

Federal Court



Cour fédérale

**Date: 20221004**

**Docket: IMM-2343-21**

**Citation: 2022 FC 1373**

**Toronto, Ontario, October 04, 2022**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**AKHTRA ABDUL MAJEED BALOCH  
HAJRA BANO  
AFFAN BALOCH  
AFRAH AKHTAR BALOCH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision dated February 22, 2021, made by a member of the Refugee Protection Division under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”). The RPD found the applicants were neither Convention refugees under section 96 or persons in need of protection under section 97 of the *IRPA*.

[2] For the reasons below, the application is dismissed.

**I. Facts and Events Leading to this Application**

[3] The applicants are a family. The applicant, Mr Akhtar Baloch, is the father and was the principal claimant for refugee protection. He is a citizen of Pakistan. His spouse is the applicant Ms Hajra Bano, who is also a citizen of Pakistan. The other applicants are two of their three children.

[4] Mr Baloch and Ms Bano were both born in Karachi, Pakistan and grew up there. Mr Baloch initially practised the Sunni Muslim faith. Ms Bano grew up as a Shia Muslim. They met because their fathers were friends. Their relationship faced some challenges. The narrative in Mr Baloch's Basis of Claim form disclosed that after meeting Ms. Bano, he found that the only way to see her was to go to the same Imam Bargah she attended. In about 2004, he converted to the Shia Muslim faith and attended the Imam Bargah. As a convert, Mr. Baloch stated that from 2004 to 2006, he faced harassment and discrimination from Sunni Muslims and threats from extremists.

[5] The couple fell in love in early 2005, but did not disclose it to her parents because she had been engaged, since she was young, to another man. By this time, Mr Baloch was working in Dubai. Ms Bano eventually told her mother about Mr Baloch in late 2005. Her mother told her she was already engaged and had no right to choose her husband. However, the relationship continued.

[6] In late 2006, Mr Baloch returned to Karachi to visit. He met with Ms Bano. Her mother became aware of their meeting and told her fiancé. Mr Baloch's narrative stated that the fiancé and his "goon allies" attacked his house and beat him up.

[7] At some point in early 2007, the couple's families agreed they could marry. In May 2007, their *nikkah* was solemnized in Dubai, United Arab Emirates (UAE). However, their marriage was not been accepted by everyone in their families, nor by the former fiancé.

[8] Following their 2007 marriage, Mr Baloch and Ms Bano lived in the UAE. They have three minor children. The eldest is a citizen of Pakistan; the second is a citizen of the United States; and the third is a baby born in Canada.

[9] While living in the UAE, Mr Baloch returned to Pakistan from time to time. While in Pakistan in June 2019, he received threatening phone calls. He feared for the lives of his family.

[10] In August 2019, the family travelled from Dubai to the United States. On September 13, 2019, they presented themselves at the Canadian border and claimed refugee protection under the *IRPA*. Their claims were based on their fear of persecution in Pakistan based on their religion.

## **II. The Decision under Review**

[11] The RPD summarized the claim for protection as follows:

In summary, they allege that the principal claimant was persecuted because he converted from the Sunni to Shia faith. They allege that the principal claimant received threatening calls and that because the principal claimant converted from Shia to Sunni, these calls must've been made by members of a Sunni extremist group, the Sipah-e-Sihaba. They allege that they fear the Sipah-e-Sihaba. They further allege that they fear [Ms Bano's] cousin, to whom she was promised to marry.

[12] The RPD found that there was a link between the applicants' claim that Mr Baloch received threats because he converted from Sunni to Shia Muslim and the Convention ground of religion in *IRPA* section 96. Ms Bano and the minor applicants' fears were connected to the ground of persons in a particular social group as family members of a person who is persecuted because of religion. The RPD found no Convention nexus with the harms they alleged at the hands of the fiancé, which could only be assessed under *IRPA* section 97.

[13] The RPD concluded that the applicants did not provide sufficient consistent and credible evidence to demonstrate that they had a well-founded fear of persecution from the Sipah-e-Sihaba ("SSP"). The RPD found that material aspects of the claims were not credible, based on discrepancies between Mr Baloch's testimony, his Basis of Claim narrative and the statements he made to a Canada Border Services Agency ("CBSA") officer at the Port of Entry ("POE").

