Federal Court  Cour fédérale

Date: 20230216

Docket: IMM-3687-21

Citation: 2023 FC 228

Toronto, Ontario, February 16, 2023

PRESENT: The Honourable Mr. Justice Henry S. Brown

BETWEEN:

VEERAPATHIRAN RAMACHANDIRAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division ["RAD"], dated May 5, 2021, which affirmed a decision of the Refugee Appeal Division ["RPD"] finding that the Applicant was neither a *Convention* refugee nor a person in need of protection.

II. Facts

[2] The Applicant is a 39-year-old citizen of India who seeks protection alleging three reasons: (1) he will be persecuted by family members and his community in the Thiruthuraipoondi region of Tamil Nadu because he wishes to marry a woman who belongs to a lower caste; (2) he is a member of a Hindu nationalist party, and because of this affiliation, will be targeted by Muslims; and, (3) he is a person of interest to the police (specifically the Central Bureau of Investigation or "CBI") as they suspect him fomenting or participating in anti-Muslim violence.

[3] I will break down these claims in more detail. First, the Applicant alleges he and his lower caste girlfriend had their romantic relationship discovered by family in approximately 2008. The Applicant states their relationship continued secretly for the next eleven years or so before his hearing at the RPD. The Applicant states he still wishes to marry her should he return to India. On August 2018, the Applicant states he received an anonymous call telling him that he and his girlfriend would be murdered if they continued their relationship.

[4] Moreover, the Applicant alleges that in May 2016, he was attacked by supporters of a Muslim political candidate after a verbal confrontation with these individuals in which he stated that Hinduism should be the state religion of India. In August 2018, the Applicant alleges he was mistreated by police and received a second warning not to get involved in extremist politics.

[5] The Applicant decided to leave India, arriving in Canada on November 12, 2018 on a visitor visa. In June 2019, the Applicant applied for refugee protection.

III. Decision under review

[6] In broad strokes, the RAD found that the Applicant was neither a *Convention* refugee nor a person in need of protection. The issue was primarily credibility.

A. *Supporting document explaining political affiliation*

[7] The Applicant had produced a letter from a political party in India indicating he had been a “spirited supporter” of the party for 15 years. The RPD questioned the Applicant about whether the person who had signed the letter was actually the vice president of the party. In its reasons, however, the panel stated that the Applicant had not provided “any documentary evidence from the party to indicate that the supported [political] party.” The RAD agreed with the Applicant that this was in error, but did not consider the error determinative on the appeal. The RAD noted the letter did not mention the Applicant being threatened or attacked by Muslims due to his affiliation with the party. Given these considerations, the RAD afforded the letter limited weight in terms of its probative value in establishing the Applicants’ allegations.

B. *Allegation of bias*

[8] The Applicant alleged bias against him by the RPD, making the following assertions:

> a) The RPD member questioned the validity and authenticity of all of his supporting documents. At one point, the RPD member stated that "anybody can write, anybody can sign,

anybody can stamp, anybody can produce" such documents, at another point the RPD stated that the Appellant ought to have printed out instructions from an Indian government website as to how caste certificates are generated.

b) The RPD member interrupted Counsel while he was questioning the Appellant and as a result Counsel "could not question the Appellant in an orderly manner due to interruption by the panel that took almost 90% of the total hearing time."

c) At the end of the hearing, the RPD member acceded to Counsel's request for written submissions, to be submitted by February 10, 2020, but specified, "no more documents."

d) The RPD member "questioned the Appellant in a manner in which the accused criminals are generally questioned. The panel posed leading questions, questions on the same point again and again."

e) The RPD member referred to documentation on communication between police forces in India which he did not cite in his decision and for which he did not provide a reference during the hearing. The Appellant asserts that this amounted to "providing misleading information or attempting to obtain answers by providing such misleading, wrong information" as the Appellant provided documentation that proves the contrary—that police forces do communicate with one another.

f) The RPD member stated that the test of truth of a story is that it be in harmony with the preponderance of probabilities which a practical and informed person would readily recognise as reasonable, however, according to the Appellant, "the panel does not seem to be a practical and informed person and thus the readily recognition is hardly possible."

