

Federal Court



Cour fédérale

Date: 20220105

Docket: IMM-3952-20

Citation: 2022 FC 3

Ottawa, Ontario, January 5, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HAMZA OMAR BAPIR AGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hamza Omar Bapir Agh [Mr. Agh] seeks judicial review of the decision of the Refugee Appeal Division [RAD] dated August 7, 2020, which dismissed his appeal and confirmed the decision of the Refugee Protection Division [RPD]. The RPD had found that Mr. Agh was not credible and had failed to establish the core elements of his claim of persecution, made pursuant to section 96, and his claim for protection, made pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is dismissed. The RAD independently assessed the evidence and reasonably concluded that the RPD did not err in finding that the Applicant had not established the core elements of his claim.

I. Background

[3] Mr. Agh is a Kurdish citizen of Iraq. He fears persecution in Iraq from an Islamic fundamentalist group. Mr. Agh recounts that he worked as an accountant at the Iraqi Ministry of Finance and Economy [the Ministry] and had the authority to disburse funds for government projects in Erbil, in the Kurdish Region of Iraq. He recounts that in April 2015, he was approached by a person purporting to be an old friend, acting on behalf of an Islamic fundamentalist group, who demanded that Mr. Agh issue a cheque from the Ministry in the amount of \$500,000 USD to the Islamic fundamentalist group.

[4] Mr. Agh recounts that he refused to do so, which led to death threats from the Islamic fundamentalist group. He further recounts that after promising to reconsider his refusal, he was able to leave unharmed and promptly reported the incident to the police. He attests that the police provided surveillance on his home and workplace.

[5] Mr. Agh further recounts that in June 2015, while on a family picnic, he was kidnapped by masked men, put in the trunk of a car, beaten and left by the roadside in retaliation for reporting to the police. He states that he spent two weeks in hospital recovering. He recounts that the police attended at the hospital and, again, dispatched surveillance to his home and workplace, but found nothing.

[6] Mr. Agh attests that (over a year later) following a phone call on October 8, 2016, in which the caller asked if he was still alive, he decided to leave Iraq. He then obtained a US visa on October 18, 2016 and moved his family to stay with his brother in another city in Iraq. Mr. Agh travelled to Canada via the US and made his claim for refugee protection.

A. *The Decision of the RPD (May 19, 2017)*

[7] The RPD found that the determinative issue was Mr. Agh's credibility. The RPD did not believe that Mr. Agh faced the threats or the treatment he alleged because his testimony and documents contained inconsistencies, omissions and implausibilities, and some documents were unreliable.

[8] The RPD accepted that Mr. Agh worked for the Ministry, but did not believe that he was approached by Islamic fundamentalists demanding money or that he was threatened for his refusal. The RPD found that the police report of the attempted extortion was likely fraudulent, noting that it was handwritten and appeared to be an original, although Mr. Agh stated that this was a copy that his brother had obtained and sent to him. The RPD also found that the police report lacked significant details.

[9] The RPD also made negative credibility inferences about the medical report provided by Mr. Agh, referred to as a report by the "juridical physician," on the injuries he allegedly suffered in the kidnapping incident. The RPD noted that it was unlikely that there would be no other medical records available if Mr. Agh had spent two weeks in hospital recovering.

[10] The RPD also found Mr. Agh's account of his kidnapping to be inconsistent. The RPD noted that Mr. Agh's Basis of Claim [BOC] stated that, while at a family picnic, he was approached and grabbed up by his assailants and placed in the trunk of a car. However, his account at the hearing was that he had walked away from his family to gather wood and was approached and apprehended by men waiting in a car. The RPD noted that given the significance of this event, it would expect that the details would be recounted consistently.

[11] With respect to the police response and surveillance following the kidnapping incident, the RPD noted that Mr. Agh had stated that the police only visited him once. The RPD noted that the police report of the kidnapping did not link the kidnapping to the extortion. The RPD found it unlikely that the police would have provided surveillance at Mr. Agh's house but would not have followed up to question Mr. Agh following the kidnapping. The RPD also noted that Mr. Agh changed his testimony when this issue was put to him, stating that he did not know whether the police had provided surveillance at his home, but rather that he thought they did so. The RPD noted Mr. Agh's change of testimony and found that this confirmed the view that he was not credible.

