

Federal Court



Cour fédérale

**Date: 20240301**

**Docket: IMM-4006-22**

**Citation: 2024 FC 347**

**Ottawa, Ontario, March 1, 2024**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**SHAFQAT PARVEEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Shafqat Parveen, seeks judicial review of the decision of the Refugee Appeal Division (“RAD”) dismissing his appeal and upholding the decision of the Refugee Protection Division (“RPD”) that found that he is not a Convention refugee or a person in need of protection.

[2] The determinative issue for both the RPD and the RAD was the Applicant's credibility. Although the RAD disagreed with some of the RPD's specific credibility assessments, the overall result was the same: the Applicant's evidence was found to be unsatisfactory and thus her refugee claim was refused.

[3] The Applicant argues the RAD decision is unreasonable, because she should have been declared a Vulnerable Person in light of the evidence about her medical situation and age. She claims that the RAD's refusal to accept all of her new evidence wrongly led it to reject her appeal.

[4] The Applicant has not met her burden to demonstrate that the decision is unreasonable and I find no denial of procedural fairness. For the following reasons, the application for judicial review will be dismissed.

#### I. Background

[5] The Applicant is a citizen of Pakistan. At the time of the RAD hearing, she was 67 years old. She is a Shia Muslim, and says that she served her religious community in Pakistan. The Applicant has two daughters who are Canadian citizens and a third daughter who lives in Pakistan.

[6] It was the Applicant's service to her religious community that gave rise to her refugee claim. She says that in August 2018 she served as head of the local food bank and shelter services at her local mosque, and she began volunteering to teach children about the Shia faith. As a result of these activities, the Applicant received threatening phone calls from a Sunni Muslim extremist group in Pakistan – the Sipah-e Sahaba ("SSP"). She says that she received approximately 15 threatening calls from SSP between November 2018 and March 2019.

[7] In December 2018, some "goons" gathered outside of her home, threatening her and firing shots into the air. In that month the SSP also tried to extort her for a large sum of money. In March 2019, a local Sunni Imam issued a fatwa against her for damaging the faith of the Sunni community. The Applicant says she tried to obtain assistance from the police, but was told to pay the money that SSP had demanded so that she could live in peace.

[8] The Applicant fled Pakistan and arrived in Canada in April 2019. She claimed refugee protection a few months later.

[9] The RPD rejected the Applicant's refugee claim, finding her evidence to be lacking in credibility. She was represented by counsel and one of her daughters was present at the hearing. The only accommodation request by the Applicant was for frequent washroom breaks, which

was granted. The RPD found that the presumption of credibility was rebutted because the Applicant's testimony was vague and contained inconsistencies and omissions.

[10] The Applicant appealed to the RAD, and brought an application to file new evidence. Because the RAD's treatment of the Applicant's appeal and her application for new evidence are also raised on this judicial review, I will only provide a brief summary of the RAD's decision here. These matters are discussed in more detail below.

[11] On the new evidence request, the RAD accepted a letter from a hearing specialist and an audiological report, even though they did not meet the technical requirements for new evidence under s. 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD also accepted portions of the affidavit of a neighbour in Pakistan, which stated that the Applicant had asked four of her neighbours to be witnesses to speak to the incident when her home was besieged but they refused because they feared the goons. The RAD also admitted a psychological report which stated that the Applicant had been shocked by the RPD decision and provided a cursory description of her medical condition.

[12] In regard to the credibility and vulnerable person request, the RAD rejected the Applicant's claims that the RPD had breached procedural fairness by not following Chairperson's Guideline 8: *Procedures With Respect to Vulnerable Persons Appearing Before*

*the Immigration and Refugee Board* (“Guideline 8”). The RAD noted the absence of any such request before the RPD, and its review of the transcript did not indicate that the Applicant had difficulty understanding or participating in the hearing. The RAD disagreed with some of the RPD’s specific credibility findings, but went on to find that the Applicant’s evidence was inconsistent on key points and her delay in leaving Pakistan after she received the threats despite the fact that she possessed a valid super visa for travel to Canada undermined her credibility.

[13] Based on a review of the transcript and evidence submitted by the Applicant, including the new evidence that was admitted, the RAD rejected the appeal. The Applicant seeks judicial review of this decision.

## II. Issues and Standard of Review

[14] The only issue is whether the RAD’s decision is reasonable. The Applicant submits that it is not, because: (a) the RAD unreasonably refused to admit her new evidence; and (b) because of that, it made unreasonable credibility findings without convening an oral hearing. A core underlying element of the Applicant’s case is the failure of the RPD and RAD to declare her a vulnerable person, despite her medical conditions.

[15] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[16] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2). The reviewing court must look for any “fatal flaws” in the reasons’ overarching logic (*Vavilov* at paragraph 102).