[14] The central issue giving rise to credibility concerns was Mr Baloch's identification of the agents of persecution. The RPD found that the agents of persecution described in Mr Baloch's Basis of Claim narrative were Ms. Bano's former fiancé and his family. Although his narrative referred to threatening phone received in June 2019, it did not mention the "agents of these calls".

[15] After considering Mr Baloch's and Ms Bano's testimony at the hearing, the RPD concluded:

- (a) Mr Baloch's Basis of Claim narrative did not identify the SSP as the agents of persecution;
- (b) The identity of the agents of persecution was "based on speculation";

- (c) no relevant details about the SSP were found in supporting affidavits from friends or in a summary of a report to police about an attack on Mr Baloch's brother in September 2020;
- (d) Mr Baloch did not disclose the identity of the agents of persecution to the CBSA officer when the family arrived at the Canadian border in September 2019; and
- (e) Ms. Bano did not witness the alleged threats and was not herself threatened.

[16] The RPD also found that the country condition evidence was insufficient to support a finding that extremist groups personally targeted individuals with a profile similar to the applicants.

[17] The applicants applied to this Court for judicial review of the RPD's decision.

### **III. Issues Raised by the Applicants**

[18] The applicants raised the following issues to challenge the reasonableness of the decision:

- (a) the RPD breached procedural fairness by failing to provide Ms Bano with simultaneous translation of Mr Baloch's testimony during the hearing;
- (b) the RPD erred in placing disproportionate weight on the content of the CBSA officer's POE notes of an interview with Mr Baloch;
- (c) the RPD erred in drawing adverse credibility findings based on omissions in the Basis of Claim narrative; and
- (d) the RPD's decision was unreasonable because it failed to canvass the documentary evidence showing that Shia Muslims were at risk in Pakistan.

[19] I will first address the applicant's position on procedural fairness, as it was the focus of their submissions at the hearing in this Court. Then I will analyse their submissions challenging the RPD's decision based on the principles set out by the Supreme Court in *Canada (Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653, 2019 SCC 65.

#### IV. Procedural Fairness

[20] The Court's review of procedural fairness issues involves no deference to the decision maker. The question is whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual(s) affected: *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63; *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, esp. at paras 49 and 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[21] Absent an issue about an apprehension of bias, the ultimate question for procedural fairness is whether the applicant knew the case to meet and had a meaningful opportunity to be heard – a “full and fair” chance to respond. The Court determines whether a fair and just process was followed: *Denso Manufacturing Canada, Inc. v Canada (National Revenue)*, 2021 FCA 236, at paras 35 and 44; *Canadian Pacific Railway*, 2018 FCA 69 at paras 44 and 54; *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990, at paras 21-22.

[22] The applicants submitted that RPD failed to provide them with procedural fairness because it did not provide Ms Bano with simultaneous translation of Mr Baloch's testimony during the hearing. They submitted that Mr Baloch proceeded with the hearing in English. However, Ms Bano did not speak English and was unable to follow her husband's testimony during the hearing as it was not interpreted for her. The applicants noted that Ms Bano was never asked for her input on this issue. Because Mr Baloch's testimony involved considerations at the heart of the applicants' refugee claim, Ms Bano's understanding of his testimony was critical. The applicants also submitted that demonstrating prejudice is not necessary to establish a breach of procedural fairness owing to a failure to provide interpretation (relying on *R v Tran*, [1994] 2 SCR 951).

[23] The respondent submitted that there was no breach of procedural fairness in this case. The respondent noted that the applicants were represented at their RPD hearing by experienced counsel (who are not counsel on this application). The respondent submitted that the RPD did canvass the issue of translation with the applicants and counsel at the outset of the hearing. According to the respondent, the applicants and their counsel confirmed that they were content to proceed as the member proposed: that Mr Baloch testify in English and Ms Bano testify through an interpreter. The also respondent noted that that at no time during the hearing did counsel raise an objection about inadequate translation or the failure to provide translation to Ms Bano. The respondent submitted that issues of procedural fairness must be raised at the earliest opportunity and a failure to do so amounts to an implied waiver of any perceived breach. The respondent further submitted that the RPD member raised translation to obtain the applicants' input and agreement on how to proceed. On that basis, their failure to raise the issue during the hearing

amounted to a waiver of the right to object to the absence of translation later, at this application for judicial review.