Reasons and decision, Refugee Appeal Division, at 9.

[9] The RAD disagreed with the Applicant's claims, finding instead that the RPD member was genuinely motivated to comprehend the Applicant's evidence. On the Applicant's concerns

around the RPD's questioning the authenticity of every document, the RAD found the RPD correct in ensuring that the Applicant understood his concerns and had multiple opportunities to rebut them.

[10] Largely, the RAD found that there was insufficient evidence to show that the RPD was biased against the Applicant. Specifically, the RAD did not find the RPD member's references to the NDP without document numbers to be evidence of bias. Neither did the RAD agree with the Applicant that he was questioned in the "manner of an accused criminal", rather the RAD found the member's tone calm and respectful. On the issue of the time, the RAD found the Applicant's assertion that he and his Counsel were afraid to speak out is not borne out by the evidence of the recording and transcript. In particular, the RAD panel noted that Counsel was given more than 40 minutes for questions, which is generally considered ample time. Moreover, the RAD noted no acrimony on either side and pointed out that where the Applicant's counsel felt the question was incorrectly put to the Applicant, he pointed it out to the RPD member directly.

[11] Similarly, the RAD disagreed with the Applicant's assertion that the RPD breached natural justice when the member asked for "no more documents". In the RAD's view, the RPD appeared to have attempted to stress that the time allowed for submissions was not meant to provide an opportunity for further documents, but rather a reasonable accommodation in the place of oral submissions given the time constraints. The RAD also pointed out that had the Applicant made an application in accordance with Rule 50 of the Refugee Protection Division Rules, SOR/2012-256, the member would have been bound to address it. Neither did the

Applicant demonstrate that he had documentation in his possession within the timeframe for his written submissions.

[12] In consideration of all these factors, the RAD found no breach of procedural fairness or natural justice.

C. *Credibility findings*

(1) Relationship with girlfriend

[13] The RAD agreed with the RPD that the supposed attacks against the Applicant were not credible. Specifically, the RAD noted none of the letters he submitted corroborated his specific allegations of being threatened in 2018 or of being beaten up in 2008 by family and community members when they might have been expected to. In the RAD's view, the Applicant provided supporting documents from people who should have been fully aware of what had happened to him—such as his girlfriend—yet none of them mentioned these key allegations. The Applicant had said the RPD erred by requiring corroborative evidence in this way. The RAD disagreed, stating that the RPD's finding was different from requiring corroborative evidence where none has been given.

[14] Moreover, the RAD rejected the Applicant's reasoning that he did not tell his family or friends to write anything specific. In the RAD's view, absent any specific dictation, the Applicant could have informed his girlfriend, for example, to write about what they experienced as a couple in India due to the difference in their castes. The RAD also noted inconsistencies in

the Applicant's assertion that his family members were often the agents of persecution, specifically pointing to his father's affidavit, which was similarly deficient in corroborating his allegation.

[15] The RAD also took issue with the Applicant's claims based upon country condition evidence, which stated that normally it would be the lower-caste person who would be targeted by the higher-caste person's family or her own family rather than the higher-caste person. The Applicant had argued that the RPD selectively examined the country condition evidence, ignoring another reference to cases where both persons in an inter-caste couple were killed. The RAD rejected this argument, noting that the RPD simply highlighted a portion of the evidence that speaks to what generally occurs rather than specific cases. This ground is the subject of a failed new evidence application which the Applicant sees as a basis for judicial review.

[16] Finally, the RAD addressed the Applicant's assertion regarding the RPD's perceived implausibility of the Applicant's story. In the RAD's view, the RPD's reasoning was not based on implausibility, rather it was based on the quality of the Applicant's corroborative evidence in comparison with his written allegations and oral testimony as well as the objective documentation available.