[12] The RPD also noted inconsistencies in Mr. Agh's account of his actions regarding his decision to leave Iraq following a phone call that he perceived as threatening. In his BOC, Mr. Agh stated that he had applied for a US visa and moved his family to his brother's home on October 18, 2016; however, his brother's letter stated that Mr. Agh moved his family on October 9, 2016. The RPD was not satisfied with Mr. Agh's explanation for the inconsistency,

which was that he moved his family on October 9, 2016, but then returned alone to Erbil to stay with his uncle.

[13] The RPD stated that the credibility concerns it noted were not exhaustive, as there were several other inconsistencies and implausibilities. The RPD found that Mr. Agh likely provided false documents and that his inconsistent accounts of significant events extended to the point that the RPD could not rely on his testimony or other documents to support his claim.

[14] The RPD found that Mr. Agh lacked credibility and that his evidence was insufficient to find that he was the victim of the threats and harm as alleged, on a balance of probabilities. The RPD concluded that he did not face a serious possibility of persecution and he would not be subject personally to a risk to life, a risk of cruel and unusual treatment or punishment or a danger of torture.

[15] Mr. Agh appealed the RPD decision to the RAD, arguing that there had been serious errors of interpretation at the RPD hearing that had resulted in the RPD making erroneous credibility findings. Mr. Agh also argued that the RPD misconstrued the police protection evidence, erred in assessing the police report of the attempted extortion, and erred in its assessment of the letter from Mr. Agh's brother.

B. *The First Decision of the RAD (April 24, 2018)*

[16] The RAD dismissed Mr. Agh's appeal, finding that there were no significant errors in the RPD's decision. The RAD found that there was insufficient evidence about alleged errors in the

interpretation at the RPD hearing, noting that the single example of an error was not significant and did not affect the outcome.

C. *The RAD's First Decision Was Found Unreasonable*

[17] In his first application for judicial review, Mr. Agh argued that the RAD failed to conduct an independent review of the evidence, misconstrued or ignored evidence and made speculative findings.

[18] In *Agh v Canada (Citizenship and Immigration)*, 2019 FC 1086, the Court found that the RAD had failed to fulfill its appellate role. The Court noted that there was no reference to the RAD having listened to the audiotape of the RPD hearing and little review or analysis by the RAD of the RPD's reasons. The Court noted that the RAD failed to address two of Mr. Agh's arguments regarding the treatment of the police and medical reports and simply confirmed the RPD's findings. The Court found that the RAD had also erred by not analyzing the RPD's other credibility findings, but rather simply deeming these to be reasonable, despite stating that the RPD did not have any particular advantage in making these findings. The Court remitted the matter to the RAD for redetermination.

II. The RAD Decision Under Review

[19] The RAD noted the basis for Mr. Agh's claim and that the RPD had found that Mr. Agh was not credible. The RAD summarized the RPD's more specific findings as follows: the police report was likely fraudulent; the medical report ("juridical physician's report") was not reliable

because it lacked details that were included in the BOC; and Mr. Agh's credibility was undermined by his evolving testimony about the police response and the inconsistency between his BOC, his testimony and the letter from his brother about when he moved his family to his brother's home.

[20] The RAD identified the issues raised by Mr. Agh on appeal as follows: errors in interpretation led to the RPD's negative credibility inferences; the RPD erred in finding that the police report was likely fraudulent; the RPD erred in finding inconsistencies based on a microscopic analysis of the kidnapping incident; and the RPD erred by giving undue weight to the minor discrepancy between his brother's letter and his testimony about the date he moved his family to his brother's home.

[21] The RAD stated that it considered the entire record to determine whether the RPD's decision was correct and reviewed Mr. Agh's testimony, the documents filed by Mr. Agh, and the objective documentation. The RAD found that the RPD had no meaningful advantage over the RAD in evaluating the evidence and, as a result, the RAD did not defer to the RPD's findings.