[24] At the hearing in this Court, both parties made detailed reference to the transcript of the RPD hearing, and specifically to the passages in which the RPD member, the applicants and their counsel discussed translation and interpretation issues. In addition, the applicants acknowledged that the first time they raised any concerns about translation or procedural fairness was when they filed their materials for this application for judicial review.

[25] Although the applicants noted the roots of the right to interpretation in section 14 of the *Canadian Charter of Rights and Freedoms*, their submissions solely concerned procedural fairness.

[26] Apart from *Tran*, the applicants did not refer to any decision of this Court, the Federal Court of Appeal or any other court to support their position. At the hearing, I raised *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 FC 85, in which the Federal Court of Appeal held that interpretation services provided to refugee claimants must be continuous, precise, competent, impartial and contemporaneous: at para 4. While actual prejudice need not be demonstrated, the applicant must show that the interpretation errors were consequential (i.e., they must be real, significant, serious or non-trivial), material to the decision maker's findings, and related to the applicant's ability to answer questions or present the refugee claim: *Mohammadian*, at para 4; *Paulo*, at paras 28-29, 33 and 41; *X.Y. v*



*Canada (Citizenship and Immigration)*, 2020 FC 39, at paras 32-33; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497, at para 14.

[27] In *Tran*, the Supreme Court held that the *Charter* right to an interpreter may be waived (except in some criminal matters) and described how a waiver may be effected in the criminal law context. In *Mohammadian*, a refugee case, the Federal Court of Appeal noted that at first instance, Pelletier J. (who was then a member of this Court) held that that a waiver of the claimant's *Charter* right under section 14 resulted if an objection to the quality of interpretation was not raised by the claimant at the first opportunity during the hearing: at para 13. The Federal Court of Appeal upheld that conclusion (at paras 18-19). It found that when the claimant's "conduct during the [hearing] and for some time afterward is weighed with his undoubted knowledge of his right, it is difficult to construe that conduct as other than a clear indication that the quality of interpretation was satisfactory to him during the hearing itself" (at para 19).

[28] As Justice Gleason held in *Mah*, the Federal Court of Appeal concluded that "waiver of the right to object to inadequate translation may be inferred from conduct in refugee cases, noting that the volume of workload before the Board necessitates a more flexible approach to waiver than that which is applied in the criminal context": *Mah v Canada (Citizenship and Immigration)*, 2013 FC 853, at para 13. The Court will consider whether the claimant was aware of the existence and extent of the translation problems at the hearing: *Mah*, at paras 14-15. The burden to show a waiver is on the respondent: *Mah*, at para 18.

[29] As noted, the Federal Court of Appeal also held in *Mohammadian* that concerns with the interpretation must be raised at the first opportunity: *Mohammadian*, at paras 13 and 18-19. See also: *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161, at para 3; *Jovinda v Canada (Citizenship and Immigration)*, 2016 FC 1297, at paras 28-31. The requirement to do so reflects general principles about procedural fairness: *Kozak v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124, [2006] 4 FCR 377, at para 66; *Hennessey v Canada*, 2016 FCA 180, at para 20; *Canadian National Railway Company v Canada (Transportation Agency)*, 2021 FCA 173, at para 68.

[30] The applicants sought to distinguish *Mohammadian* because their position concerned the existence of interpretation for Ms Bano, rather than a concern about its quality. However, in this case, interpretation was offered to Ms Bano and provided to her during some parts of the hearing, including the introduction and for her testimony. The issue the applicants raised is procedural fairness – not a *Charter* right to interpretation. The applicants did not propose a different standard or test for administrative law procedural fairness relating to translation during an RPD hearing other than those established by *Mohammadian*, this Court's decisions following *Mohammadian* and by the general appellate cases describing procedural fairness principles in an administrative context.

[31] Accordingly, I conclude that the legal principles applicable to procedural fairness generally and in *Mohammadian* apply in this case with respect to the applicants' conduct at the hearing when issues about interpretation were raised and to the timeliness of their objections.