### III. Analysis

[17] In light of the Applicant’s submissions, it will be useful to start with a discussion of the Applicant’s arguments on the vulnerable person designation, which encompass the new evidence issue, before turning to the arguments about the credibility findings made by the RAD, which in turn involve consideration of the oral hearing request. As will become evident below, the Applicant’s submissions are interwoven, and therefore after a discussion of each issue, I will step back to examine the RAD’s decision and the process followed as a whole.

A. *The RAD's treatment of the vulnerable person issue was reasonable*

[18] The Applicant asked the RAD to declare her a Vulnerable Person under Guideline 8 because of her medical conditions (vertigo, dizziness, mental distress and certain other medical conditions) and her advanced age (67), plus her memory issues. She requested that her daughter be appointed as her Designated Representative. The Applicant argued that the RPD erred in failing to make this designation before it conducted the hearing, and claimed that this breach prevented her daughter from gathering the evidence she needed to support her claim.

[19] The RAD refused to designate the Applicant as a vulnerable person on several grounds. First, it noted that neither the Applicant, her counsel nor her daughter had requested that at the RPD. The RAD's review of the transcript showed that she had been able to answer questions when they were asked and she was able to correct the translator at one point in the hearing. While acknowledging the Applicant's statement that she tends to get her dates mixed up, the RAD noted that she testified "in a spontaneous and focused manner throughout the hearing." Furthermore, the translator did not express concerns about her answers or her ability to understand the proceedings.

[20] Turning to the Applicant's new evidence, the RAD found that the psychotherapist's letter reported that she said she suffered from pain and was being treated for depression and anxiety.

The psychotherapist opined that the Applicant's cognitive abilities had declined over the past few years, but no professional assessment of her capabilities was provided.

[21] The RAD found that the RPD had granted the Applicant the accommodation she requested (more frequent washroom breaks). The letter from the doctor in Pakistan was given no weight because the RAD found it to be fraudulent, for reasons discussed below. The RAD found the Applicant's reliance on *Duale v Canada (Citizenship and Immigration)*, 2004 FC 150 [*Duale*] to be misplaced, because in that case the individual was a minor at the time of the RPD proceeding. The RAD concluded that the Applicant had not shown that her ability to understand the proceedings was diminished, and therefore she had not demonstrated that a vulnerable person designation was necessary.

[22] Before this Court, the Applicant argues that the RAD's analysis is fatally flawed because it engaged in circular reasoning and failed to appreciate the impact of her medical conditions on her ability to engage with the process. She submits that the RAD unreasonably excluded some of her medical evidence, and by doing so it failed to consider the very evidence that would have supported her request for a vulnerable person designation. This, in turn, would have affected the RAD's credibility assessment.



[23] The Applicant acknowledges that she did not make a request to the RPD to be designated a vulnerable person, but submits that the RAD's analysis of that point is also circular. The Applicant was not in a position to gather the evidence she needed to support such a request, or to ask her daughter or counsel to do so, because of her medical condition. The RPD did not raise the matter itself. Therefore, she cannot be criticized for failing to raise it at the first opportunity, because she and her counsel did not have the evidence. The Applicant argues that the new evidence was only gathered at the request of her new counsel, who represented her before the RAD and represents her in this judicial review.

[24] Because the evidence-gathering process was impaired by virtue of her diminished capacity and the failure to appoint a Designated Representative to assist her during the process, the Applicant submits that the *Duale* case is directly applicable to her situation. In that case, Justice Eleanor Dawson stated at paragraph 20: "I am unable to safely conclude that the failure to appoint a designated representative could not have had an adverse effect on the outcome of the claim...The evidence before me supports the inference that the evidence gathering process was not what it could have been." The Applicant asserts that the same conclusion should be reached here, given the effects of her medical condition and the absence of a Designated Representative to assist her in preparing for and during the hearing.

[25] I am not persuaded by this argument. The Applicant's situation is significantly different than that found in *Duale*, or the precedent it relies on (*Stumpf v Canada (Minister of Citizenship*

*and Immigration*), 2002 FCA 148). In *Duale*, the applicant was an unaccompanied minor. He completed his initial refugee claim when he was 16 years of age. Although he was represented by counsel by the time his case came on for a hearing, he had not received the benefit of a designated representative in gathering evidence. The RPD found he had not established his identity, criticized his lack of effort to obtain such documents, and drew negative credibility findings.

[26] The facts in *Duale* can be contrasted with the situation in the case at bar. The Applicant was an adult woman who had lived on her own in Pakistan, was represented by counsel, had the assistance of her daughter, and she was able to gather and present evidence. The RAD's review of the transcript showed that she was able to understand and participate in the proceeding. In addition, it should be noted that the Applicant was able to gather and present new evidence before the RAD, without the assistance of a designated representative. The RAD's refusal to accept all of that evidence (a finding which is discussed below) does not diminish the importance of the fact that the Applicant was able to gather it.

