

Federal Court



Cour fédérale

Date: 20230808

Docket: IMM-4539-22

Citation: 2023 FC 1082

Ottawa, Ontario, August 8, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

MANIKANDAN SUBRAMANIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant, a citizen of India, seeks judicial review of a Refugee Appeal Division [RAD] decision concluding that he was neither a Convention refugee nor a person in need of protection. The determinative issue was credibility.

[2] For the reasons that follow, I dismiss the application. The RAD based its negative credibility finding on an accumulation of inconsistencies, contradictions and omissions in the Applicant's evidence. The RAD's credibility findings were reasonable and fall within a range of possible, acceptable outcomes in the circumstances.

II. **Background**

A. *The Applicant's refugee claim*

[3] The Applicant claimed refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* based on his fear of reprisals by the Indian authorities, landowners and others due to his political opinion, social activism and an inter-caste relationship.

[4] Specifically, the Applicant alleged that he joined the Communist Party in 2009, following his relatives "Mr. S" and "MG". He claimed he was an active party member, which included organizing protests and attending meetings. In 2014, he decided to marry a lower caste woman (a Dalit woman) to show his commitment to Communist Party principles. Due to both his political activities and romantic relationship, the Applicant claimed he was the victim of several physical attacks and questioned by police regarding extremism. The Applicant then went into hiding and learned that agents from the Central Bureau of Investigation [CBI] had subsequently attended his home looking for him. The Applicant obtained a false passport and travelled to Canada in August 2019.

B. *The RPD decision*

[5] The Refugee Protection Division [RPD] rejected the Applicant's claim under sections 96 and 97 of the *IRPA* based on a lack of credibility. The RPD concluded that there were "significant omissions, discrepancies and/or inconsistencies in his testimony at the hearing and in other evidence provided which were not reasonably explained" (para 15). While the Applicant provided supporting documentation, the RPD determined that they did not "overcome the very significant credibility issues in the claim" (para 64).

[6] Based on the totality of the evidence and the "sheer number of credibility issues," the RPD concluded that the Applicant had failed to establish his claim for refugee protection:

I find that the claimant has not established the core aspects of his claim, that he was a member of the Communist party, that he was targeted by police and others for his political activities or that he was, or is currently being, sought by the police or the CBI. (para 66)

C. *The RAD decision*

[7] On appeal, the RAD agreed that the determinative issue was credibility and confirmed the RPD's decision. In reaching its decision, the RAD thoroughly reviewed the evidence and each of the RPD's adverse credibility findings in turn:

- i. inconsistent evidence regarding the Applicant's decision to flee India (paras 20-28);
- ii. the Applicant's failure to provide a reasonable explanation for not producing his genuine passport (paras 29-39);
- iii. discrepancies in the Applicant's testimony regarding Mr. S's death (paras 40-42);
- iv. the Applicant's lack of sufficient knowledge about the Communist Party (paras 43-48);
- v. the Applicant's failure to produce a membership card (paras 49-53);
- vi. inconsistencies in the Applicant's evidence regarding the March 2019 and January 2017 incidents (paras 54-59);

- vii. omission of 2011 political problems from the Applicant's narrative (paras 60-61);
- viii. inconsistent evidence regarding a January 2014 attack (paras 62-63); and
- ix. inconsistent evidence concerning detention by the police in July 2019 (paras 64-66).

[8] The RAD concluded that collectively these inconsistencies, contradictions and omissions undermined the credibility of his allegation that "he was involved or an activist in the Communist party and is at risk from the police, CBI or upper caste landowners, as he asserts" (para 66).

[9] The RAD reviewed the Applicant's supporting documentation (paras 41, 52, 67, 70) and agreed with the RPD that they were "insufficient to outweigh the plethora of foregoing credibility concerns" (para 67).

[10] The RAD determined that there was no need to conduct a separate section 97 analysis given that the lack of credibility was determinative of both claims.

III. **Issues and Standard of Review**

[11] The overarching issue is whether the RAD erred in concluding that the Applicant lacked credibility. In challenging the RAD's credibility determination, the Applicant makes the following arguments: (i) the RAD unreasonably drew negative inferences in making its credibility determination; (ii) the RAD erred in finding that the Applicant's supporting documentation was insufficient to outweigh its credibility concerns; and (iii) the RAD erred in raising a new issue without giving notice. Further, the Applicant submits that the RAD erred in failing to conduct a separate assessment under section 97 of the *IRPA*.

[12] There is no dispute that the applicable standard of review is reasonableness. In accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], 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” (at para 85). A decision-maker’s reasons are not to be assessed against a standard of perfection (at para 91). Their reasons are to be read holistically and contextually in order to understand “the basis on which a decision was made” (at para 97). A decision must exhibit “the hallmarks of reasonableness – justification, transparency and intelligibility” (at para 99).

IV. Analysis

A. *The numerous inconsistencies, contradictions and omissions support a lack of credibility*

[13] The Applicant asserts that the RAD’s adverse credibility findings are unreasonable. At the hearing, Applicant’s counsel conceded that it was reasonable for the RAD to conclude that the Applicant’s lack of knowledge of the name of the current leader of the Communist Party, and his failure to produce a membership card, undermined his claim. The Applicant’s submission was that the remainder of the RAD’s credibility findings are, however, unreasonable.