[22] The RAD admitted new evidence from Mr. Agh consisting of an affidavit from an interpreter, Mr. Abu-Baker, and a chart purporting to set out the errors in the interpretation at the RPD hearing. Mr. Agh did not request an oral hearing before the RAD.

[23] The RAD noted that the chart included Mr. Abu-Baker's comments about Mr. Agh's understanding of the evidence. The RAD disregarded these comments, noting that they were not reliable, fell outside the role of an interpreter and went beyond setting out the alleged errors.

[24] The RAD found that Mr. Agh was not prejudiced by any faulty interpretation. The RAD listened to the audio recording of the entire RPD hearing and compared it with the chart purporting to describe the errors. The RAD found that the chart did not accurately reflect the questions posed by the RPD in English. Regardless, the RAD addressed each of the alleged errors.

[25] With respect to the medical records, the RAD found that there was no confusion between the terms "records," "reports" and "prescriptions" and that Mr. Agh properly understood that the question posed was whether Mr. Agh had any other health records from his stay in the hospital. The RAD noted that Mr. Agh responded that "they only kept this report that I admitted to the hospital and then referred to the police station" (referring to the "juridical physician's" report on the record). The RAD further noted that Mr. Agh's submission in his memorandum on appeal—that he did have access to prescriptions and records of the treatment he was given—is contrary to his clear evidence at the RPD hearing.

[26] The RAD also addressed the alleged errors regarding the demand from the Islamic fundamentalists, noting that the RPD provided Mr. Agh the opportunity to clarify whether he was asked to write a cheque or cash a cheque and he stated, "they wanted me to write the cheque."

[27] The RAD accepted that Mr. Agh worked for the Ministry and that his testimony about his expired ID card, if it was misinterpreted, had no bearing on the RPD's decision.

[28] With respect to the police surveillance and response following the kidnapping, the RAD found that Mr. Agh's allegation that the interpreter mistranslated the question was without merit. The RAD compared the chart to the audio recording of the RPD hearing and found that the chart was not accurate, noting that the RPD had clearly asked Mr. Agh whether the police interviewed him again or whether their visit to the hospital was the only time they spoke to him. Mr. Agh clearly stated that the police only spoke with him once. The RAD further noted that Mr. Agh had stated in his submissions on appeal that the police had visited him four other times.

[29] With respect to whether the police provided surveillance, the RAD found that Mr. Agh's allegation that the interpreter mistranslated his answer as "I don't know" did not reflect the exchange at the RPD hearing. The RAD set out the questions verbatim, which included the RPD member noting the limited details provided to the police and questioning why, based on such limited details, the police would provide surveillance. Mr. Agh responded, "[w]hen we reported to the police, the police didn't say to us but probably they were watching our home" and later, "[y]eah, the police told me that they gonna watch and you will be staying two weeks in hospital."

[30] The RAD found the allegation of mistranslation to be without merit. The RAD added that Mr. Agh had not addressed the issue at the heart of the RPD's finding, which was that the police appeared to have made no effort to obtain more details of the kidnapping and beating.

[31] The RAD concluded that Mr. Agh had failed to establish that there were any serious errors in the interpretation. Moreover, the RAD found that none of the alleged errors played any part in the RPD's decision.

[32] With respect to Mr. Agh's argument that the RPD erred in finding that the police report of the attempted extortion was likely fraudulent, the RAD disagreed with the RPD's rationale that because it was handwritten, it could be fraudulent. However, the RAD noted that the RPD had other reasons to find it was likely fraudulent, including that the police report lacked details and that Mr. Agh's explanation—that he did not want to make a "big deal" out of the extortion and threats—did not make sense. The RAD found that the police report was not reliable.

[33] The RAD agreed with the RPD that Mr. Agh's account of his kidnapping in his BOC and oral testimony was inconsistent, although this inconsistency was minor.

