

Federal Court



Cour fédérale

Date: 20230512

Docket: IMM-7464-21

Citation: 2023 FC 673

Ottawa, Ontario, May 12, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

**MIRZA MANSOOR AHMED BAIG
AZRA GULL
AYESHA BAIG
ESHAL BAIG
ALISHA BAIG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants are a family – father, mother and their three children. They are citizens of Pakistan. One of the minor applicants, Alisha, is also a citizen of the United States.

[2] The applicants sought refugee protection in Canada on the basis of their fear of Sunni extremists who had targeted the adults applicants, Mirza Mansoor Ahmed Baig and his wife Azra Gull, because of Mr. Baig's perceived support of the Shia faith and its adherents. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the claims of all the applicants except Alisha on credibility grounds. It rejected Alisha's claim because no grounds for protection were advanced with respect to the United States. Accordingly, the RPD concluded that the applicants are neither Convention refugees nor persons in need of protection.

[3] The applicants appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. They sought to file new evidence in support of their appeal. They also submitted that the RPD erred in making its adverse credibility determinations.

[4] In a decision dated September 27, 2021, the RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

[5] The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). They submit that the RAD's refusal to admit the new evidence and its agreement with the RPD's adverse credibility findings are unreasonable.

[6] As I explain in the reasons that follow, I am not persuaded that there is any basis to interfere with the RAD's decision. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

[7] Mr. Baig was born in Karachi, Pakistan, in May 1984. He states that, although he was raised in a strict and pious Sunni Muslim family, he had always been on friendly terms with Shia neighbours and classmates. There was an imambargah (a Shia congregation hall) close to his house. Since he was a teenager, he would attend there regularly and volunteer at its activities.

[8] According to Mr. Baig, one day in early September 2019 a Sunni man recognized him as someone who had attended the imambargah. The man accused him of being a bigger traitor than the infidels and physically assaulted him. Similar threatening confrontations by Sunni extremists occurred over the following weeks.

[9] In December 2019, Mr. Baig, who worked for Pakistan International Airlines, decided to visit Canada. (He had obtained a visitor visa in August 2018.) While he was away, a group of Sunni extremists broke into his house and threatened him, Ms. Gull and their family. According to the applicants' Basis of Claim ("BOC") narratives, Ms. Gull suffered a concussion during the incident. Ms. Gull and the minor applicants then went into hiding until they were able to leave Pakistan for Canada on January 19, 2020. (Apart from Alisha, who held a US passport, they too had previously obtained Canadian visitor visas.) Before leaving, on December 30, 2019 and again on January 6, 2020, Ms. Gull returned to check on the family home. She claimed that on

both occasions she found that the door lock had been broken and someone had entered the house, although nothing was missing.

[10] The applicants claimed to have filed three complaints with the police – one relating to the December 25, 2019, incident, another relating to an earlier incident on November 16, 2019, and a third relating to Ms. Gull’s having found that their home had been broken into twice in December 2019 and January 2020. The adult applicants drafted and signed all three complaints – Mr. Baig drafted the one relating to the November 16, 2019, incident; Ms. Gull drafted the other two. All three are written in English. According to the applicants, the police stamped each of the complaints after it was submitted.

[11] In summary, the RPD found as follows:

- Mr. Baig claimed to have volunteered at the Imam Bargah regularly since he was a teenager yet he could not explain the role of his contact person there, Zafar Naqvi, nor could he name anyone else in the leadership of the organization.
- Despite his alleged involvement with the Imam Bargah over many years, Mr. Baig demonstrated only a superficial understanding of the Shia faith and could provide only the “barest of information” about it.
- The sole corroboration for the applicants’ claim was a letter from Zulfiqar Ali, a friend of Mr. Baig, that described Mr. Baig’s support for the Shia faith and the harassment he had faced because of this. The letter was undated, unsworn, and was not accompanied by any identification. As a result, the RPD gave it no weight.

- The applicants provided no other evidence to corroborate Mr. Baig’s alleged role at the Imam Bargah. The adult applicants are well-educated and were represented by counsel (an immigration consultant). There was no explanation for their failure to provide corroborative evidence.
- In sum, “the claimants’ evidence regarding the principal claimant’s alleged volunteer history... is not credible.”
- The account of the alleged attack at the applicants’ home by Sunni extremists on December 25, 2019, is not credible. The BOC narratives state that when the attackers entered the home they pushed Ms. Gull and she fell and suffered a concussion. However, under questioning during the hearing, Ms. Gull clearly stated that she did not suffer a concussion during the incident. No explanation was offered for this inconsistency.
- The BOC narratives stated that the attackers told Ms. Gull that they had a fatwa to kill Mr. Baig. However, this is not mentioned in the police report Ms. Gull allegedly filed following the incident. There was no explanation for this omission.
- Ms. Gull claimed that she did not have the prior police complaint drafted by her husband with her when she prepared her own complaints about the other incidents. After the RPD pointed out that all three complaints appeared very similar in their formatting, structure, and wording, Ms. Gull admitted that she had referred to her husband’s complaint when she drafted hers. The RPD found that her testimony was internally inconsistent and had evolved under questioning. The RPD also noted that the security features on the documents (a stamp from the Malir City Police Station and a signature) are easily replicable. There was no other evidence establishing that the applicants had actually

lodged complaints with the police. The RPD therefore did not accept that these were genuine complaints that had been brought to the attention of the police. Accordingly, it assigned them no weight in establishing the applicants' claims.

