Federal Court  Cour fédérale

Date: 20230202

Docket: IMM-2344-22

Citation: 2023 FC 156

Montréal, Quebec, February 2, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

UNKNOWN SHAKIL ALI
UNKNOWN REHAAN ALI
SHEHWAN ALI
UNKNOWN NARGIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of the dismissal of their refugee claim. I am dismissing their application because the decision-maker reasonably rejected the new evidence they tendered, finding it not credible, and reasonably concluded that the applicants had an internal flight alternative [IFA] in their country of origin.

I. Background

[2] The applicants are citizens of India. They are Muslims. They came to Canada in 2018 and claimed refugee status, alleging that their shop was twice destroyed by Hindu nationalists and that when they complained to the Delhi police, they were beaten and falsely accused of hiding militants. They also allege that the police continued to visit their relatives in Delhi and, in May 2021, told Mr. Ali's mother that they had a summons against Mr. Ali and his wife.

[3] Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed their claim. The RPD found that the applicants had an IFA in Kolkota, in particular because it did not believe that the Delhi police are seeking to harm them. Before the RAD, they sought to adduce new evidence, namely, that the Delhi police had recently brought a false accusation of extortion against them. The RAD refused to admit the new evidence because it found that the circumstances in which it was obtained were entirely implausible. Moreover, the RAD confirmed the RPD's finding that the applicants have an IFA in Kolkota.

II. Analysis

[4] The applicants now seek judicial review of the RAD's decision. They argue that the RAD erred in refusing to admit the new evidence and with respect to the IFA. I am dismissing their application, as I find that the RAD's decision is reasonable in both respects.

A. *New Evidence*

[5] When the RAD is asked to admit new evidence, it must assess its credibility: *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230. This is exactly what the RAD did in the present case when it concluded that the circumstances in which the applicants' lawyer in India obtained a copy of summonses against them were implausible. The applicants argue that this finding is unreasonable, because (1) there was an explanation for the timing of the new summons; (2) the circumstances in which the summonses were obtained are irrelevant to the issue of their authenticity; and (3) the RAD could not implicitly find the summonses to be fraudulent.

[6] With respect to the first issue, the RAD properly directed itself when it explicitly stated that implausibility findings can only be made in "the clearest of cases." This is compatible with this Court's case law, in particular *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7; *Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at paragraphs 27–29, 38–39 [*Al Dya*]. In appropriate circumstances, coincidence in time may provide the basis for an implausibility finding: *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at paragraphs 21–25; *Uddin v Canada (Citizenship and Immigration)*, 2022 FC 117 at paragraphs 10–12.

[7] The applicants argue that the RAD overlooked their explanation for the coincidence in time between the rejection of their claim by the RPD and the issuance of the new summonses, namely, that the lawyer's inquiries with the police triggered the issuance of the summonses a few

days later. The RAD, however, was aware of this explanation. The main reason why it found the applicants' account to be implausible is different: it is the fact that the applicants' lawyer happened to attend the court registry on the very day the summonses were issued, or possibly the day after. The reasonableness standard applies to the judicial review of implausibility findings: *Al Dya*, at paragraph 41. Here, the RAD gave detailed and coherent reasons for finding the applicants' explanation insufficient. In my view, its decision in this regard was reasonable.

[8] Second, the applicants argue that the RAD could not reject the summonses based on the circumstances in which the applicants obtained them. If I understand correctly, they ground this proposition in the presumption of authenticity of foreign official documents. It is, however, well established that the circumstances in which foreign official documents are obtained are relevant to their authenticity or credibility: *Bagire v Canada (Citizenship and Immigration)*, 2013 FC 816 at paragraphs 24–26; *Yasik v Canada (Citizenship and Immigration)*, 2014 FC 760 at paragraph 39; *Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at paragraph 16; *Oliveira c Canada (Citoyenneté et Immigration)*, 2022 CF 561 at paragraphs 18–22 *Lemma v Canada (Citizenship and Immigration)*, 2022 FC 770 at paragraph 30. It stands to reason that if a document was obtained in implausible circumstances, it is unlikely to be credible or authentic. Such a finding, when adequately justified, does not offend the presumption of authenticity of foreign official documents, discussed in *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at paragraphs 85–91, because this presumption is rebuttable. In fact, as the RAD found that this case met the high bar of "the clearest of cases" for making implausibility finding, one can infer that the presumption of authenticity is also rebutted.

[9] Third, the applicants fault the RAD for not explicitly finding that the summonses are fraudulent, stating instead that they are "not credible." They argue that the RAD failed in its duty to clearly express its findings regarding the authenticity of documents, contrary to cases such as *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*]; and *Miah v Canada (Citizenship and Immigration)*, 2022 FC 335. What these cases guard against, however, is the conflation between concerns related to credibility and probative value, especially in the context where pre-removal risk assessment [PRRA] officers are prohibited from making credibility findings without holding a hearing. These cases do not require the use of specific language to express concerns about the credibility or authenticity of a document. What is required is that "the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 102, [2019] 4 SCR 653. In this case, the RAD's logic can easily be followed.

B. *Internal Flight Alternative*

[10] With respect to the IFA, the applicants first argue that the RAD failed to take into consideration various statements in the national documentation package [NDP] that describe the state of implementation of the CCTNS database and the actual ability of local police forces in India to communicate with one another. Based on my review of the documentary evidence, the RAD's finding that the applicants would not be found in Kolkota by the Delhi police is one that could reasonably be made. As I explained in *Magonza*, at paragraph 92:

> . . . a difference must be drawn between, on the one hand, situations where the evidence is truly mixed and the officer has to make a decision and, on the other hand, situations where the

> evidence overwhelmingly demonstrates that state protection is inadequate but the officer clings to some minor qualification or positive aspect in the evidence to reach the opposite conclusion.

[11] In this case, the evidence was at least mixed, and certainly not overwhelmingly in favour of the applicants.

[12] Relying on cases such as *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93, and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915, the applicants also argue that if they return to India, they will need to withhold their contact information from family and friends, which amounts to living in hiding. The holdings in these cases are fact-specific and cannot be generalized to every IFA situation: *Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at paragraph 15. Moreover, such an assertion must be assessed based on the facts found by the RAD, not on the facts alleged by the applicants: *Pastrana Acosta c Canada (Citoyenneté et Immigration)*, 2023 CF 139 at paragraphs 6–9. Here, the RPD found that the police did not search for the applicants after they left India and the applicants did not challenge this finding before the RAD, other than by attempting to bring new evidence that the RAD found not to be credible. Given this, the RAD reasonably concluded that the applicants "would not be forced to keep their location from their families or to ask their families not to share their location in Kolkata with the police."

[13] Lastly, the applicants argue that the RAD failed to recognize that the discrimination the applicants would face as Muslims in India amounts to persecution. Again, on my review of the evidence, the RAD's conclusion was reasonable. The RAD was alive to the distinction between discrimination and persecution and reasonably found that despite the upward trend in violent

incidents against the Muslim minority in recent years, Muslims in India do not face a serious possibility of persecution. To the extent that the applicants argue that they would face a heightened level of discrimination because they are sought by the police, this is based on a version of the facts reasonably rejected by the RAD.

III. Disposition

[14] For these reasons, the application for judicial review will be dismissed.

JUDGMENT in IMM-2344-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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