

Federal Court



Cour fédérale

Date: 20230202

Docket: IMM-480-22

Citation: 2023 FC 153

Montréal, Quebec, February 2, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MOHAMMAD KHALID KAKAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Montréal, Quebec, on February 1, 2023)

[1] Mr. Kakar was born in Afghanistan. He obtained refugee status, and subsequently citizenship, in Italy. In 2019, he filed a refugee claim in Canada. He alleges that he is threatened by the Italian Mafia because of events related to the opening of an Afghan restaurant in 2017. In particular, he alleges that certain of his employees threatened him and beat him to obtain control of the restaurant. He believes that these employees are linked with the Mafia.

[2] Both the Refugee Protection Division and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed Mr. Kakar's claim. Briefly, the RAD found that (1) the employees who beat Mr. Kakar were not related to the Mafia; (2) the promotion of his book at public events in Italy and his return to that country after travelling to the United States are inconsistent with his assertion of subjective fear; and (3) he failed to rebut the presumption of state protection.

[3] Mr. Kakar now seeks judicial review of the RAD's decision, asserting that the above-mentioned findings are unreasonable. Moreover, he argues that the RAD unreasonably refused to admit new evidence, namely, a recent newspaper article about the risks associated with the Mafia.

[4] With respect to the first ground, Mr. Kakar takes issue with the RAD's finding, at paragraph 40 of its decision, that Mr. Kakar was not of interest to the Mafia and that the reference to the Mafia was likely an embellishment. He argues that his testimony to the effect that one of his employees is a member of the Mafia benefits from the presumption of truthfulness and that the matter should be viewed in the context of other facts of the case that are not contested.

[5] I disagree with Mr. Kakar. Whether the employee is a member of the Mafia is a critical fact that has strong implications for the remainder of the analysis. Moreover, the presumption of truthfulness does not extend to an applicant's beliefs about the persons with whom they have had dealings: *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 640 at paragraph 11. In this

case, the RAD reviewed all the documentary evidence and noted that the Mafia is never mentioned, not even in the police report. Further, after reviewing the transcript of the hearing, it is apparent that Mr. Kakar was unable to provide any tangible proof that his employee was part of the Mafia. The latter's ties to the Mafia are merely an assumption Mr. Kakar made because he was told she had defrauded other small businesses.

[6] For the same reasons, the RAD did not err in rejecting the new evidence. If the Mafia is not targeting Mr. Kakar, evidence concerning the situation of persons sought by the Mafia is simply irrelevant. Under the *Raza/Singh* framework, the RAD is entitled to reject new evidence that is not relevant: *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230. This was not, as Mr. Kakar contends in his written submissions, an assessment of materiality or credibility.

[7] With respect to subjective fear, Mr. Kakar has not persuaded me that the RAD made an unreasonable finding. In fact, it is difficult to understand how Mr. Kakar could make public presentations in November 2018 after having been threatened the year before, and how he could return to Italy after travelling in the United States in December 2018 if he really feared for his life.

[8] With respect to state protection, again, Mr. Kakar has not persuaded me that the RAD's findings are unreasonable. He bears the burden of rebutting the presumption of state protection. He made a complaint to the police, which led to his former employees being charged. To rebut the presumption, Mr. Kakar pointed out that the employees did not appear in court when

summoned, and that the police could not find them. The RAD, however, assessed this submission and found that the first hearing was postponed because there was an issue as to whether the employees had been properly served and that Mr. Kakar did not attend further hearings and did not inquire as to the outcome of the case. In my view, the RAD's findings were based on the evidence before it.

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

JUDGMENT in IMM-480-22

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

DOCKET: IMM-480-22

STYLE OF CAUSE: MOHAMMAD KHALID KAKAR v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 1, 2023

JUDGMENT AND REASONS: GRAMMOND J.

DATED: FEBRUARY 2, 2023

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