[32] I turn to what happened at the RPD hearing. It occurred by videoconference. There are three points of interest in the hearing transcript. The exchanges at the hearing demonstrate that the applicants had several opportunities to address the need for interpretation from English to Urdu for Ms Bano. Interpretation was discussed and was provided for her during the hearing.

[33] The very first statement on the transcript concerned interpretation:

BOARD MEMBER: Okay. Thank you, the recording has started. Okay, counsel, so with respect to interpretation is the preference not to have the principal claimant's testimony translated or interpreted?

[34] Mr Baloch (the principal claimant) and legal counsel confirmed that he was "quite capable" to testify in English. Mr Baloch advised that if he needed translation, or did not understand, he would ask for translation. He said: "But for my wife, I need the translation." The member stated that her plan was to start with questioning of Ms Baloch as the principal claimant. The member stated "I may and do have a few questions for, for your wife so at that point we can have the interpreter." Mr Baloch responded: "All right." An Urdu translator was on hand at the hearing for that purpose. At this stage of the hearing, there was both an agreement by the applicants (speaking through Mr Baloch) on how the interpretation would proceed and an opportunity by the applicants and their legal counsel to raise any concerns about interpretation and to object to the proposed translation arrangements for Ms Bano.

[35] A few pages later, there was a discussion of Mr Baloch's Basis of Claim form. The RPD member asked him to affirm that the information in it was complete, true and correct and up-to-date. Mr Baloch answered: "Yes." The RPD member then began to provide the applicants with

an understanding of some important aspects of the proceeding. The interpreter intervened to ask whether the member wanted interpretation of “everything which, which you ask will to the male claimant so that – for the female claimant.” The member advised that the interpreter should interpret all of the introduction and that “when I’m asking the claimant’s direct questions” (which I take to mean when the member was asking Mr Baloch questions in direct examination), “it doesn’t sound like it’s necessary for you to [interpret] at that point.” She confirmed that the introduction should be interpreted for everyone. At this second point in the hearing, there was another opportunity for Mr Baloch or the applicants’ legal counsel to raise a concern on the very issue raised on this Court application, but they did not do so.

[36] A few pages after that, the RPD member advised that she had a series of questions for both Mr Baloch and Ms Bano. Directing a question to counsel, the member asked what the applicants preferred by way of order, because she could ask questions of Ms Bano to start, if that were easier for the applicants with their children. She noted that she did not have many questions for Ms Bano. Mr Baloch answered that the member should start with Ms Bano because the baby needed to be fed. The RPD member suggested that alternatively, she could start with Mr Baloch, because “I will be... some time to ask you questions so she [Ms Bano] could step away from the camera if she wished” to feed the baby. Ms Bano stated: “That’s fine.” The RPD member stated “I will start with the principal claimant and Hajra can step away from the camera... with the children”, to which Mr Baloch responded: “Thank you ma’am, thank you for understanding.”

[37] The RPD member then advised that she would begin by asking Mr Baloch a series of questions and stated her understanding that “at this point, we don’t need it all to be interpreted,

but if you have any questions or you do need anything interpreted, you'll let us know?" Mr Baloch advised that if he did not understand, he would ask for the interpreter. The RPD member began to question Mr Baloch.

[38] From these third exchanges in the transcript, one can see that the applicants contemplated that Ms Bano would not be present for all of Mr Baloch's testimony. In addition, the RPD member again raised the point that his testimony did not need to be interpreted. Neither Mr Baloch nor the applicants' raised any objection at this time.

[39] In sum, the RPD member, Mr Baloch and the interpreter raised the general point about translation into Urdu for Ms Bano. In addition, the hearing participants considered the specific issue of whether to provide interpretation of Mr Baloch's testimony into Urdu for Ms Bano. The applicants and their legal counsel were not only aware of the general and specific issues during the hearing; they expressly agreed at the outset to the RPD member's proposal on what parts of the hearing to translate for Ms Bano, and then did not raise any objections or concerns when additional opportunities arose to do so. In the context of this administrative hearing, the applicants agreed to the approach taken to translation and waived their right to object through their words and conduct: *Mohammadian*, at paras 18-19.

