

Federal Court



Cour fédérale

Date: 20250127

Docket: IMM-3719-24

Citation: 2025 FC 152

Ottawa, Ontario, January 27, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

GURDEV SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India and a Sikh. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB], found the Applicant not to be credible and refused his claim for protection. The Refugee Appeal Division [RAD] of the IRB upheld the RPD's decision, also concluding, for reasons of credibility, that the Applicant was not a Convention refugee or a person in need of protection.

[2] The Applicant seeks judicial review of the RAD's February 14, 2024, decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant submits the RAD erred by (1) failing to address evidence corroborating the Applicant's narrative and in particular his reported detention and torture in India, and (2) upholding certain unreasonable credibility findings by the RPD.

[3] The Respondent argues the RAD reasonably addressed the issue raised by the Applicant on appeal, that no reviewable error has been demonstrated, and that the Application for judicial review should be dismissed.

[4] I am required to review the RAD's decision on the standard of reasonableness. Reasonableness review involves a robust evaluation of an administrative decision but starts from the principle of judicial restraint and respect for the distinct role of administrative decision makers. The Applicant must demonstrate shortcomings or flaws in the decision – when read as whole – that render it unreasonable. An unreasonable decision fails to demonstrate an internally coherent and rational chain of analysis that is justified in light of the facts and the law that constrain the decision maker. While the decision maker need not address every argument raised, reasons must be justified, intelligible and transparent. It is not the Court's role to fashion reasons (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 13, 85, 86, 85, 96, 99 and 100).

[5] In this instance, the RAD's reasons are not perfect, but having carefully considered the decision in light of the principles set out above, I am satisfied the decision and the supporting analysis are reasonable. For the reasons that follow, the Application is dismissed.

II. Background

[6] The Applicant reports that, in the years prior to him fleeing India, he had spent significant time travelling between India and Dubai where he worked. He reports upon his return to India in April 2018, he was found to be in possession of a photo or documentation (the evidence on this point is inconsistent) indicating a connection to militant-related activities. As a result of this material being found in his possession, he reports having faced multiple inquiries in the months that followed, and that he was ultimately arrested and tortured on September 13, 2018. He was released that day upon payment of a bribe, after being fingerprinted and having his photograph taken. Upon release he was also told that when asked to do so he was required to again report to the police.

[7] The Applicant then reportedly fled to Delhi where he remained in hiding until he travelled to Canada with the help of an agent in March 2019. He submitted a claim for protection in June 2019.

III. Analysis

[8] In his submissions, the Applicant acknowledges that the RAD's reasons disclose that the RAD undertook an independent examination of the evidence, listened to the hearing before the

RPD, read the transcript of that hearing, and reviewed the negative credibility findings rendered by the RPD. The Applicant argues the RAD erred by failing to explain why supporting/corroborative evidence – evidence the RAD acknowledged had been provided – was not sufficient to overcome the identified credibility concerns. The Applicant submits it was unreasonable for the RAD to reject the claim on credibility grounds without engaging in an analysis of evidence produced for the purpose of corroborating the Applicant's narrative. The evidence was significant and went to the heart of the claim:

- A. a medical report identifying injuries and treatment provided to the Applicant between September 13 and 15, 2018;
- B. an Affidavit sworn by the village Sarpanch that sets out facts that are consistent with the Applicant's narrative relating to the activities and the police's interest in the Applicant;
- C. an Affidavit sworn by a neighbour that similarly reports facts that are consistent with the Applicant's narrative; and
- D. a letter from a lawyer reporting he had been retained by the Applicant regarding a complaint against the police and had helped the Applicant write a letter of complaint.

[9] The Respondent does not dispute that the RAD is required to undertake an independent review of the RPD's decision. However, it is argued this does not provide the Applicant *carte blanche* to frame issues on judicial review that were never raised on appeal to the RAD. The Respondent submits that the RPD did not address the corroborative evidence and therefore this

issue could have been raised and argued before the RAD; it was not, and the Applicant is essentially seeking to litigate an issue not challenged on appeal.

[10] In its reasons, the RAD comments on the absence of substance in the submissions made to it, noting that the submissions made on appeal were limited to generalized allegations of error and did not comply with paragraph 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257 – i.e. that an appellant is required to provide complete and detailed submissions regarding the RPD’s alleged errors.

