

Federal Court



Cour fédérale

**Date: 20220727**

**Docket: IMM-2125-21**

**Citation: 2022 FC 1126**

**Ottawa, Ontario, July 27, 2022**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**ZAFAR IQBAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Zafar Iqbal, seeks judicial review of a decision of the Refugee Protection Division (“RPD”), dated March 3, 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 Pakistan based on his sexual orientation as a gay man. The RPD dismissed the Applicant's claim because it found the Applicant failed to establish his personal and national identity, and found that the Applicant was not credible based on inconsistencies between the Applicant's testimony and his Basis of Claim ("BOC") narrative.

[3] The Applicant submits that the RPD's decision is unreasonable because the RPD erred in evaluating the authenticity of his passport and National Identity Card ("NIC") when assessing his identity. The Applicant also argues that the RPD erred in its negative credibility findings.

[4] For the reasons that follow, I find the RPD's decision to be unreasonable. Accordingly, this application for judicial review is allowed.

## II. **Facts**

### A. *The Applicant*

[5] The Applicant is a 34-year-old citizen of Pakistan and a gay man.

[6] In December 2010, the Applicant states that he met a young man named Shahid Imran ("Imran") at a religious festival. They quickly became good friends, and then lovers.

[7] In February 2013, the Applicant alleges that a neighbour saw him and Mr. Imran while they were being intimate with one another. The neighbour told the Applicant's father about what he had witnessed. Following this, the Applicant states that his father and brother assaulted him,

leaving him with bruising and swelling on his face and body. Rumours of the incident spread throughout the community, and the Applicant was subjected to bullying and humiliation.

[8] In September 2016, the Applicant states that he began a romantic relationship with a man named Sarwar (“Sarwar”). Given his previous experience, the Applicant states he was careful to keep their relationship private. Occasionally, Sarwar would invite the Applicant to his home where they were physically intimate.

[9] On April 20, 2019, the Applicant allegedly visited Sarwar’s home at night and was intercepted by Sarwar’s brother while leaving. Believing the Applicant was a thief, Sarwar’s brother began beating the Applicant until the Applicant and Sarwar revealed the reason for the Applicant’s visit. The Applicant states that gossip and rumours throughout his village followed the incident. The Imam from the local mosque reprimanded him for engaging in a sinful act and called him an “impure homosexual” who was “spreading filth in the Muslim society and deserved to be stoned to death.”

[10] The Applicant decided to leave Pakistan. With the help of his father, he employed an agent who secured him a US visa. The Applicant travelled to the US and crossed into Canada on August 27, 2019.

B. *Decision Under Review*

[11] In a decision dated March 3, 2021, the RPD found the Applicant is neither a Convention refugee pursuant to section 96 of the *IRPA*, nor a person in need of protection pursuant to subsection 97(1) of the *IRPA*.

[12] The RPD rejected the Applicant's claim for two reasons. First, the RPD found that the Applicant failed to establish his personal and national identity. Second, the RPD took issue with the Applicant's credibility, stemming from inconsistencies between the Applicant's testimony and the allegations in his BOC narrative.

[13] In finding the Applicant failed to establish his identity, the RPD had concerns about the authenticity of the passport submitted by the Applicant. Specifically, the RPD took issue with the fact that the Applicant's passport contains a South African spousal visa, yet the Applicant testified that he was never married and indicated that he had never travelled outside Pakistan prior to entering the US. The RPD was not satisfied with the Applicant's explanation that the agent he hired had placed the South African visa in his passport to show travel history when applying for the US visa. Noting that the Applicant's passport contained the US visa, the RPD concluded that the passport was obtained fraudulently to obtain the US visa. Based on the finding that the Applicant's passport is fraudulent, the RPD also doubted the authenticity of the Applicant's NIC, noting that fraudulent documents are easily obtained in Pakistan. The RPD found that the issuance of the NIC in February 2019, less than two months before the April 20, 2019 incident that led the Applicant to leave Pakistan, was "too fortuitous to be believed".