[40] The applicants' submissions emphasized that the RPD was responsible to ensure procedural fairness and Ms Bano was not asked directly about the interpretation of Mr Baloch's testimony. It is true that Ms Bano was not asked personally about translation, although she did appear to agree that she would step out of the video hearing to feed the baby or be with the

children. However, legal counsel was present on behalf of the applicants throughout the hearing and there was no suggestion that counsel did not represent Ms Bano. Equally, it is plain from the transcript that Mr Baloch spoke for the claimants at the RPD hearing. In addition, the basis of the applicants' claim for protection was made in the narrative filed with Mr Baloch's Basis of Claim form. Ms Bano did not file a separate narrative and relied on her husband's. Her testimony concerned threats from her former fiancé and threats to Shia Muslims generally in Pakistan. She did not witness the threatening calls to Mr Baloch and did not testify about them (she said that he was receiving threats, without elaboration). Thus, while the failure to ask Ms Bano directly about translation could be a salient point in another case, in this case the presence of legal counsel to address the issues, the role played by Mr Baloch in advancing their claims for *IRPA* protection, the content of Ms Bano's testimony and the absence of *Charter* issues on this application together constitute a complete response to the applicants' submission.

[41] If the applicants had raised their concerns at the hearing, it obviously would have been simple to address the risk of any possible harm – the interpreter was present and could have just continued to interpret for Ms Bano after the RPD member's introductory remarks, while Mr Baloch was testifying. The applicants did not object during the hearing or raise any concerns afterwards, in the five weeks between the hearing on January 11, 2021 and the RPD's decision on February 23, 2021. They raised procedural fairness for the first time when they filed their materials in this Court. Given their knowledge and conduct at the hearing, I find that they did not exercise reasonable diligence in raising these issues in a timely manner. In addition to *Mohammadian* and the general procedural fairness cases cited above, see *Benitez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 461, [2007] 1 FCR 107, at para 220 (aff'd

2007 FCA 199, [2008] 1 FCR 155) and *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59, at para 67.

[42] For these reasons, I conclude that the applicants have not demonstrated that the RPD failed to provide them with procedural fairness as alleged.

**V. Was the RPD's Decision Reasonable?**

**A. *Standard of Review***

[43] The standard of review is reasonableness, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[44] In its review, the Court reads the decision maker's reasons holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. The Court considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

[45] The Supreme Court has identified two types of fundamental flaws in administrative decisions: a failure of rationality internal to the reasoning process; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it:

*Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39. In order to intervene, the court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[46] On a judicial review application, this Court's role is not to agree or disagree with the decision under review. The Court's task is to determine whether the decision maker made one or more of the kinds of fundamental errors described above and if so, whether the decision should be set aside as unreasonable.

**B. *Reasonableness of the RPD's Credibility Analysis***

[47] Although the applicants articulated their fears of returning to Pakistan as Shia Muslims, Mr Baloch did not identify the SSP as the agents of persecution or describe the contents of the threatening calls he received in Pakistan until his testimony at the RPD hearing. The RPD found these omissions to be important to its assessment of his credibility.

[48] On this application, the essence of the applicants' position was that the RPD failed to conduct a proper analysis of Mr Baloch's testimony in relation to the omissions in his Basis of Claim narrative and the CBSA officer's notes of the interview at the POE.

[49] The applicants first argued that the RPD erred by drawing a negative inference from the absence of facts in Mr Baloch's narrative. The omissions related to the identity of the agents of



persecution as the SSP, and the fact that they had called him a *kafir* (infidel) during the call. The applicants submitted that the RPD erred by making an adverse finding against them based on elaborative details that were not critical elements of the claim of a well-founded fear of persecution. They referred to *Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 and *Mukamusoni v Canada (Citizenship and Immigration)*, 2015 FC 196. They also submitted that the cultural context of their claims must be considered.