[34] The RAD found that the RPD did not give undue weight to the inconsistency between Mr. Agh's testimony and his brother's letter regarding the date that Mr. Agh moved his family to his brother's house. The RAD found that an adverse credibility finding was justified because when the inconsistency was put to Mr. Agh, he provided yet another version of events at the hearing.

[35] The RAD concluded that Mr. Agh failed to establish on a balance of probabilities the core events upon which his claim was based. The RAD confirmed the RPD's findings that

Mr. Agh does not face a serious possibility of persecution and would not be subjected personally to a danger of torture or to a risk to his life or of cruel or unusual punishment or treatment.

III. The Applicant's Submissions

[36] Mr. Agh argues that the RAD erred in finding that the RPD's credibility findings were correct. Mr. Agh submits that the RAD simply confirmed the RPD's unspecified and minor credibility issues, which cannot reasonably support the RAD's global finding of lack of credibility.

[37] He argues that the RAD engaged in "circular reasoning" by finding that the minor credibility findings had no impact on the RPD's overall decision, but nonetheless finding that the RPD did not err. He adds that if any one of the several minor credibility findings is erroneous, it impacts the global finding.

[38] Mr. Agh argues that the RAD erred by requiring corroborating medical records. He submits that because the RAD accepted his single medical report and did not find it to be fraudulent, the medical report should have been sufficient to support his account that extremists assaulted him as he alleged. He submits that his failure to provide additional medical reports cannot support an adverse credibility finding.

[39] With respect to the police report of the attempted extortion, Mr. Agh argues that the RAD erred by finding that it was not reliable because it lacked detail. Mr. Agh adds that the police report of his account of being kidnapped by unknown men in a black car included the name of

the police lieutenant and police department and submits that the RAD could have verified this information. Mr. Agh submits that a document is presumed to be genuine and should be assessed for what it says, not what it does not say.

[40] Mr. Agh also submits that there was no inconsistency between his BOC and his testimony about his kidnapping, only that he provided more detail in his testimony.

[41] Mr. Agh argues that he provided an explanation for the inconsistency in the dates noted in his brother's letter and in his testimony regarding when he moved his family. Mr. Agh again submits that he provided more detail in his testimony about returning to Erbil to stay with his uncle.

IV. The Respondent's Submissions

[42] The Respondent submits that the RAD reasonably found that Mr. Agh had not established his claim with credible or reliable evidence. The Respondent submits that Mr. Agh seeks a reweighing of the evidence, which is not the role of the Court.

[43] The Respondent notes that Mr. Agh raises the same issues on judicial review as he did before the RAD, with the exception of the allegations regarding errors in interpretation of his evidence at the RPD hearing.

[44] The Respondent disputes Mr. Agh's contention that the RAD did not independently assess his credibility, noting that the RAD's review of all the alleged interpretation errors includes its assessment about the credibility of those particular aspects of his evidence.

[45] The Respondent submits that the RAD's credibility findings are supported by the omissions and inconsistencies on important aspects that go to the core elements of Mr. Agh's claim. The Respondent argues that credibility assessments are within the RAD's expertise and the Court owes deference to such findings, noting that the RAD listened to the audio recording of Mr. Agh's testimony at the RPD hearing.

[46] The Respondent notes that, while the RPD found the police report regarding the alleged extortion attempt to be fraudulent, the RAD independently found that the police report was not reliable due to its lack of detail. The Respondent submits that the RAD reasonably rejected Mr. Agh's explanation that he did not want to make a "big deal" out of the incident.

[47] The Respondent further submits that the RAD did not err in its assessment of the medical report in finding that there was insufficient evidence about Mr. Agh's hospital stay. The Respondent notes that any negative credibility finding arising from the medical report was not based on the alleged error in interpretation, as Mr. Agh had argued, given that Mr. Agh was clearly asked whether he had any other records and he responded that he did not.

[48] The Respondent disputes Mr. Agh's contention that the RAD's reasoning is circular because it found the inconsistencies relied on by the RPD to be minor, yet agreed with the RPD's

global finding. The Respondent notes that the only minor inconsistency was regarding Mr. Agh's account of his kidnapping, which was inconsistent with his BOC.

[49] The Respondent submits that the RAD addressed all the arguments on appeal, conducted its own assessment and made its own conclusions about credibility and sufficiency of the evidence. The RAD's comment was only that it would have preferred if the RPD had listed the other several credibility findings as opposed to making a blanket statement. This does not mean that the RAD is of the view that the RPD erred.

V. The Issues

[50] The issue is whether the RAD's decision is reasonable. This entails consideration of the submissions now made by Mr. Agh: whether the RAD conducted an independent assessment; whether the RAD erred in its credibility findings; whether the RAD unreasonably rejected Mr. Agh's explanations for the omissions and inconsistencies that underpinned the RAD's credibility findings; and whether the RAD erred in its assessment of the police report and medical report.

VI. The Standard of Review

[51] In *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103, the Federal Court of Appeal clarified that the RAD is an appeal tribunal and applies the standard of correctness when reviewing an RPD decision. The RAD conducts an independent assessment of

the evidence. However, the RAD may defer to the RPD on credibility findings “where the RPD enjoys a meaningful advantage” (para 70).

[52] The Court judicially reviews a decision of the RAD on the reasonableness standard.

[53] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*], the Supreme Court of Canada provided extensive guidance to the courts in reviewing a decision for reasonableness.

[54] 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 that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91).

VII. The RAD’s Decision Is Reasonable

[55] At the outset, it is important to recall that Mr. Agh’s claim for refugee protection was based on his risk from Islamic fundamentalists because he refused to write a cheque for \$500,000 from the Ministry of Finance and Economy where he was an accountant. Mr. Agh had the burden to establish his claim with credible and sufficient evidence. The RAD reasonably concluded that the RPD had correctly found that Mr. Agh did not establish the core elements of his claim.

[56] The RAD fulfilled its appellate function; the RAD addressed all Mr. Agh’s arguments on appeal and conducted a thorough and independent assessment of all the evidence, including by

reviewing the audio recording of Mr. Agh's testimony at the RPD hearing, and the new evidence he submitted. The RAD did not ignore or misconstrue any evidence, and did not microscopically analyze inconsistencies or dwell on irrelevant evidence.

[57] With respect to the alleged errors in the interpretation at the RPD hearing, the RAD reasonably found that Mr. Agh's chart was misleading and misstated the questions put to him by the RPD. Regardless, the RAD considered each alleged error and reasonably concluded that there were no errors in interpretation that led to erroneous credibility findings.

[58] Contrary to Mr. Agh's argument that the RAD had brushed aside the RPD's more general and unspecified adverse credibility findings, the RAD clearly stated that it was not deferring to the RPD's findings. The RAD started from scratch and made its own credibility findings, many of which were consistent with or confirmed those of the RPD.

[59] The RAD did not find that the RPD erred by not describing additional inconsistencies and implausibilities. The RAD's comment that it would have been preferable for the RPD to identify the incidents it was referring to was made in the context of the RAD's consideration of Mr. Agh's argument that there were interpretation errors. The RAD added, "[h]owever, I have reviewed the audio tape and compared it to the chart provided by the Appellant and considered them both in light of the RPD's reasons." In other words, the RAD satisfied itself regarding the unspecified or additional inconsistencies by reviewing the audio recording.

[60] It is well established that boards and tribunals—i.e., the decision-makers that hear the testimony and review the evidence—are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA). Their credibility findings should be given significant deference: *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13; *Fatih v Canada (Citizenship and Immigration)*, 2012 FC 857 at para 65; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 41–46.

[61] There is extensive jurisprudence that guides the assessment of credibility and the Court’s review of credibility findings. For example, in *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4, Justice Rennie summarized the principles from the jurisprudence, several of which apply in the present case:

- a. A board is entitled to make findings of credibility based on implausibility, common sense and rationality: *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228; *Lubana*, above;
- b. Uncontradicted evidence may be rejected if it is not consistent with the probabilities of the case as a whole, or where inconsistencies are found in the evidence: *Akinlolu v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 296;
- c. Inferences must be reasonable and must be set out in clear and unmistakable terms: *Hilo*;
- d. Not all inconsistencies and implausibilities will support a negative finding of credibility. Adverse credibility findings should not be based on microscopic examination of issues irrelevant or peripheral to the claim: *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444;
- e. Evidence or testimony with respect to whether a claimant travels on false travel documents, destroys travel documents

or lies about them upon arrival is peripheral and of very limited value to a determination of credibility: *Lubana*;

- f. Assessment of testimony should take into account the age, culture, background and prior social experience of the witness, as should a lack of coherence in testimony where the psychological condition of the witness has been medically established;
- g. Similarly, in assessing statements made by refugees to immigration officials on first arrival to Canada, the trier of fact must consider that “most refugees have lived experiences in their country of origin which gives them good reason to distrust persons in authority”: Professor J.C. Hathaway, *The Law of Refugee Status* (Toronto, Butterworths) (1991), pp 84-85, as cited by Justice Martineau in *Lubana*;
- h. Where a credibility finding is based on inconsistencies of the applicant, specific examples of inconsistency must be set out. The inconsistency must arise in respect of other evidence which was accepted as trustworthy. Put otherwise, an inconsistency can arise in one of two ways: evidence is internally inconsistent in the testimony of the witness, or; evidence that is inconsistent with respect to the testimony of other witnesses or documents. If, in the later situation, that of external inconsistency, the evidence on which the inconsistency is predicated must be accepted as trustworthy;
- i. The cumulative effect of minor inconsistencies and contradictions can support an overall finding that an applicant is not credible: *Feng v Canada (Citizenship and Immigration)*, 2010 FC 476; and
- j. A general finding of a lack of credibility may conceivably extend to all relevant evidence emanating from the testimony of a witness: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238.

[62] In *Vazquez Bizarro v Canada (Citizenship and Immigration)*, 2013 FC 140 at para 18, Justice Noël also explained that omissions and contradictions will provide the basis for adverse credibility findings:

This Court has repeatedly recognized that the RPD can reasonably base its negative findings with respect to credibility on the omissions and contradictions that it identifies with respect to important facts alleged in the Personal Information Form and the oral testimony (see *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ 1867 at paragraph 33, 52 ACWS (3d) 165; *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paragraph 18, 154 ACWS (3d) 1183). Furthermore, it is open to the RPD to reject an explanation provided with respect to such omissions when they are unreasonable (*Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at paragraph 10). Thus, the RPD's findings regarding the omissions in the applicant's written account as well as its rejection of the applicant's explanations with respect to those omissions are well-founded.

[Emphasis added.]

[63] In the present case, the RAD made credibility findings based on inconsistencies and omissions that were relevant to Mr. Agh's claim—that he was threatened by Islamic fundamentalists for refusing to comply with their demands to provide \$500,000 from the Ministry where he worked—including Mr. Agh's evolving testimony about whether the police had provided surveillance, whether the police visited him once or more following the alleged kidnapping, and whether other medical reports were available, as well as his inconsistent accounts of his kidnapping and of the dates when he moved his family to Erbil. The RAD clearly set out the inconsistencies and noted which were minor and which were not.

[64] The RAD did not engage in circular reasoning, as argued by Mr. Agh. The RAD made specific credibility findings, which supported the overall finding that Mr. Agh lacked credibility, and also found that important documents to support his claim—in particular, the police report regarding the attempted extortion, which was the precipitating incident for the subsequent

allegations—were unreliable. Contrary to Mr. Agh’s submission that “most” of the credibility issues were minor, the RAD found that several credibility issues went to the heart of the claim.

[65] Moreover, the cumulative effect of even minor inconsistencies can support an overall adverse credibility finding. In the present case, the RAD characterized two inconsistencies as minor: regarding the date Mr. Agh moved his family and his description of the kidnapping. However, these events were relevant to Mr. Agh’s claim. It was open to the RAD to consider these inconsistencies along with Mr. Agh’s evolving and inconsistent account of whether the police provided surveillance, whether the police spoke with him only once or on four other occasions, the lack of any mention in the police report regarding the alleged kidnapping of the alleged extortion attempt or the assailants, the lack of a reasonable explanation for not providing the details of the alleged extortion to the police, and his inconsistent submission about whether other medical reports were available.

[66] The RAD’s credibility finding arising from the inconsistency in the dates when Mr. Agh moved his family was based not only on the different dates but also on Mr. Agh’s explanation—which was not really an explanation at all. The RAD reasonably found that the explanation—that he returned to Erbil to stay with his uncle—was a “third version” of events and that this third version was also clearly inconsistent with Mr. Agh’s statement in his BOC that he remained at his brother’s house until he left for the US.

[67] With respect to the police report of the attempted extortion, the RAD did not find, as did the RPD, that it was fraudulent, but rather that it was not reliable because it omitted many details

of the alleged incident. In addition, the RAD did not find Mr. Agh's explanation for the lack of detail to be reasonable, noting that his statement that he did not want to make a "big deal" out of it and only wanted to ensure his safety was not in keeping with the act of making a report to the police or the alleged nature of the threat.

[68] Mr. Agh submits that the RAD's findings regarding the police report and medical report are implausibility findings, which are based on the RAD imposing its view of what these reports should have set out by Canadian standards. Mr. Agh points to the principle in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[69] While a police report in Iraq may differ from that of typical Canadian police reports, the RAD would be aware of the differences. Moreover, Mr. Agh did not make this argument to the RAD, but rather he sought to explain the lack of detail in the police report as due to his desire not to make a "big deal" out of the extortion and only to obtain some protection. His explanation is not logical and was reasonably rejected by the RAD; if it is worth making the police report in

order to obtain protection, as he claimed, then it is worth providing the details. The police could not provide him with protection without knowing from whom he sought protection.

[70] Mr. Agh also points to the National Documentation Package on Iraq, in particular, the Human Rights Watch Report “Flawed Justice: Accountability for ISIS Crimes in Iraq,” December 2017, which notes that victim participation in prosecutions for counterterrorism is not encouraged. This document does not support Mr. Agh’s current submissions regarding the RAD’s assessment of the police report as unreliable. Mr. Agh did not tell the police that his attempted extortion was from Islamic fundamentalists. The Human Rights Watch Report, which notes that victims’ input is not taken into account in prosecutions, does not address why Mr. Agh did not provide this information.

[71] Mr. Agh’s arguments that his documents should be accepted for what they say, not what they do not say, overlooks that he bears the onus to establish his claims with credible and sufficient evidence. The police reports of both the attempted extortion and the alleged kidnapping simply do not say enough. The police report of the alleged kidnapping did not make any link with the alleged attempted extortion by Islamic fundamentalists, which is the basis of his claim. Given that Mr. Agh claims to fear persecution to the extent that he would—as he stated—move his family from Erbil and then flee Iraq, it would be reasonable to expect that he would report the circumstances of the extortion, which led to the alleged threats and his alleged kidnapping, to the police.

[72] With respect to the medical report (the juridical physician's report), the RAD addressed the allegations regarding errors in interpretation and found that there were none. Mr. Agh was clearly asked whether he had any other records and he responded that he did not.

[73] Although Mr. Agh again submits that a document should be assessed for what it says, the single medical report vaguely describes Mr. Agh's injuries and does not shed any light on who was responsible or why Mr. Agh was assaulted. Moreover, the RAD's finding with respect to the medical report is not only that it was unreliable, but also that Mr. Agh again provided inconsistent evidence; in his submissions to the RAD he stated that he did have access to other records of his treatment and in his testimony to the RPD he stated that did not have other records. If he had other records, he should have provided them.

[74] In conclusion, the RAD reasonably found, due to its own credibility findings based on inconsistencies in the evidence on relevant aspects of the claim, and due to insufficient evidence, that the RPD had correctly found that Mr. Agh had not established his claim pursuant to sections 96 or 97.

JUDGMENT in file IMM-3952-20

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3952-20

STYLE OF CAUSE: HAMZA OMAR BAPIR AGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 16, 2021

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: JANUARY 5, 2022

APPEARANCES:

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