[14] The RPD also noted that the Applicant's passport indicates it was issued on September 6, 2016. When the Applicant was asked during the RPD hearing why he had applied for a passport, he simply stated that he "wanted a passport around". When the RPD remarked that passports are usually obtained for international travel, the Applicant replied that there had been a possibility for him to join his family for Hajj in Saudi Arabia. Finding the Applicant's testimony evasive and unsatisfactory, the RPD made a negative credibility finding.

[15] Additionally, the RPD drew an adverse credibility finding from the Applicant's testimony, finding that he did not testify in a straightforward manner. When the Applicant was asked to provide additional details about the February 2013 incident involving his former romantic partner, Mr. Imran, the Applicant was unable to provide much detail beyond what was already in his BOC narrative. The RPD also noted the inconsistencies in the Applicant's testimony regarding when his community first discovered his sexual orientation: he first said this occurred in 2010, and then later stated it occurred in 2013. When asked about the discrepancy, the Applicant stated he had made a mistake and clarified that 2013 was when his family first found out he is gay. Finally, the RPD drew a negative credibility inference from the Applicant's account of the April 2019 incident. The RPD found that since Sarwar lived with his family, the Applicant was known as a platonic friend of Sarwar's. Therefore, it was implausible that Sarwar's brother mistook the Applicant for a thief on the night of the incident. When this was put to the Applicant, the Applicant stated that he and Sarwar's brother did not know each other.

III. **Issue and Standard of Review**

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

[17] The parties concur that the applicable standard of review is reasonableness. I agree (*Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 884 at para 13; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at para 25).

[18] 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).

[19] 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).

#### IV. Analysis

[20] The Applicant submits that the RPD erred in finding that he did not establish his personal or national identity, and that his passport and NIC are fraudulent. The RPD’s finding was based on speculation and a flawed assessment of his testimony. The Applicant argues that the RPD engaged in a concerted effort to reject or minimize his identity evidence, rather than fairly and reasonably reviewing the evidence provided (*Abdullahi v Canada (Citizenship and Immigration)*, 2015 FC 1164 (“*Abdullahi*”) at para 10). For instance, the RPD unreasonably rejected the Applicant’s explanation that, despite how he has never been married or visited South Africa, it was the agent who placed the South African spousal visa in his passport to establish a travel history. Based on the conclusion that the Applicant’s passport is fraudulent and that it is easy to obtain fraudulent documents in Pakistan, the RPD unreasonably found his NIC to also be fraudulent. The Applicant relies on this Court’s decision in *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 to submit “[...] evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries.” (at para 7). The Applicant further submits that the RPD failed to engage in a fair assessment of his credibility based on the finding that he is “not trustworthy”.

[21] The Respondent maintains that it was open to the RPD to find that the Applicant had not established his personal and national identity. During his testimony, the Applicant was evasive about why he had obtained his passport in 2016, and provided an unsatisfactory explanation

about why the passport contained a South African spousal visa. It was reasonable of the RPD to find that the Applicant's testimony was not straightforward, given how he required prompting. It was also reasonable of the RPD to give less weight to the Applicant's NIC, given the suspicious coincidence that it was issued less than two months before the Applicant left Pakistan.

[22] I do not find that the RPD engaged in a reasonable review of the evidence presented by the Applicant to establish his personal and national identity. I agree with the Applicant that the RPD was overly critical of the Applicant's passport and NIC, and unreasonably rejected the Applicant's explanation for the South African spousal visa in his passport. In its assessment of the Applicant's passport, the RPD's decision states:

