

Federal Court



Cour fédérale

**Date: 20211223**

**Docket: IMM-4177-21**

**Citation: 2021 FC 1464**

**Vancouver, British Columbia, December 23, 2021**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**GURPREET SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
& IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This case concerns the application for judicial review of Gurpreet Singh (the Applicant), made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act], concerning a decision (the Decision) of the Refugee Appeal Division (the RAD or the Member), dated May 28, 2021. In the Decision, the RAD dismissed the Applicant's appeal of the Refugee Protection Division's (the RPD) decision. The RAD held that the RPD had erred in finding that the Applicant has an internal flight alternative (IFA), but had nonetheless

correctly concluded that the Applicant is not a Convention Refugee or a person in need of protection. For the reasons that follow, I find the Decision of the RAD to be reasonable.

I. Background

[2] The Applicant is a single citizen of India, who claims that he was targeted by a gang of drug dealers known as Veeran Naal Sardari (VNS) based in the state of Punjab. According to the Applicant, VNS began its attempts to recruit him in 2014. When he refused, and advocated that others stay away, he alleges that he was threatened with violence and death. The Applicant further claims that when he reported the gang to the police, they arrested him at the behest of VNS, accused him of selling drugs, and beat him over several days until his father successfully freed him with a bribe to the police.

[3] The Applicant made his way to Canada, claiming that he cannot safely reside in any part of India because while hiding from both the police and VNS after the detention, (i) he received threats until his departure for Canada in May of 2018, and (ii) the police made inquiries with his parents since his departure, threatening to kill him if he ever returns.

[4] During his hearing before the RPD, the Applicant was asked about a letter (the Letter) he submitted in support of his claim, written by the village council's leader, the Sarpanch. The Sarpanch stated in the letter that (i) he had known the Applicant for over 20 years; (ii) during the Applicant's college years, he was an active VNS member; (iii) VNS provided social services, opposed drugs, and was opposed by the Punjab Police; and, (iv) the Applicant was twice arrested

by the police, and although he intervened to secure release from detention, the Applicant's life was still at risk from the police in India.

[5] At the first tribunal level, the RPD gave the Applicant the opportunity to respond to the significant inconsistencies between the Letter and his testimony. The Applicant responded that the Sarpanch could not read English and must have made a mistake. The RPD, in its refusal, found the IFA to be determinative, but also noted "significant credibility issues raised throughout the hearing". On appeal, the RAD raised the Letter with the Applicant once again, advising him of credibility issues arising from it, and inviting submissions and/or new evidence to address these concerns. The Applicant did not provide any further documentation, responding only with post-perfection submissions, and restating what he had at the RPD hearing, namely the writer's English deficiencies and that the Letter must have been a mistake, and should not be given any weight.

[6] In its Decision, the RAD found that without any new evidence, s 110(6) of the *Act* precluded an oral hearing. It noted that credibility issues had already been canvassed by the RPD, and noted no meaningful advantage enjoyed by the RPD in assessing credibility, given the recording which the RAD member listened to. The RAD disagreed with the RPD, finding that even before getting to the IFA issue, the RPD was correct to raise credibility, but erred by failing to elaborate on those concerns. Thus, the RAD did so. The RAD then went on to address the Letter, noting that it was written in English, was not translated from an original source document and appeared on an English letterhead.

[7] The RAD found that the Letter appeared to be coherent and genuine, and completely contradicted the Applicant's claim, specifically with respect to the Applicant's membership in VNS, the nature of the group, and the relationship between the VNS and the police. The RAD found that the credibility concerns could not be overcome and the Applicant's presumption of truthfulness was rebutted.

## II. Analysis

[8] The parties agree that the applicable standard of review for the decision of the RAD is reasonableness. A court conducting reasonableness review scrutinizes the decision maker's decision in search of the hallmarks of reasonableness – justification, transparency and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints that brought the decision to bear (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99). Both the outcome and the reasoning process must be reasonable: *Vavilov*, at para 83.

[9] The issue in this judicial review is whether it was reasonable for the RAD, without convening a hearing, to conclude that the Applicant lacked credibility. The Applicant takes issue with the RAD's finding for two reasons.

[10] First, he submits that the RPD had a meaningful advantage over the RAD in assessing credibility, which the RPD did not find to be determinative. He contends that if the RAD had doubts regarding the Applicant's credibility, it ought to have either held a hearing, as requested

by the Applicant, or remitted the matter to the RPD with instructions to hold a hearing on credibility. Second, the Applicant submits that the RAD's finding on credibility is flawed.

[11] In *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 [*Huruglica*], at paragraph 70, the Federal Court of Appeal [FCA] acknowledged that while the RAD may sometimes exercise a degree of restraint before substituting its decision over that of the RPD, the circumstances must be considered on a case by case basis. The FCA instructed the RAD to determine whether the RPD is in an advantageous position in making findings of fact or mixed fact and law. Only where the RAD is of the opinion that it cannot provide a final determination without hearing oral evidence is the RAD to remit the matter to the RPD for redetermination (*Huruglica* at para 103).

[12] Here, the RAD reviewed the entire written record and the audio recording of the RPD hearing and reasonably found the RPD had no meaningful advantage over the RAD in assessing credibility. This Court has repeatedly found that, where audio recordings of testimony were available and reviewed by the RAD in addition to the written record and the RPD's conclusions, it is reasonable for the RAD to find no meaningful advantage in the assessment of credibility, and to make its own determination (*Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 89-90; *Odia v Canada (Citizenship and Immigration)*, 2018 FC 363 at para 5; *Keqaj v. Canada (Citizenship and Immigration)*, 2020 FC 563 at para 30).