[27] Any assessment of the RAD's decision in regard to the vulnerable person designation (and the related question of the naming of a designated representative) must be done with an understanding of the purpose of the vulnerable person designation. It was described this way by Justice Cecily Strickland in *Al-Sarhan v Canada (Citizenship and Immigration)*, 2019 FC 1438:

[25] Guideline 8 is intended to provide procedural accommodation for persons identified as vulnerable persons. Vulnerable persons are defined as individuals whose ability to present their cases before the Immigration and Refugee Board of Canada (“IRB”) is severely impaired. Counsel for a person who wishes to be identified as a vulnerable person must make an application under the applicable rules of the division specifying the nature of the vulnerability, the type of procedural accommodations sought, and the rationale for those accommodations. A psychological report can assist the IRB in applying Guideline 8 if it addresses a person’s particular difficulty in coping with the hearing process, including their ability to give coherent testimony. Such reports should contain the expert’s opinion about the person’s condition and ability to participate in the hearing process, including any suggested procedural accommodations and why they are recommended (Guideline 8 ss 1.1, 2.1, 7.4, 8.1, and 8.3(g)).

[28] I accept that the RPD has a duty to consider whether to designate the claimant as a vulnerable person and to name a designated representative, even in the absence of a request; that is clear from *Duale*. However, that duty will only trigger when the claimant appears to be a person whose ability to present their case is “severely impaired.”

[29] The Applicants says that the RAD engaged in circular reasoning, but I disagree. The evidence that the RAD did not accept falls far short of demonstrating that the Applicant’s capacities were impaired or limited to such a degree that she was not capable of either gathering the evidence prior to the RPD hearing or asking her daughter or counsel to do so. The RAD is bound by strict rules regarding the admission of new evidence, and it did not err in following them: see *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paragraph 54 [*Singh FCA*]. Indeed, on this point I note that the RAD appears to have admitted some new evidence despite finding it did not meet the legal threshold set out in subsection 110(4) of *IRPA*.

[30] In addition, the Applicant was granted the only accommodation she requested before the RPD, and thus was obviously aware that she could make such requests. It was reasonable for the RAD to consider the combined effect of the absence of any request that she be designated a vulnerable person, together with the evidence of her active participation in the RPD hearing. The RAD's treatment of the vulnerable person request was reasonable, and this includes both its assessment of the request made for the RAD to designate the Applicant as a vulnerable person, and its analysis of the Applicant's arguments about the RPD's failure to take that step.

B. *The RAD reasonably refused to admit some of the new evidence*

[31] The Applicant's argument on this point is intertwined with her submissions on the vulnerable person designation, but I will add a few comments in response to her specific submissions on this point.

[32] As noted previously, the legal principles regarding the admission of new evidence before the RAD are restrictive and must be followed: *Singh FCA*. In this case, the RAD refused to admit some of the Applicant's new evidence. The RAD found that the Hearing Specialist's letter and the Audiological report did not meet the criteria for admission under subsection 110(4) of *IRPA*. The Applicant had indicated to the RPD that she had hearing loss, but did not mention the vertigo and dizziness that are mentioned in the Hearing Specialist's letter. The Applicant did not claim that these conditions arose after the RPD hearing; rather, her claim rested on the argument

that she could not reasonably have been expected to obtain this evidence prior to the RPD hearing because she did not anticipate that her claim would be rejected for lack of credibility.

[33] While the RAD found that this evidence did not meet the legal criteria, it nevertheless stated at paragraph 7:

However, given that the information regarding the Appellant's dizziness and vertigo was not mentioned to the RPD and given the Appellant is now arguing that she did not receive a fair hearing and that the RPD erred in its credibility assessment, I am admitting the information related to the Appellant's dizziness and vertigo.

[34] No issue was raised about the legality of the RAD's admission of this evidence, and the Applicant cannot claim that it prejudiced her by doing so.

[35] The RAD refused to admit some other medical evidence, relating to the Applicant's medical condition and certain procedures she underwent in 2020 (noting that the RPD decision was released on November 30, 2021). The RAD found that she had not explained why this evidence could not have been obtained previously, and thus it did not meet the statutory criteria.

[36] The Applicant also submitted an affidavit from a former neighbour in Pakistan, speaking about the December 2018 incident when goons came to her home and threatened her, and indicating that goons had visited the neighbour's home after the Applicant left Pakistan. The

RAD found that the affidavit evidence on these points was not admissible, because there was no explanation why it was not obtained earlier. However, the RAD did admit the portion of the affidavit that indicated that the Applicant had asked four other neighbours to be witnesses but they refused because they feared reprisals from the goons. The RAD accepted that this request was made after the RPD decision was released, and therefore it met the new evidence criteria.