[50] With respect to the POE notes, the applicants submitted that the RPD erred by placing undue reliance on the notes (citing *Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102). They contended that this Court has cautioned against undue reliance on omissions in statements made by claimants immediately on arrival in Canada. They submitted that the RPD failed to consider Mr Baloch's explanation that his statements to the CBSA officer were in response to the officer's questions and the officer did not ask him who the agents of persecution were. He therefore focused on the material basis of his family's claim, namely, the risk of persecution on the basis of their religion as Shia Muslims in the context of country conditions in Pakistan. They contended that in that context of religion-based persecution throughout Pakistan, the specific identity of the militant group personalized the risk to the applicants, while the overarching objective risk on the basis of religion was the fulcrum of the family's risk on Convention grounds. On that basis, Mr Baloch's omission during in the POE interview did not concern a key detail but rather a peripheral one.

[51] Given the RPD's critical role as the trier of fact, a reviewing court will be slow to interfere with its assessment of a refugee claimant's credibility: *Karicka v Canada (Citizenship*

*and Immigration*), 2021 FC 1005, at para 42; *Un Nisa v Canada (Citizenship and Immigration)*, 2020 FC 1033, at para 29; *Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426, at para 34; *Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938, at para 13; *Siad v Canada (Secretary of State)* (1996), [1997] 1 FC 608 (CA), at para 24. However, that does not imply that credibility findings are beyond the Court's review; the Court must still find that the findings were reasonable: *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38, at para 35.

[52] Adverse credibility findings may be based on omissions and inconsistencies in the contents of statements at a POE, on Basis of Claim forms and in a claimant's testimony: *Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407, at para 29.

[53] With respect to the use of statements made at the POE, Justice Walker explained in *Gaprindashvili v Canada (Citizenship and Immigration)*, 2019 FC 583:

[24] The jurisprudence of this Court establishes that an applicant's statements to immigration authorities at the POE may be considered by the RPD (*Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at para 15). One or more material omissions and inconsistencies among an applicant's POE notes, basis of claim narrative and oral testimony at an RPD hearing can properly form the basis of an adverse credibility finding where the omission(s) or inconsistency(ies) is or are central to the claim (*Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 20). The RPD must assess the nature of the omission or inconsistency and its impact on the applicant's refugee claim (*Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407 at paras 29-30) ...

[54] However, the Court has also held consistently that the RPD should be careful not to place undue reliance on statements made by refugee claimants at a POE as the basis for adverse credibility findings. "The circumstances surrounding the taking of those statements is far from

ideal and questions about their reliability will often arise”: *Wu*, at para 16. See also: *Gong v Canada (Citizenship and Immigration)*, 2022 FC 24; *Khan v Canada (Citizenship and Immigration)*, 2021 FC 1177, at paras 12 and 26; *Mahadjir Djibrine v Canada (Citizenship and Immigration)*, 2020 FC 1036, at para 36; *Yasun v Canada (Citizenship and Immigration)*, 2019 FC 342, at para 20; *Guyen*, at para 42.

[55] Accordingly, as Justice Kane stated in *Guyen*, “[w]ith respect to making credibility findings based on the POE forms and notes, the jurisprudence cautions against relying on inconsistencies in testimony between the POE notes and later testimony and documents, unless those inconsistencies are about ‘crucial elements’ of the applicants claim”: *Guyen*, at para 39; *Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8, at para 51. In both *Guyen* and *Cetinkaya*, the Court cautioned against reliance on POE notes as the sole basis on which the impugn credibility: *Guyen*, at para 42; *Cetinkaya*, at para 51.

[56] The omission of a significant or important fact from a claimant's Basis of Claim can be the basis for an adverse credibility finding. Such a finding cannot be made on the basis of a claimant’s failure to include “minor or elaborative details”: *Akhigbe*, at paras 12 and 16. In *Naqui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282, Justice Mactavish stated:

Not every omission from an applicant's PIF [Basis of Claim] will, however, be determinative of the individual's credibility: *Akhigbe* ... The nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission.

To a similar effect, see: *Kaleja v Canada (Citizenship and Immigration)*, 2011 FC 668, at para 18; *Irvbogbe v Canada (Citizenship and Immigration)*, 2016 FC 710, at para 32; *Ugbaja v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 835, at para 14.

[57] Applying those principles, I conclude that it was open to the RPD to make its findings in the present case.