[14] I do not agree with the Applicant’s characterization of the RAD’s approach as being “overzealous and microscopic”. Rather, the RAD undertook a comprehensive and thorough review of the evidence to make an independent assessment concerning the Applicant’s credibility.

[15] Significant deference is owed to the RAD with respect to the assessment of credibility: *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at para 23; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 23 [*Sary*]; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 11. As explained by Justice Gascon, “credibility issues are one of the RAD’s core competencies”: *Sary* at para 23.

[16] The Applicant’s focus on the individual inconsistencies, contradictions or omissions cited by the RAD is flawed. The established jurisprudence makes clear that the RAD is not obliged to consider inconsistencies, contradictions and omissions in isolation. Rather, it may rely on their accumulation in making adverse credibility findings: *Hirimuthugoda v Canada (Citizenship and Immigration)*, 2021 FC 784 at para 11; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22; *Sary* at para 19; *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1.

[17] This is precisely what the RAD did in this case – it based its credibility determination on an overall assessment of the evidence. Collectively, the numerous inconsistencies, contradictions and omissions (enumerated in paragraph 7 above) support a lack of credibility. On this basis, I find no reviewable error in the RAD’s assessment of credibility.

B. *Supporting documentation was insufficient to overcome credibility concerns*

[18] The Applicant argues that the RAD erred in concluding that his supporting documentation was insufficient to overcome its credibility concerns and in failing to assign any weight to the evidence.

[19] I do not agree with the Applicant's position. The RAD reviewed the supporting documents, as evidenced in paragraph 67 of its Reasons, and determined that they were "insufficient to outweigh the plethora of foregoing credibility concerns" [emphasis added]. In my view, this passage makes it clear that the RAD did engage in weighing the evidence, but ultimately concluded that the supporting documents were not enough to overcome the significant inconsistencies, contradictions and omissions in the Applicant's evidence as a whole. The RAD further noted that the Applicant had "demonstrated his ability to procure false documents."

[20] The Applicant is essentially asking the Court to re-weigh the evidence and conclude that the supporting documentation outweighs the RAD's credibility concerns. As emphasized by the Supreme Court in *Vavilov*, "the reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker" (at para 125).

C. *Additional findings on a known issue*

[21] In his Memorandum of Argument, the Applicant asserts that the RAD erred in raising a new issue without giving notice to the Applicant and an opportunity to respond. The alleged new

issue relates to the RAD's credibility finding concerning the Applicant's evidence about his participation in March 2019 protests and a 2017 attack.

[22] I do not agree that this credibility finding constitutes a new issue. This Court has held that the RAD may rely on new grounds related to credibility findings that were made by the RPD without holding an oral hearing: *Karim v Canada (Citizenship and Immigration)*, 2020 FC 566 at para 24; *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064; *Lin v Canada (Citizenship and Immigration)*, 2017 FC 1175 at para 22; *Sary* at paras 29-32.

[23] Here, the RPD found that the Applicant's evidence about the March 2019 protests and the 2017 attack was inconsistent. While the RAD concluded that the RPD erred in finding an omission based on the Applicant's failure to mention a particular protest in his narrative, the RAD nonetheless found that the Applicant's evidence about the March 2019 protest and the 2017 attack raised credibility concerns based on its assessment of the evidence (paras 55-57).

[24] I accept the RAD's conclusion that its consideration of the evidence and its impact on the Applicant's credibility is not a new issue:

These are corollary credibility findings made on the same evidence and on the same credibility issue raised by the RPD, which is the Appellant's involvement in a protest in March 2019 and an attack in 2017. The Federal Court has recognized that the RAD is permitted to make additional findings on a known issue without inviting additional submissions. (para 58)

D. *Not necessary to conduct a separate section 97 analysis*

[25] Finally, the Applicant submits that the RAD erred in failing to conduct a separate section 97 analysis. He alleges that the RAD was required to undertake a separate assessment because the evidence from the Applicant's girlfriend was "impliedly credible." I find no merit in this argument.

[26] Negative credibility findings are sufficient to foreclose a section 97 analysis absent objective evidence supporting that the applicant faces a personalized risk: *Cortes v Canada (Citizenship and Immigration)*, 2016 FC 684 at para 30 [*Cortes*]; *Dawoud v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1110 at paras 44-45; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 102 at para 46.

[27] If the evidentiary basis for both claims is the same and the applicant does not provide further information related to the section 97 claim, there is no need to conduct a separate analysis: *Aloysious v Canada (Citizenship and Immigration)*, 2019 FC 1050 at para 15; *Cortes* at para 30; *Canada (Citizenship and Immigration) v Nwobi*, 2014 FC 520 at para 14; *Nega v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1157 at para 18.

[28] Here, the basis for the Applicant's claims under sections 96 and 97 of the *IRPA* were identical – his fear of the Indian authorities, landowners and others due to his political opinion, social activism and an inter-caste relationship. Given the transferable nature of the credibility

findings, it was unnecessary for the RAD to conduct a separate analysis under section 97 of the *IRPA*.

V. **Conclusion**

[29] Based on the foregoing, I find no reviewable errors in the RAD's decision that the Applicant lacked credibility. The application for judicial review is dismissed. The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-4539-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4539-22

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