[37] The Applicant submits that the RAD failed to conduct a reasonable analysis of the new evidence. I am not persuaded. The admission of new evidence by the RAD is the exception, and it is governed by strict rules. The RAD assessed the evidence in light of the Applicant's explanations and its analysis conformed to the test set out in subsection 110(4) of *IRPA*. There is no basis to question the RAD's determinations on this point.

[38] In light of its findings on the new evidence, the RAD rejected the Applicant's request for an oral hearing because it found that the new evidence did not raise a serious issue with respect to her credibility. There was no denial of procedural fairness here, because the Applicant had a full and fair opportunity to know the case she had to meet, and she participated fully in the hearings both before the RPD and the RAD.

C. *The RAD's credibility assessments were reasonable*

[39] The RAD disagreed with certain of the RPD's credibility findings. For example, the RAD found that the RPD erred in drawing a negative inference from the lack of witness statements and the vagueness of the Applicant's testimony about the December 2018 incident when goons came to her home. The RAD found that some of the RPD's findings were microscopic, but nevertheless found that her evidence on this lacked credibility because her account evolved on important aspects of what happened.

[40] Similarly, the RAD rejected the RPD's plausibility finding about the Applicant's evidence that the armed militants ran away when a crowd of neighbours came to her home. The RAD found this was not one of the clearest of cases, and there was no way of knowing why the militants would react the way that they did. Therefore the RAD did not draw a negative inference from the Applicant's evidence on this point.

[41] The RAD based its negative credibility assessment mainly on the following findings:

- The Applicant's delay in leaving Pakistan after the threats started, even though she had a valid super visa for entry to Canada;
- The medical letter did not support her claim that she did not leave because she was ordered to take bed rest, and the letter's validity was questionable because it

contained typographical errors in the letterhead; the letter also diverged from the explanation contained in the Applicant's Basis of Claim form;

- Her evidence evolved about whether or when she stopped her religious teaching after the threats began; she first stated it was her duty to continue teaching, and then claimed she had not taught since after the December 2018 attack; and
- The letter stating that a fatwa had been declared against the Applicant was not a legal decree to have her killed, as the Applicant had claimed.

[42] In addition, the RAD found that the Applicant's residual profile as a single, divorced, Shia woman did not support her claim to face a risk of persecution. She had lived on her own in Pakistan after her divorce and had a daughter and other family members there to assist her. The RAD found that the evidence did not support her claim of risk.

[43] The Applicant contends that the RAD's findings are unreasonable, because the new evidence that was excluded by the RAD did go to her credibility, and if it had been admitted the RAD should have held an oral hearing. If that had been done, the Applicant claims that these credibility concerns could have been assessed in light of her medical conditions and overall capacity to provide evidence, which could have resulted in a different outcome.

[44] I am not persuaded by this argument. I have already determined that the RAD's rejection of some of the new evidence was reasonable. Its assessment that the evidence that was admitted



did not call into question her credibility was reasonable, in the circumstances. Because of this, the RAD's decision to refuse to hold an oral hearing was also reasonable. As stated above, the denial of the Applicant's request for an oral hearing did not deny her procedural fairness, in the circumstances of this case.

[45] Turning to the RAD's credibility assessment, I can find no basis to question any aspect of its reasoning. The Applicant's submissions on this point amount to a request that I re-weigh the evidence, but that is not the role of a reviewing court. The RAD examined each element of the key evidence, explained its analysis and justified its overall assessment of the Applicant's credibility. That is all that reasonableness review asks of a decision maker, under the *Vavilov* framework.

#### IV. Conclusion

[46] Stepping back from the details of the Applicant's arguments, I have examined the RAD decision as a whole. I find that it is a careful, balanced and detailed analysis that is both responsive to the Applicant's submissions and reflective of the evidence in the record. The RAD's explanation of its findings and its overall conclusion are clearly explained and its reasoning is logical. That is what reasonableness review under the *Vavilov* framework requires of an administrative decision maker.

[47] Based on the reasons set out above, I find no reason to overturn the RAD's decision. It is a reasonable analysis of the evidence that applies the appropriate legal framework, and there was no denial of procedural fairness.

[48] For all of the reasons set out above, the application for judicial review will be dismissed.

[49] There is no question of general importance for certification.

**JUDGMENT in IMM-4006-22**

**THIS COURT'S JUDGMENT is that:**

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

"William F. Pentney"  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4006-22  
**STYLE OF CAUSE:** SHAFQAT PARVEEN v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VIA ZOOM

**DATE OF HEARING:** APRIL 6, 2023

**REASONS AND JUDGMENT:** PENTNEY J.

**DATED:** MARCH 1, 2024

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