

Federal Court



Cour fédérale

Date: 20220712

Docket: IMM-5579-21

Citation: 2022 FC 1025

Ottawa, Ontario, July 12, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

BIBI PARI ZAHIRI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Bibi Pari Zahiri, seeks judicial review of a decision of the Refugee Protection Division (“RPD”), dated June 14, 2021, finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant fears persecution in Afghanistan at the hands of the Taliban due to her husband's work with the Afghan government. The RPD dismissed the Applicant's claim because it found the Applicant's allegations to be vague and based on speculation, and that the Applicant had not provided reliable corroborative evidence to substantiate her claim.

[3] The Applicant submits that the RPD erred in drawing a negative inference from the lack of corroborative evidence provided and in rejecting the Applicant's husband's employment documents.

[4] For the reasons that follow, I find that the RPD's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is 57-year-old citizen of Afghanistan. She has no formal education or employment history and cannot read or write. The Applicant and her husband, Abdul Zahir Zahiryani, have nine children together. Their eldest daughter lives in Mississauga, Ontario and their second-oldest child lives in Mazar-e-Sharif, Afghanistan. Since 2012, the Applicant, her husband and seven of their nine children were living together in Kabul, Afghanistan.

[6] The Applicant alleges that in 2012, her husband began working for the Afghanistan Ministry of Counter Narcotics on strategy development and policy implementation and

monitoring. The Applicant states that her husband worked with the Bureau of International Narcotics and Law Enforcement Affairs within the US Department of State, the United Nations Office on Drugs and Crime, the Colombo Plan, and the Afghan Ministry of Public Health.

[7] The Applicant claims that her husband received threats due to his work, yet he did not tell her about these threats until after she arrived in Canada because he did not want to trigger her high blood pressure.

[8] The Applicant explains that on January 29, 2020, her husband was stopped by two individuals with covered faces who asked him if he was “Dr. Zahir”. Her husband was able to seek help from security guards and he found an opportunity to run away. The Applicant’s husband did not tell her about this incident at the time.

[9] On the evening of February 3, 2020, the Applicant states that she received a call from her husband advising her that he was busy at the office and would be home late. He told her not to let the children go outside because it was not safe. The Applicant’s husband later called back to let her know that he would be staying at a colleague’s home for the night. He also informed her that he would be taking the children to his nephew’s wedding in Taloqan city the next day. Their youngest son would remain with the Applicant in Kabul. This was unexpected to the Applicant, as her husband had previously stated that he would not be attending the wedding. The Applicant’s husband came home early in the morning of February 4, 2020, and told the Applicant that he was taking the six children to Taloqan, leaving the Applicant and their youngest child behind. The Applicant did not ask why he chose to leave them behind.

[10] The Applicant states that her husband later told her that on the night of February 3, 2020, he was being followed by an SUV when he left work. Her husband left his car at the market before hiding at the Applicant's sister's apartment for the night. On February 4, 2020, the Applicant's husband took the six children to Mashtan, a mountain village in the Farkhar district, and not Taloqan as he had told her. The Applicant's husband did not take her with them because he worried that her history of back surgery would not allow her to travel to the mountains or remote areas, where there were no doctors or medical facilities available. The Applicant alleges that her husband and four of their children continue to live in hiding in Mashtan.

[11] On February 7, 2020, the Applicant states that she was at the local pharmacy with her son when a car stopped beside them. Three men with covered faces jumped out of the car and tried to grab the Applicant. When the Applicant and her son screamed to draw attention, the masked men let go of the Applicant and drove away.

[12] On February 8, 2020, the Applicant and her son went to stay with her daughter in Mazar-e-Sharif. A week later, her husband asked the Applicant to go to the US and Canada to visit family and to leave their son with their daughter in Mazar-e-Sharif. On February 21, 2020, the Applicant flew to New York.

[13] On February 27, 2020, the Applicant entered Canada as an exception to the Safe Third Country Agreement as her daughter resides in Canada. The Applicant states that after she arrived in Canada, her husband told her about the threats he had been receiving and she subsequently made a claim for refugee protection.

[14] The RPD hearing took place on April 26, 2021. Shortly before the hearing, the Applicant's counsel advised the RPD that the Applicant's daughter would be called as a witness because it had recently come to counsel's attention that the Applicant had been having difficulties recalling dates and details and her daughter was aware of the events that had occurred in Afghanistan. The Applicant's counsel also provided copies of the Applicant's medications and advised that the medication she was taking affected her capacity. The Applicant and her daughter were questioned separately at the hearing.

B. *Decision Under Review*

[15] On June 14, 2021, the RPD refused the Applicant's claim for refugee protection. The determinative issue was credibility.

[16] The RPD found that the Applicant had failed to meet her burden to establish her claim. While the RPD considered the Applicant's alleged difficulties with dates and details, the RPD noted that no evidence had been filed in support of the assertion that her medications negatively affected her ability to testify. Overall, the RPD found that the Applicant's testimony was vague and unreliable. Other than the attempted kidnapping, the Applicant had no direct or first-hand knowledge of the events alleged in her narrative. She was unable to elaborate on her narrative or address outstanding concerns about the allegations. She failed to establish that her husband worked for the Afghan government in counter narcotics, that he was targeted by the Taliban due to his work, that her husband and children fled to a remote village due to this targeting, or that she was a victim of an attempted kidnapping by the Taliban as a result of her husband's work.

[17] The RPD took issue with the Applicant's complete reliance on information provided by her husband regarding her husband's risk profile, the agent of persecution, and the alleged incidents. The RPD found that much of the Applicant's testimony and narrative were based on speculation and not grounded in any evidentiary basis. In particular, the RPD found that her belief that the Taliban were behind her attempted kidnapping was based entirely on her husband's speculation. Similarly, the RPD found that there was no indication that the masked men who approached her husband on January 29, 2020 were members of the Taliban who were targeting him because of his employment.

[18] The RPD also drew a negative inference regarding the Applicant's overall credibility. Specifically, the Applicant had testified that she did not learn about the underlying events causing her departure from Afghanistan until after she arrived in Canada, yet in her interview at the port of entry, the Applicant had advised the officer that she intended to make a refugee claim and was fleeing danger and instability in Afghanistan. The RPD did not accept that the Applicant would not have known that she needed a visa to enter Canada and found that when asked about this, her testimony was unclear and evasive.

[19] The RPD further found that the documents provided to prove the Applicant's husband's employment did not reliably demonstrate that he was employed by the Afghan government. The Applicant was not able to explain missing information and inconsistencies in the employment documents.

[20] The RPD acknowledged that corroboration is not required in every claim. However, given the credibility concerns surrounding the Applicant's testimony and evidence, the RPD found that such evidence was necessary in this case. The Applicant did not provide any reliable evidence to corroborate her allegations. The RPD also took issue with the lack of evidence provided from her husband. While it accepted that her husband was unable to testify at the hearing due to the instability in Afghanistan, the RPD found that the Applicant had ample time to obtain written evidence from him, which she failed to do. The RPD also found that the Applicant's daughter's testimony suffered from the same reliability issues as the Applicant, given that she had no direct knowledge of the allegations.

III. Preliminary Issue

[21] The Applicant identifies the Minister of Immigration, Refugees and Citizenship as the Respondent in this application. The proper Respondent is the Minister of Citizenship and Immigration (*IRPA*, section 4(1); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)). Accordingly, the style of cause is hereby amended.

IV. Issue and Standard of Review

[22] The only issue in this application for judicial review is whether the RPD's decision is reasonable.

[23] The Applicant does not make submissions on the applicable standard of review. The Respondent submits that the applicable standard of review in evaluating the RPD's decision is

reasonableness. I agree with the Respondent. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”), the Supreme Court of Canada confirmed that reasonableness is the presumptive standard when reviewing an administrative decision. I find that the issue raised does not warrant a departure from this presumption (at paras 10, 16-17).

[24] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[25] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

V. Analysis

[26] The Applicant submits that it was unreasonable for the RPD to require corroborative evidence when her testimony was consistent with her narrative, and her evidence was consistent with the documentary evidence. The Applicant argues that the presumption of truthfulness should have applied. Given that the RPD accepted that the Applicant's claim of risk arose from her husband's employment, it was unreasonable to expect her to provide first-hand knowledge of the threat to her husband. Further, the RPD erred in faulting the Applicant for failing to have her husband testify at the hearing, given that she provided an explanation for his inability to testify.

[27] The Respondent submits that it was reasonable for the RPD to draw a negative inference from the lack of corroborative evidence to support the Applicant's allegations. The Applicant had no first-hand knowledge of the incidents related to her alleged risk. It was therefore reasonable for the RPD to expect evidence from her husband. The RPD accepted that the Applicant's husband was not available to testify at the hearing, yet this did not explain the lack of written evidence from him.

[28] I agree with the Respondent. While this Court has found that there is no general requirement for corroboration as it is a corollary to the presumption of truthfulness, this presumption is rebuttable (*Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 27, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at p 305). This Court has cautioned against making adverse credibility findings solely on the basis of the absence of corroborating evidence. However, the RPD may consider the absence of

such evidence in assessing a claimant's credibility if there is no reasonable explanation for its absence and if there are legitimate reasons to question the truthfulness of the claimant's allegations (*Chen v Canada (Citizenship and Immigration)*, 2019 FC 162 at para 28; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10).

[29] The RPD did not make its adverse credibility findings on the sole basis that the Applicant had failed to provide corroborating evidence. The RPD made it clear that the presumption of truthfulness was rebutted in this case due to the lack of detail in the Applicant's testimony. Contrary to the Applicant's assertion, the RPD did not expect the Applicant to have first-hand knowledge of the incidents she alleged—in fact, the RPD accepted that the Applicant was not present at these events and her account was based entirely on what her husband had told her. Given this, it was reasonable then for the RPD to expect the Applicant's husband to provide a first-hand account of what happened. As the Respondent submits, the RPD accepted that her husband was unable to call in as a witness due to the instability in Afghanistan, but found that the Applicant could have obtained written evidence from her husband. I find that this was a reasonable expectation, especially given the RPD's concerns about the vagueness of the Applicant's testimony and her complete reliance on her husband's account of events. The RPD, in turn, had valid reasons to find that the presumption of truthfulness had been rebutted and that corroborating evidence was required to support the Applicant's claim.

[30] The Applicant further submits that the RPD's concerns about the reliability and trustworthiness of the Applicant's husband's employment documents were unfounded. The Applicant argues that the RPD conducted a microscopic analysis of the inconsistencies in the

documentation supporting the husband's employment. It was unreasonable for the RPD to expect the Applicant, who cannot read, to provide an explanation for these inconsistencies. The Applicant asserts that the RPD conducted a similar microscopic analysis in impugning the difference in image quality of the Applicant's husband's employment ID cards and the difference in spellings of her husband's last name on the cards.

[31] The Respondent submits that the Applicant does not dispute that there were discrepancies in her husband's employment ID cards and certificates. The Respondent states that the RPD highlighted several discrepancies in the documents, including that one of the ID cards had expired prior to the incidents and that her husband's name was misspelled. The RPD acknowledged the cultural context and the potential for misspelling due to translation, but reasonably concluded that the difference in the names on the documents compounded the existing concerns and the lack of reasonable explanation offered for the discrepancy.

[32] I agree with the Respondent. The RPD is entitled to question the authenticity of a document where there are discrepancies on the face of the document that one would not reasonably expect to find (*Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at para 87). The RPD highlighted several discrepancies in the Applicant's husband's employment documents, including the difference in image quality of the employment ID cards, the difference in spelling of the Applicant's husband's name and Applicant's father-in-law's name on the employment ID cards, and the fact that one of the cards was expired before the alleged incidents occurred. The RPD gave the Applicant an opportunity to explain these discrepancies. While it is understandable that the Applicant was unable to provide a reasonable explanation of her own,

she testified that she had spoken to her husband about the documents. I therefore do not find that the RPD conducted a microscopic analysis of the documents. While the RPD may not have found that any of these discrepancies alone would call into question the authenticity of the documents, taken together and in combination with the RPD's existing credibility concerns, I find the RPD reached a reasonable conclusion.

VI. Conclusion

[33] I find that the RPD's decision was reasonable given the Applicant's vague testimony, her lack of first-hand knowledge of the alleged incidents, and her complete reliance on her husband's account of events, which were also speculative in nature. Furthermore, it was reasonable of the RPD to draw a negative inference from the lack of corroborative evidence provided and to reject the Applicant's husband's employment documents. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5579-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is changed to reflect the "Minister of Citizenship and Immigration" as the proper Respondent.
2. The application for judicial review is dismissed.
3. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5579-21

STYLE OF CAUSE: BIBI PARI ZAHIRI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 26, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: JULY 12, 2022

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