[58] During the hearing, the RPD member questioned Mr Baloch. The member asked him to describe what he fears in Pakistan. Mr Baloch referred to two telephone calls he received while in Pakistan in early June 2019. He stated that he was threatened during those calls that he and his family would be killed. He said that the caller characterized him as a *kafir*. He stated that the callers said they were Tehrik-e-Taliban (i.e. members of the SSP). The RPD member asked him several times why the identity of the SSP and their message that he was a *kafir* was not in his Basis of Claim. The member read him the paragraph about the threatening calls. In his responses, Mr Baloch noted that he did mention Sunni extremists and referred the member to the “next” paragraph, or the second and third paragraphs after in the Basis of Claim narrative. The member did not see where it connected the threatening calls to Sunni extremists. Mr Baloch replied that receiving such a threatening call as a Shia in Pakistan, it was “totally understandable” that it must have been Sunni extremists. He repeated that the callers identified themselves as Sunni extremists.

[59] The RPD did not accept Mr Baloch's explanation for why he omitted the details from his form as credible and drew a negative inference from the omissions. That inference also negatively impacted its assessment of the threatening calls and the applicants' overall credibility.

(1) Omission in the Basis of Claim narrative

[60] The RPD found that the agents of persecution detailed in the applicants' Basis of Claim forms were Ms Bano's cousin and family. The RPD recognized that there were some allegations of threatening phone calls that Mr. Baloch received in June 2019, but the agents of those calls were not stated.

[61] The RPD's decision summarized the questions and answers during Mr Baloch's testimony in detail and noted the requirements for information in a Basis of Claim form. I agree with the respondent that the member's questions to Mr Baloch were fair and proceeded in a logical manner. The member asked open-ended questions about what Mr Baloch feared in Pakistan and who was the source of that fear. Mr Baloch himself raised the threatening calls and linked them to the SSP and Sunni extremists, thereby focusing the applicants' claims for protection to specific agents of persecution. The Basis of Claim narrative did not associate those agents of persecution with the threatening calls in June 2019.

[62] The RPD's decision stated that the Basis of Claim narrative had many other details, so it was clear that the applicant understood that he had to provide details. As the threatening calls were the sole basis for the claimants' allegation that the fear persecution owing to Mr Baloch's religious conversion, the RPD expected that details of the connection between his conversion and

the threats would be included in the narrative. The RPD drew a negative inference from the omission of the details, which had an impact on applicants' credibility on their allegation that Mr Baloch received threatening calls from the SSP because of his conversion, and their overall credibility.

[63] In my view, neither the cases of this Court nor the evidence itself prevented or constrained the RPD from drawing a negative inference about credibility on this basis: *Akhigbe*, at paras 15-16; *Kaleja*, at para 18; *Ugbaja*, at para 14. Mr Baloch's testimony during the hearing added new information to the applicants' claims – that the threatening calls in June 2019 were made by members of the SSP. In the Basis of Claim narrative, the general position was a fear of extremist Sunnis because of his Shia faith or as a convert to it. The narrative mentioned telephone calls in June 2019 in which he was threatened. Asked at the hearing about his fear, Mr Baloch raised threatening calls and, for the first time, connected them to the SSP.

[64] Given the contents of the Basis of Claim narrative and hearing transcript, the claim that it was members of the SSP who were the agents of persecution making threatening calls in June 2019 was not a minor or elaborative detail. It was advanced by Mr Baloch at the hearing as an important element to the applicants' claim for protection, and it was material to the claim for protection. His testimony changed the identity of the alleged agents of persecution from members of Ms Baloch's family, who were the focus of the claim (along with the former fiancé), to members of the SSP.

[65] Accordingly, there is no basis on this judicial review application to interfere with the RPD's finding on credibility related to the omission in the Basis of Claim narrative.

(2) The RPD's Use of the Port of Entry Interview Notes

[66] Later in its reasoning, the RPD examined the CBSA officer's notes of an interview with Mr Baloch. By this point, the RPD had found that the applicant's testimony about the SSP member was speculative, and had noted the absence of evidence in other affidavits filed to support the claims that SSP members made the threatening calls to Mr Baloch.

[67] The RPD noted that Mr. Baloch did not identify agents of persecution when he was interviewed by CBSA officer at the POE. The RPD summarized the material questions and answers as set out in the officer's notes. It found that Mr. Baloch's explanation was not reasonable for why he did not tell the CBSA agent that those making the threatening calls were members of the SSP. The RPD found that the alleged calls from the SSP in June 2019 were the "core" of the applicants' allegation that they were persecuted because Mr. Baloch converted, and it was the only allegation that could form a basis for their subjective fear of the SSP. The RPD expected that if those calls were actually received from the SSP, Mr. Baloch would have told the CBSA agent that the callers were members of the SSP.

[68] As is apparent, RPD's negative inference from the omission in the POE notes was not the sole basis for its conclusion on credibility: see *Guyen*, at paras 42, 43-46; *Cetinkaya*, at para 51. Nor can I conclude that the RPD placed undue reliance on the omission in assessing credibility or in its overall decision. The information was omitted by Mr Baloch at different points in time –

at the POE and later in the Basis of Claim narrative – and was not in other affidavits filed to support the claim for protection. Further, the RPD also noted that Ms Bano did not provide evidence that the source of the threatening calls with the SSP.

[69] Overall, after assessing the omissions from the Basis of Claim narrative, the POE notes, the other affidavits and Ms Bano's testimony, the RPD found that applicants had not provided sufficient consistent and credible evidence to demonstrate that they had received threats of harm from the SSP because Mr Baloch had converted. I find no reviewable error in its conclusions.

**C. *Other Arguments by the Applicants***

[70] The applicants' written memorandum contended that the RPD failed to properly assess the country condition evidence related to the risks posed to Shia Muslims in Pakistan. The applicants mentioned this position only briefly at the hearing. I find no reviewable error in the RPD's assessment. The applicants' submissions amount to a re-argument of the merits of their position before the RPD, or of the weight to be given to certain evidence. While the RPD could have come to another conclusion, it is not this Court's role to determine whether it was correct, only whether it was reasonable using the applicable judicial review principles: *Vavilov*, at paras 125-126.

[71] The applicants also argued in writing that the RPD ignored the Chairperson's *Gender Guidelines* concerning women refugees. This argument cannot succeed. Put succinctly, the RPD found that Ms Bano did not have personal knowledge of the alleged threats in the telephone calls



to Mr Baloch because she was not present when they occurred. It assessed the weight of her testimony on that basis.

**VI. Conclusion**

[72] The application is therefore dismissed.

[73] The applicant proposed the following questions for certification:

"Must a waiver to interpretation services by a refugee claimant at their hearing before the Refugee Protection Division of the Immigration and Refugee Board of Canada be clear, unequivocal and informed?"

[74] To be certified for appeal under *IRPA* paragraph 74(d), a proposed question must be a "serious question" that (i) is dispositive of the appeal, (ii) transcends the interests of the parties and (iii) raises an issue of broad significance or general importance: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, [2018] 2 FCR 229, at para 36. In addition, a certified question "must be a question which has been raised and dealt with in the decision below": *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89, at para 12; *Canada (Citizenship and Immigration) v Kassab*, 2020 FCA 10, at para 72; *Lewis*, at para 46.

[75] In this case, the proposed question is not appropriate to certify for appeal. The applicants did not argue that a waiver of interpretation services does need not be clear, unequivocal and informed as a matter of law for the waiver to be valid. These reasons did not deal with the point. In addition, applying settled law on procedural fairness including the Federal Court of Appeal's decision in *Mohammadian*, the applicants waived their right to object through their words and

conduct at the hearing, failing to raise interpretation issues in a timely manner. The outcome of an appeal would turn solely on a re-analysis of these issues by applying settled principles of procedural fairness to the unique facts of this case. See also *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, [2018] 3 FCR 674, at para 46.

**JUDGMENT in IMM-2343-21**

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

1. The application is dismissed.
1. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

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Judge

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

**DOCKET:** IMM-2343-21

**STYLE OF CAUSE:** AKHTAR ABDUL MAJEED BALOCH, HAJRA  
BANO, AFFAN BALOCH, AFRAH AKHTAR  
BALOCH v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 23, 2022

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** OCTOBER 04, 2022

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