- None of the other evidence tendered by the applicants ameliorated the RPD's credibility concerns.

[12] Having found that the applicants failed to establish that Mr. Baig volunteered with a Shia imambargah in Pakistan or that they had come to anyone's attention because of this, the RPD concluded that the applicants are neither Convention refugees nor persons in need of protection.

[13] In their appeal to the RAD, the applicants sought to adduce four items of new evidence: (1) a recommendation letter dated March 17, 2021, from Trustee Syed Pervez Naqvi on behalf of the imambargah where Mr. Baig allegedly volunteered; (2) a letter of support dated March 1, 2021, from Mr. Baig's older brother describing Mr. Baig's sympathies for the Shia community and his volunteer activities in support of that community; (3) a letter of support dated March 4, 2021, from Ms. Gull's brother describing how she was beaten in her home on December 25, 2019, how she had reported the incident to the police, and how in early January 2021 he learned that a threatening letter had been left at the applicants' home; and (4) an undated letter of support from a neighbour of the applicants describing the December 25, 2019, incident as well as the delivery of the threatening letter in January 2021.

[14] In their submissions addressing the admissibility of these items as new evidence under subsection 110(4) of the *IRPA*, the applicants simply stated that they did not realize evidence to

corroborate their account would be required so they did not attempt to obtain this evidence previously.

[15] With respect to the merits of their appeal, the applicants took issue with most if not all of the RPD's adverse credibility findings.

III. DECISION UNDER REVIEW

A. *The Admissibility of the New Evidence*

[16] The RAD found that all four documents submitted by the applicants contained information that pre-dated the RPD's decision rejecting the claims (i.e. all the information pre-dated January 28, 2021) and the applicants reasonably could have been expected to bring the information to the RPD. Additionally, the RAD found that items 3 and 4 (above) were not sufficiently credible to be admitted because both referred to Ms. Gull being beaten during the incident on December 25, 2019, which contradicts her own account of the incident.

B. *The Merits of the Appeal*

[17] The RAD found that the RPD was correct when it determined that the applicants' evidence failed to credibly establish that Mr. Baig had volunteered with an imambargah in Pakistan and that the applicants were at risk because of this. The RAD agreed with the reasons the RPD gave for having concerns about the credibility of this essential element of the claims. The RAD also agreed with the RPD's finding that the three alleged police complaint documents were not authentic complaints issued by the police in Pakistan. Finally, the RAD agreed with the

RPD that the incident on December 25, 2019, did not occur as the applicants claimed. All of these conclusions were supported by detailed reasons that explained why the RAD agreed with the RPD on these key issues. Accordingly, the RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

IV. STANDARD OF REVIEW

[18] It is well-established that the RAD's decision (including its determination concerning the admissibility of new evidence) should be reviewed on a reasonableness standard: see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29. That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[19] 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). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to

exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

V. ANALYSIS

A. *The Admissibility of the New Evidence*

[20] On review, the applicants simply reiterate their submission to the RAD that they did not realize that corroborative evidence would be required and, as a result, did not attempt to obtain it until after the RPD rejected their claims. They have not pointed to any flaws in the RAD’s analysis of the admissibility of the new evidence. Instead, they effectively ask me to substitute my view for that of the RAD. As set out above, that is not the role of a court on judicial review under the reasonableness standard. The RAD’s conclusion that the applicants failed to establish that they could not reasonably have been expected to present to the RPD the evidence they now seek to rely on is altogether reasonable.

B. *The Merits of the Appeal*

[21] Similarly, the applicants express their disagreement with several of the RAD’s negative credibility determinations but they have not provided any basis for finding that those determinations are unreasonable. The RAD provided detailed and cogent reasons for agreeing with the RPD that the claims for protection failed on credibility grounds. This conclusion is altogether justified in light of the record before the RAD, including the submissions made in support of the appeal. In short, the applicants disagree with how the RAD weighed the evidence

and urge me to re-weigh that evidence and reach a different conclusion than the RAD. Once again, that is not the role of a court on judicial review under the reasonableness standard.

VI. CONCLUSION

[22] For these reasons, the application for judicial review is dismissed.

[23] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-7464-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7464-21

STYLE OF CAUSE: MIRZA MANSOOR AHMED BAIG ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2022

JUDGMENT AND REASONS: NORRIS J.

DATED: MAY 12, 2023

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