[11] The Applicant acknowledges his submissions to the RAD were deficient but submits those submissions did identify the general principles applicable to the treatment of evidence when assessing credibility, including the requirement that a decision maker address contrary evidence. This, coupled with the RAD’s obligation to undertake an independent review of the RPD’s decision, was sufficient to trigger a requirement for the RAD to engage with the corroborative evidence.

[12] The RAD’s reasons demonstrate that the RAD was aware of the corroborative evidence and that the RAD considered whether the corroborative/supportive evidence was sufficient to overcome the credibility concerns identified:

[16] [...] Dans ses observations, l’appelant soutient que la SPR a mal interprété la preuve. Je ne peux être en accord avec l’appelant qui n’explique pas de quelle façon la SPR aurait erré à cet égard. De plus, j’estime que ces éléments de preuve ne pallient pas les problèmes de crédibilité relevés dans la preuve.

[13] The RAD's consideration of the corroborative evidence, albeit brief, is responsive to the submissions made. The reasons also demonstrate that the RAD was aware of the corroborative evidence and considered the question of whether the evidence mitigated the numerous credibility concerns the RPD had identified and the RAD had concurred with. The RAD concluded it did not. This is not a situation where a decision maker fails to make any reference to directly contradictory evidence thereby allowing a reviewing court to infer the decision maker was unaware of the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 52, 1998 CanLII 8667 (FC)).

[14] Nor can the RAD's failure to engage in an analysis of the corroborative evidence be read in isolation. This finding must be read holistically and contextually given: (1) the appeal submissions identified concerns with the RPD's treatment of the corroborative evidence in only the most general of terms, (2) the identification of several significant credibility concerns, and (3) as addressed below, the Applicant's failure to produce the complaint letter, the absence of evidence from the Applicant's spouse, and the absence of any explanation as to why this evidence had not been provided.

[15] A more detailed consideration of the corroborative evidence would have been preferable, but I am not persuaded the RAD's failure to undertake that analysis was unreasonable in this case.

[16] The Applicant also argues that the RAD unreasonably rejected evidence that the Applicant had a lawyer assist him in writing a letter of complaint by focusing on what the letter

did not contain, such as details relating to the content of the complaint letter and interactions with the police.

[17] I take no issue with the Applicant's position that it may be an error for a decision maker to focus on the absence of detail in a document where the contents do not otherwise contradict other evidence. However, in this instance, the RPD's credibility finding was not based uniquely on the lack of detail in the lawyer's letter. Instead, the RPD concludes "based on all the evidence" that no complaint letter was written – this finding relied on the Applicant's failure to produce the complaint letter despite having been given an opportunity to do so; the RPD states the following in this regard:

[36] The panel provided the claimant opportunity [*sic*] to contact his lawyer and his Sarpanch to obtain a copy of the said complaint letter, as well as the lawyer's professional ID and the Sarpanch's ID. Although the IDs were provided, the complaint letter was not.

[18] The Applicant having produced the lawyer's professional ID but not having produced the letter, or an explanation for not having done so, it was reasonable for the RPD to conclude – as it did – that the Applicant had failed to establish on a balance of probabilities that the complaint letter had been sent. Nor did the RAD err in confirming the credibility finding.

[19] The Applicant further submits that the RPD and the RAD misapprehended the evidence in stating that the Applicant had testified the lawyer was in possession of the letter when, in fact, he had only stated that he would make an effort to get a copy from the lawyer. I agree, the RPD and in turn the RAD misstated and misapprehended the evidence in this respect. However, as I have noted above, the RPD relied upon "all of the evidence" in concluding that no complaint

letter had been written. The misapprehended testimony was not relied upon to support the RPD's finding or the RAD's concurrence with that finding.

[20] The Applicant also argues that certain of the RAD's credibility findings were microscopic and unreasonable. I disagree. It was not unreasonable for the RAD to find that the Applicant's initial explanation for being detained at the airport – because he allegedly possessed “information about some militant related activities” – differed materially from his testimony before the RPD that his detention was because he was carrying a photo of a man who advocated for a Sikh homeland.

[21] Similarly, and in light of my conclusions that the RAD's credibility findings were not unreasonable, it was not unreasonable for the RAD to draw a negative inference from the Applicant's failure to produce supporting evidence from his wife, an individual who is present in Canada, reportedly witnessed the Applicant's arrest, and was herself assaulted by police.

IV. Conclusion

[22] The Application for judicial review is dismissed. The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-3719-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3719-24

STYLE OF CAUSE: GURDEV SINGH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 22, 2025

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 27, 2025

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