(2) Risk due to political affiliation

[17] The RAD acknowledged the RPD erred in stating that the Applicant did not produce a letter from the party, however, the letter did not assist either panel in establishing his allegations that he faced problems with Muslims due to his political associations. Moreover, the RAD

highlighted that the Applicant's affiliation with the political party is absent on his immigration forms; the Applicant even went so far as to mention he had no associations with any organisations (including political ones) on one of his forms. The references to his broader political affiliations in the Applicant's Basis of Claim ["BOC"] were found to be vague and generic, considering he was supposedly part of the party for 15 years.

[18] In the RAD's view, the Applicant's own documentary evidence and immigration forms do not support his allegation that he was a member of a noted Hindu nationalist party. Moreover, the RAD agreed with the RPD's finding that since the Applicant had not established his involvement with the party, there would be no reason for him to be targeted by police for supposedly causing tensions with the country's Muslim community.

[19] The RAD also rejected the Applicant's argument that the RPD conducted an overly microscopic assessment of the evidence, effectively ignoring a letter from the Applicant's friend, which supports all of his allegations. However, the RAD notes a few issues with the letter: it does not elaborate on how the individual knows the Applicant; it speaks in imprecise terms without providing details on names or dates; it does not state where the individual came by any of this information; and it contains apparent inconsistencies on the number of attacks against the Applicant. Given these concerns, the RAD did not find the letter to be a credible corroborating document, and assigned it little weight.

(3) Risk from police

[20] The RAD agreed with the RPD's rationale that as the Applicant had failed to establish his involvement with the nationalist political party, his allegation as to being of interest to police on this basis is also not established. In essence, the RAD found the Applicant had provided no country condition evidence to support his assertion that he continues to be at risk from the police due to perceived anti-Muslim sentiments.

D. *IFA analysis*

[21] Given that the RAD agreed with the RPD's finding that the Applicant's allegations were not credible, the Internal Flight Assessment analysis was not required.

E. *Risk of return as failed claimant*

[22] The Applicant had raised concerns about the risks he may face if removed as a failed refugee claimant and Tamil Indian. The RAD noted some inconsistencies in the Applicant's written submissions on this issue, which claimed that he had travelled to Canada on a travel document and potential false charges being laid against him. The RAD noted the Applicant's own evidence that he travelled to Canada using his own passport. Moreover, the Applicant never made any allegations about false charges being laid against him, which suggests that these submissions may not have been made in the context of the Applicant's case.

[23] On his status as a Tamil Indian, the RAD noted that the Applicant provided no evidence that Tamil Indians are treated any differently than other Indians when they return from abroad.

IV. Issues

[24] The only issue on this application is whether the RAD's decision was reasonable.

V. Standard of Review

[25] The parties agree, as do I, that the applicable standard of review is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or

> significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[26] That said, the Supreme Court of Canada in *Vavilov* makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". No such circumstances exist in the case at bar. The Supreme Court of Canada instructs as follows:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[27] In addition, the Federal Court of Appeal recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.

> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
>
> [Emphasis added]

VI. Analysis

[28] I will deal with only two issues raised by the Applicant, new evidence and bias. In summary, I am not persuaded there is any merit in the others.

A. *New evidence*

[29] The Applicant submits the RAD was unreasonable in refusing to allow new evidence, namely an affidavit from his father stating both the Applicant and his intended wife faced opposition in their communities to their impending inter-caste marriage. This was important because both the RPD and RAD found credibility concerns with the Applicant's narrative based on country condition evidence that it is the lower caste person who is targeted for abuse in an inter-caste marriage, not the higher caste person as in the present case.

[30] At the end of the hearing, the PRD allowed the filing of additional written submissions, but made it clear there were to be no more documents. The RPD member stated "no more documents" in response to Counsel's request for time to submit written submissions. Noting that Counsel at that hearing was not a lawyer but an immigration consultant, the Applicant suggests the consultant did what the RPD told them to do and did not submit new evidence to the RPD. Instead the Applicant filed the new evidence before the RAD.

[31] The Applicant argued the new evidence in the father's affidavit could have neutralized the country condition evidence that only the lower caste marriage participant would be subject to criticism.

[32] There is no doubt and both parties agreed that the father's evidence was not new in that it was available at the time of the RPD hearing. However, the Applicant says it should have been considered for admission under the "third door" of *IRPA's* subsection 110(4) which permits the RAD to admit new evidence "that the person could not reasonably have been expected in the circumstances to have presented." Subsection 110(4) of *IRPA* states:

> **Evidence that may be presented**
>
> (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.
>
> [Emphasis added]

[33] I have no hesitation in finding the RAD failed to consider the new evidence in that light. That however is not the end of the matter.

[34] As the RAD alludes, there is no evidence to suggest the Applicant wanted to file the father's affidavit until a month or so *after* the RPD decision. Thus, I find the father's affidavit is a classic but unsuccessful example of an attempt at impermissible serial relitigation whereby a party unhappy with the result of one decision, seeks to add new evidence to the case and relitigate it based on the new evidence in an appeal to a higher tribunal. That is not permitted under the new evidence provisions of *IRPA* set out in section 110.

[35] In addition, as counsel agree, the simple fact of the matter is that the so-called new evidence is not new. This is not disputed. It could just as easily have been added to the father's main affidavit which the Applicant did file with the RPD. Its lack of newness is fatal to the Applicants complaint.

[36] In addition, the RAD fulsomely dealt with this very objection as follows:

> [36] In any event, RPD Rule 43 establishes under which circumstances post-hearing documents may be admitted. Regardless of what the RPD stated at the close of the hearing, had the Appellant made an application in accordance with Rule 50, the RPD member would have been bound to address it. Furthermore, the Appellant has not demonstrated that he had further documentation in his possession within the timeframe for his written submissions (he was given until February 10, 2020) that he wished to submit but was precluded from submitting. The new evidence he attempted to have admitted on appeal (the affidavit and photograph from his father) are dated in March 2020. Thus, the notion that he was prevented from submitting documents is a somewhat moot point.
>
> [Emphasis added]

[37] I should also note that immigration consultants, like lawyers practising in immigration law, and the public in general are deemed to know the law. Indeed such consultants and lawyers hold themselves out as knowledgeable respecting matters such as this. What the RAD is telling us, and I agree, is that the RPD's comments at the end of the hearing had no legal import. They should not have been relied upon.

[38] In these circumstances I have no difficulty finding the father's second affidavit could not have been admitted through the third door of subsection 110(4) of *IRPA*. The RAD's finding to that effect is entirely reasonable, and does not warrant judicial review.

B. *Bias*

[39] The Applicant raises the issue of bias or reasonable apprehension of bias. The legal test for a "reasonable apprehension of bias" is outlined in the Supreme Court of Canada's decision in *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 SCR 369 per de Grandpré J., dissenting:

> The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."
>
> […]
>
> The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

[40] With respect there is no merit in this aspect of the Applicant's case. This matter was carefully reviewed by the RAD at paragraphs 28 to 37 of its reasons which I have no need to supplement.

VII. Conclusion

[41] Given the above, this application must be dismissed.

VIII. Certified Question

[42] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-3687-21

THIS COURT'S JUDGMENT is that: this application is dismissed, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3687-21
STYLE OF CAUSE:	VEERAPATHIRAN RAMACHANDIRAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 15, 2023
JUDGMENT AND REASONS:	BROWN J.
DATED:	FEBRUARY 16, 2023

APPEARANCES:

Michael Crane	FOR THE APPLICANT
Rishma Bhimji	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Crane Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT