruglica**], at paras 78 and 103; *Liang v Canada (Citizenship and Immigration)*, 2017 FC 388 at paras 2, 25–29; *Hassan v Canada (Citizenship and Immigration)*, 2021 FC 1162 at paras 3–4, 9–15.

[21] Stated differently, it cannot be fairly said that the issue of Mr. Singh’s credibility was “new,” or that he did not have a meaningful opportunity to make submissions in respect of it: *Sadeghi v Canada (Citizenship and Immigration)*, 2021 FC 604 [**Sadeghi**] at para 20; *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 870 at para 13; *Tan v Canada (Citizenship and Immigration)*, 2016 FC 876, at para 48; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 31.

[22] The cases relied upon by Mr. Singh are distinguishable because, in each instance, the RAD based its decision on “new” issues that were not the subject of findings by the RPD: *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 2–3, 20–21 and 24–25; *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at paras 9–10; and *Ojarikre v Canada (Citizenship and Immigration)*, 2015 FC 896 at para 8. Thus, without being provided an opportunity to address those “new” issues, the applicant in each case did not know the case to be met before the RAD. As discussed above, the same cannot be said in the present case.

[23] In summary, it was not procedurally unfair for the RAD to reject Mr. Singh’s appeal on credibility grounds, without informing him that it intended to address that issue. This is because

Mr. Singh took issue with the RPD's credibility findings in his submissions to the RAD. In addition, the RAD simply relied on the RPD's credibility findings, without making any further credibility findings of its own. In these circumstances, it cannot be said that this issue was "new," or that he did not have a meaningful opportunity to make submissions in respect of it: *Sadeghi*, above. Consequently, the advance notice obligation that applies where the RAD is considering raising "new" credibility issues did not apply to Mr. Singh's case before the RAD: *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258 at para 28.

B. *Did the RAD err in disregarding Mr. Singh's arguments concerning the availability of an IFA?*

[24] Mr. Singh submits that the RAD's failure to address his arguments concerning the availability of an IFA was unreasonable, because the RAD is required to assess each alleged error of law, fact or mixed fact and law.

[25] I disagree.

[26] As I have noted, the RAD may confirm the decision of the RPD on another basis: *Huruglica*, above, at para 78. Where it does so, it need not address the issue(s) that the RPD identified as being determinative. This would be entirely unnecessary and contrary to the interests of judicial economy. Mr. Singh has not identified any authority to support the contrary view.

[27] Accordingly, it was not unreasonable for the RAD to disregard Mr. Singh's arguments concerning the availability of an IFA. Its decision to refrain from addressing that issue was appropriately justified, transparent and intelligible. It was also based on an internally coherent and rational chain of analysis, and can be justified in relation to the facts and the law that constrained the RAD: *Vavilov*, above.

VIII. **Conclusion**

[28] For the reasons set forth above, this application is dismissed.

[29] I agree with the parties' position that the legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

JUDGMENT in IMM-2590-21

THIS COURT'S JUDGMENT is that :

1. This application is dismissed.
2. The legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: PARMINDER SINGH v THE MINISTER OF
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APPEARANCES:

Aman Sandhu FOR THE APPLICANT

Thomas Bean FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sandhu Law Office FOR THE APPLICANT
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia