

Federal Court



Cour fédérale

Date: 20230314

Docket: IMM-9178-21

Citation: 2023 FC 346

Ottawa, Ontario, March 14, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

RAM KUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Ram Kumar is an Indian citizen who came to Canada on a Temporary Work Permit and claimed refugee protection six months thereafter. He states he fears Hindu vigilante groups and the police, both of whom targeted him for being a member of a lower caste and on suspicion of killing cows for trade.

[2] His claim was found not to be credible by both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD]. He now seeks judicial review of the latter's decision, arguing that the RAD gave little weight to his corroborating evidence — mainly the affidavit of his father, without providing reasons for doing so.

[3] For the reasons that follow, this Application will be dismissed.

II. The RAD's decision

[4] Like the RPD, the RAD found that the Applicant was inconsistent regarding the number of times he was detained by the police. While the RAD acknowledged the Applicant was nervous, may have forgotten details given the passage of time, and only had a primary school education, it found these factors did not explain the number of inconsistencies between his Basis of Claim [BOC] narrative, testimony and Schedule 12 form; it therefore drew an adverse credibility inference.

[5] The RAD also found that the Applicant was inconsistent about the dates he was in hiding, as he had variously claimed to have been in hiding from January 2016, October 2017, and December 2017. The RAD noted the Applicant was confronted with this inconsistency but did not satisfactorily explain it. The RAD also agreed with the RPD that the Applicant's visiting his family at night in secret demonstrated a lack of subjective fear that further undermined his credibility.

[6] The RAD accepted that the Applicant's wife had been beaten and sexually assaulted in May 2018. However, it drew a negative credibility inference from the fact that the Applicant claimed in his BOC that it was the police who assaulted her, only to later testify that it was members of the Khap Panchayat (caste-based community council) who did so.

[7] The RAD found the Applicant had been unable to explain the context of a letter he allegedly sent to the police, as well as an agreement referencing a meeting between the police and the Applicant's village council, at which the Applicant presented his complaints. The RAD agreed with the RPD that the Applicant likely did not genuinely write the letters.

[8] The RAD found that affidavits from the Applicant's father and cousin were insufficient to corroborate the Applicant's allegations and overcome its credibility findings. The RAD concluded the Applicant had not established that he was targeted by Hindu vigilante groups or by the police.

[9] In response to the Applicant's submissions on appeal that the RPD failed to consider if he was persecuted on the basis of his caste, the RAD found the Applicant had not demonstrated any examples of caste-based persecution that were discrete from his allegations regarding treatment by Hindu vigilantes and police as a result of being suspected of killing cattle.

III. Issues and standard of review

[10] The Applicant does not challenge the RAD's negative credibility findings but rather argues that the RAD erred in its treatment of the affidavit sworn by the Applicant's father.

[11] This is the only issue raised by the Applicant in this Application for judicial review and is reviewable under the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27).

IV. Analysis

[12] The Applicant submits that the RAD erred in failing to assign any positive weight to his father's affidavit and in finding that the affidavit did not corroborate the main elements of his claim.

[13] This affidavit is quite short (6 paragraphs) and it is worth reproducing the substance of it in full:

[...]

3. That some people had attacked my son Ramkumar for baseless suspicion and he had received many injuries and there was much damage to the eatery as well, and a false complaint was also made against him with the police.

4. That the police kept my son Ramkumar in custody and inflicted much torture on him. Scared, he fled to his cousin sister Raj Rani. The police attended there as well and beat him up for no reason, and he got no hearing.

5. That to escape this atrocity, my son Ramkumar left home, saying he would go abroad.

6. That the police tortured my son's wife as well and treated her in a manner not worthy of words.

[14] The RAD refers to this affidavit twice in its decision:

[37] In doing so, I acknowledge that the Appellant provided a medical note referring to his wife's injuries, and that an affidavit from the Appellant's father refers to the Appellant's wife as having suffered torture at the hands of the police. However, I find this documentary evidence is insufficient to overcome the credibility concerns I have noted above, which cut to the heart of the Appellant's claim.

[...]

[49] With respect to the affidavit of the Appellant's father, as noted by the RPD, the affidavit does not corroborate the Appellant's allegations that his father had to pay bribes to the police in order to have him released from detention.

[15] With respect, I do not agree with the Applicant that the RAD's findings of inconsistencies in his own testimony were used to find the father's affidavit not credible. In my view, all the RAD did was state the evidence: the father's affidavit is of no assistance to explain the inconsistencies with respect to i) the number of times the Applicant was detained; ii) the moment he went into hiding, and iii) whether the Applicant's wife was detained by the police or attacked by an extremist group. The affidavit does not address i) nor ii) and with respect to iii) it only compounds the inconsistency between the Applicant's BOC and later testimony. The affidavit does not purport to explain these inconsistencies. Further, it does not help the Applicant explain the context of the letter of complaint that was addressed to the police. In that sense, it cannot overcome the RAD's credibility findings.

[16] The father's affidavit provides no details on the events that the Applicant testified on (dates, number of occurrences, agent(s) of persecution). In my view, it was reasonable for the

RAD to point to the fact that the one event that personally involved the father — the payment of the bribe — was not even mentioned.

[17] In my view, the RAD properly weighed and assessed the father's affidavit and provided adequate reasoning for why the weight of the affidavit was insufficient to overcome the credibility concerns. Once a negative credibility finding is made, it is open to the RAD to find that corroborating evidence is insufficient to outweigh the credibility concerns with an applicant's direct evidence (*Raza v Canada (Citizenship and Immigration)*, 2021 FC 299, para 43; *Kaiyaga v Canada (Citizenship and Immigration)*, 2022 FC 541, paras 55-57).

[18] I find the RAD's decision reasonable and supported by the evidence. The intervention of the Court is therefore not warranted.

V. Conclusion

[19] Since the RAD's negative credibility findings regarding the Applicant's own testimony are unchallenged and thus, undisturbed, and since the RAD reasonably assessed the affidavit of the Applicant's father, this Application for judicial review is dismissed.

[20] The parties have proposed no question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-9178-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;
2. No question of general importance is certified;
3. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9178-21

STYLE OF CAUSE: RAM KUMAR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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DATE OF HEARING: NOVEMBER 24, 2022

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