I asked the claimant if, prior to traveling to the US in 2019, he had travelled outside Pakistan. The claimant responded in the negative. I referred the claimant to the passport which contains a 'Relative's Visa (Spouse)' issued by Home Affairs of the Republic of South Africa (SA) to the bearer of the passport on November 6, 2017 and date stamps indicating that the holder of the passport exited SA on December 28, 2017 and entered Pakistan on December 29, 2017. I then asked the claimant to explain the discrepancies between his testimony and the information contained in the passport. The claimant testified that an agent who assisted him in obtaining a US visa had taken his passport. He added that when the passport was returned to him he saw the SA visa and exit and entry stamps and the agent advised him not to worry about it because the visa and stamps had been placed there to establish a travel history. Upon being asked, the claimant confirmed that it was the agent who had place the visa and the stamps in his passport. For the following reasons I am not persuaded by this explanation. The passport contains a US B1/B2 visa, issued on July 10, 2019. I, thus, conclude that the US authorities accepted his passport, which contained the SA visa and exit/entry stamps, as genuine. I find, therefore, on a balance of probabilities, that the passport was obtained fraudulently by the claimant and then used to obtain a US visa.

[Emphasis added]



[23] It is unclear how the evidence before the RPD supports its finding that the passport is fraudulent, particularly since the RPD acknowledged that the passport was deemed genuine when the Applicant entered the US. Despite this conclusion, the RPD maintained that the Applicant's explanation is not persuasive and that the fraudulent passport was used by the Applicant to obtain a US visa. I also agree with the Applicant's position that the RPD unreasonably dismissed the Applicant's NIC. In discussing the authenticity of the NIC, the RPD states:

Given my finding above, that the claimant provided a fraudulent passport, I find, on a balance of probabilities, that the NIC is also fraudulent. I note that [...] it is relatively easy in Pakistan to use fraudulent (altered or counterfeit) feeder documents to obtain genuine documents, such as Computerized National Identity Cards and passports [...]

[24] I find that the RPD failed to assess the document on its own merits and raised no issues with the quality of the NIC. Rather, the RPD speculated about the authenticity of the NIC because of the date it was issued, and based its conclusion on the alleged fraudulent nature of the Applicant's passport and the availability of fraudulent documents in Pakistan. As noted by this Court in *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paragraph 29, the mere availability or prevalence of fraudulent documents in a country does not constitute incontrovertible evidence of fraud:

[29] It is unfortunate that generalizations about the "easy availability of fraudulent documents" are frequently relied upon as though they constitute incontrovertible evidence of fraud. Where they appear in country condition documents, these generalizations can only properly serve to alert the decision-maker to the issue. The finding about the authenticity of a document cannot depend on

even be influenced by mere suspicion from the reputation of a given country. Each document must be analyzed individually and its authenticity decided on its own merits. If there is evidence of fraud, it speaks for itself and the decision-maker should accord it no probative value. The alternative – that is, relying on the prevalence of fraud in a given country to impugn the authenticity of a document – amounts to finding guilt by association.

[25] Overall, I do not find that the RPD fairly and reasonably assessed the Applicant's identity documents (*Abdullahi* at para 10). I also agree with the Applicant's submission that in assessing the Applicant's identity documents, the RPD made findings that trickled into its assessment of the Applicant's overall credibility. The RPD relied on its conclusion that the Applicant's identity documents were fraudulent in order to support its finding "that the claimant is not trustworthy". In doing so, the RPD's credibility assessment was tainted by its identity findings.

[26] I find that these errors are sufficient to find the RPD's decision unreasonable. While I find it unnecessary to address the remainder of the Applicant's submissions on the RPD's credibility findings, I do agree with the Applicant that the RPD's decision is also characterized by a search for inconsistencies and implausibilities, demonstrating an unreasonably microscopic analysis of the evidence to impugn the Applicant's credibility (*Khan v Canada (Citizenship and Immigration)*, 2022 FC 920 at para 16, citing *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA) at para 9; *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4; and *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23).

V. **Conclusion**

[27] For the reasons above, I find the RPD's decision is unreasonable. Accordingly, this application for judicial review is allowed. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-2125-21**

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

1. The application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination.
2. There is no question to certify.

"Shirzad A."

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Judge

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

**DOCKET:** IMM-2125-21

**STYLE OF CAUSE:** ZAFAR IQBAL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

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