[13] It is also worth noting that here, the RAD did not substitute its own finding for that of the RPD on credibility. Both tribunals were in agreement that credibility was a concern, the RAD simply concluded the credibility issue to be determinative of the claim, rather than the IFA. Regarding an oral hearing, s 110(3) of the *IRPA* creates a general rule that the RAD is to proceed without a hearing on the basis of the RPD record, unless new evidence is submitted which *inter alia*, raises a serious issue with respect to credibility (see Annex A). Despite the two opportunities he was given to provide convincing evidence and explain the Letter's inconsistencies, the Applicant did neither. The Decision was both fair and transparent.

[14] Second, the Applicant argues the RAD erred by basing its credibility finding solely on the absence of corroborative evidence, citing *Ndjavera v. Canada (Citizenship and Immigration)*, 2013 FC 452 [*Ndjavera*]. The Applicant's reliance on *Ndjavera* is misplaced. It is true that *Ndjavera* stands for the principle that there is no general requirement for corroboration. However Rennie J, as he then was, also states that where there are valid reasons to question the claimant's credibility, the Board can draw a negative inference from a failure to provide corroborating evidence (*Ndjavera* at para 7).

[15] Here, it was not the mere absence of corroborating evidence that was found to be determinative by the RAD. Rather, the Letter tendered by the Applicant contradicted the basis of his claim. The RAD clearly noted this distinction in paragraph 27 of the Decision:

[27] The Appellant did not adduce any other documentary evidence of his own in support of his claim or his appeal, and he did not call on any witnesses. This is not a problem in and of itself, but it does mean that I do not have much other evidence that could overcome the credibility concerns described above. I have considered the package of information provided by the referring

agencies and the country condition information. None of the other evidence causes additional credibility concerns, but in my opinion, it also does not overcome the serious problems discussed above.

(My emphasis.)

[16] In *Lawani v. Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*], Justice Gascon explained that the presumption of truthfulness which attaches to refugee applicants is rebutted where the evidence is inconsistent with the Applicant's sworn testimony. This is exactly the situation in which we find ourselves. Documentary evidence provided in support of the Applicant's claim actually served to undermine his sworn testimony.

### III. CONCLUSION

[17] Since the Applicant twice failed to provide a satisfactory response to the concerns raised, the RAD reasonably refused the Applicant's claim on the basis of negative credibility. I see no basis to interfere.

**JUDGMENT in IMM-4177-21**

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

1. The application for judicial review is dismissed.
2. The parties raised no questions for certification and I agree that none arise.
3. No costs will be issued.

"Alan S. Diner"

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Judge



**ANNEX “A” to the Judgment and Reasons in IMM-4177-21**

**Appeal**

**110 (1)** Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person’s claim for refugee protection.

**Notice of appeal**

**(1.1)** The Minister may satisfy any requirement respecting the manner in which an appeal is filed and perfected by submitting a notice of appeal and any supporting documents.

**Restriction on appeals**

**(2)** No appeal may be made in respect of any of the following:

**(a)** a decision of the Refugee Protection Division allowing or rejecting the claim for refugee protection of a designated foreign national

**(b)** a determination that a refugee

**Appel**

**110 (1)** Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d’appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile.

**Avis d’appel**

**(1.1)** Le ministre peut satisfaire à toute exigence relative à la façon d’interjeter l’appel et de le mettre en état en produisant un avis d’appel et tout document au soutien de celui-ci.

**Restriction**

**(2)** Ne sont pas susceptibles d’appel :

**a)** la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile d’un étranger désigné;

**b)** le prononcé de désistement ou de

protection claim has been withdrawn or abandoned;

**(c)** a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

**(d)** subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

**(i)** the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

**(ii)** the claim — by virtue of regulations made

retrait de la demande d'asile;

**c)** la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

**d)** sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d'asile qui, à la fois :

**(i)** est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

**(ii)** n'est pas irrecevable au titre de l'alinéa

under paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the Refugee Protection Division;

101(1)e) par application des règlements pris au titre de l'alinéa 102(1)c);

**(d.1)** a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a country designated under subsection 109.1(1);

**d.1)** la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile du ressortissant d'un pays qui faisait l'objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

**(e)** a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

**e)** la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l'asile;

**(f)** a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

**f)** la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l'annulation d'une décision ayant accueilli la demande d'asile.

### **Making of appeal**

### **Formation de l'appel**

**(2.1)** The appeal must be filed and perfected within the time limits set out in the regulations.

### **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 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.

...

### **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

**(2.1)** L'appel doit être interjeté et mis en état dans les délais prévus par les règlements.

### **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 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.

...

### **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

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.

### **Decision**

**111 (1)** After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division

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.

### **Décision**

**111 (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

that it considers appropriate.

### **Referrals**

**(2)** The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that

**(a)** the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and

**(b)** it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

### **Renvoi**

**(2)** Elle ne peut procéder au renvoi que si elle estime, à la fois :

**a)** que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;

**b)** qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

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

**DOCKET:** IMM-4177-21

**STYLE OF CAUSE:** GURPREET SINGH v THE MINISTER OF  
CITIZENSHIP & IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 15, 2021

**JUDGMENT AND REASONS:** DINER J.

**DATED:** DECEMBER 23, 2021

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