

Federal Court



Cour fédérale

Date: 20250624

Docket: IMM-3321-24

Citation: 2025 FC 1143

Toronto, Ontario, June 24, 2025

PRESENT: Madam Justice Go

BETWEEN:

Jagjeet Singh

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] Mr. Jagjeet Singh [Applicant] is a citizen of India who seeks judicial review of the decision of the Refugee Appeal Division [RAD] confirming the Refugee Protection Division [RPD]’s decision that the Applicant is neither a Convention refugee nor a person in need of protection [Decision].

[2] The Applicant alleges fear of persecution at the hands of the Punjab police who falsely accused him of being involved with Pakistani terrorists. At the RPD hearing, the Applicant further testified that the police were motivated to target him because he had spoken out against corruption. The Applicant fled India and arrived in Canada in January 2017 and claimed protection in late September 2022.

[3] The RPD found the Applicant lacked credibility and did not credibly establish the essential elements of his claim. While the RAD did not agree with all the RPD's findings, it concluded that the RPD correctly found the Applicant has not credibly established the essential elements of his claim.

[4] The RAD's findings can be summarized as follows:

- a. While mindful of the presumption of truthfulness of the Applicant's testimony, the RAD found such presumption was rebutted due to inconsistencies and material omissions, most notably the Applicant's failure to mention in his Basis of Claim [BOC] narrative the alleged ongoing threats and attempts by the agents of persecution to arrest him, which the RAD found significantly undermined his credibility;
- b. The Applicant's delay in claiming protection in Canada undermined his credibility; and
- c. It was unclear whether the Applicant was arguing that there was a reasonable apprehension that the RPD was biased towards him. If bias on the part of the RPD was alleged, it was not established.

[5] Just days before the hearing of his judicial review application, the Applicant retained counsel who submitted a Revised Memorandum of Argument. With the Respondent's consent, I accepted counsel's Revised Memorandum.

[6] In essence, the Applicant argues the Decision was unreasonable because the RAD focused too much on the delay in the filing of the claim, and not enough on the affidavit from the Applicant's wife stating that the police continued to look for the Applicant at their home, when making its negative findings about the Applicant's credibility.

[7] With respect to the delay, the Applicant submits that the concept of reasonableness requires the RAD to consider the individual "as we find it," taking into account the Applicant's educational and other background. The Applicant also submits that the RAD speculated about the advice the Applicant may or may not have received from former counsel who assisted him with his work permit extensions.

[8] With respect to the issue of ongoing threats from the police, the Applicant submits that it was a "tactical" decision of former counsel not to amend the BOC narrative and that the Applicant did not know about the visits until two months before the hearing when his wife provided her affidavit.

[9] The Applicant's revised submissions, with respect, are not based on the evidentiary record and are contradicted by the Applicant's own evidence at the RPD hearing.

[10] Moreover, having reviewed the Decision and the record before me, I conclude it was open for the RAD to find that the presumption of truthfulness has been rebutted in relation to the Applicant's testimony and that the Applicant has not credibly established the essential elements of his claim.

[11] While a claimant's sworn testimony is presumed truth, the presumption can be rebutted where the evidence is inconsistent with the claimant's sworn testimony and when the decision-maker is unsatisfied with the claimant's explanation for inconsistencies: *Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at para 11; *Udemba v Canada (Citizenship and Immigration)*, 2021 FC 1215 at para 20.

[12] In the case before the Court, the RAD found that the Applicant made no mention in his BOC narrative about the significant allegations of repeated, regular, and ongoing visits by the police, even though the Applicant submitted his BOC almost six years after he left India. Absent those visits, the last alleged interaction with the police was in November 2016, which the RAD found to cast doubt on the existence of an ongoing and forward-looking risk.

[13] The RAD also found the Applicant has not reasonably explained the omission in his BOC of the central allegation of police visits. As the RAD noted, the Applicant did not testify that he did not mention the ongoing visits because he did not know they were important and should have been mentioned; his initial response when asked by the RPD was that he had mentioned that the police keep coming. The RAD found that the unexplained omission of this central allegation seriously undermined the Applicant's credibility and rebutted the presumption of truthfulness, citing *Moosavi-Zadeh v Canada (Citizenship and Immigration)*, 2017 FC 365 at para 44.

[14] The onus is on a claimant to include all significant information in the BOC, and that it is open to the decision-maker to draw adverse inferences as to a claimant's credibility where

material facts are omitted from the BOC and only raised in oral testimony: *Berhani v Canada (Citizenship and Immigration)*, 2021 FC 1007 at para 42; *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 [*Ogaulu*] at paras 18 and 20.

[15] As the Court explained in *Ogaulu* at para 20, where the omission from the BOC is not a minor detail or collateral information, but rather, is important to the applicant's claim, then the omission is a reasonable basis for doubting an applicant's credibility.

[16] Here, the ongoing threat to the Applicants' life is the core reason the Applicant sought refugee protection. The RAD thus reasonably expected greater consistency on this point and was justified in doubting the Applicant's credibility. The RAD's reasons present a rational chain of analysis and demonstrate an intelligible engagement with the evidence, as well as the Applicant's explanations and submissions: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 86, 89.

[17] Further, the RAD did consider the affidavit provided by the Applicant's wife and the Applicant's friends. The RAD provided reasons for finding these affidavits insufficient to overcome the RAD's concerns about the Applicant's credibility. The Applicant's disagreement with the RAD's weighing of the affidavit evidence does not raise a reviewable error; rather he is seeking the Court to reweigh the evidence, which is not within the Court's role.

[18] In conclusion, I find the RAD's findings with respect to the omissions in the Applicant's BOC were justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para 99.

[19] I also find it reasonable for the RAD to conclude the Applicant's delay in making his refugee claim undermined his credibility. Contrary to the Applicant's submissions, the RAD did consider the Applicant's individual circumstances. The RAD noted that the Applicant entered Canada on a visitor visa in January 2017 and did not apply for protection until September 2022, almost six years later. The RAD considered the Applicant's explanation that he is a simple person with limited education who did not know how to claim refugee protection until he was told by someone a month before he made his claim. The RAD found the Applicant has not adequately explained his delay in claiming, particularly after he was no longer in status, for the following reasons:

- a. During the Applicant's time in Canada from 2017 to late 2021, he obtained a work permit that was extended twice and was represented by counsel in connection with these applications.
- b. Documentation from his employer indicates the Applicant's position required the ability to communicate functionally in English orally and in writing.
- c. Choosing to remain in Canada on work permits risks loss of status that can result from an unexpected job loss or a refused application to extend an expiring work permit. It was reasonable to expect the Applicant to make every effort to seek secure protection at the earliest opportunity where there is a genuine fear of persecution in his country of origin. The Applicant was able to find his way in the immigration system and find and maintain employment for several years.

[20] For these reasons, the RAD agreed with the RPD that the Applicant is not unsophisticated and has demonstrated resourcefulness that would enable him to make inquiries about options available to him if he has genuine fear of persecution. I see no error arising from these findings.

I also reject the Applicant's counsel's attempt at the hearing to provide new explanations for the delay that were never put before the RPD.

[21] In conclusion, I find the Applicant fails to discharge his burden of demonstrating that the Decision lacks the requisite transparency, intelligibility and justification. On the contrary, read as a whole, I find the Decision reveals a rational chain of analysis with no fatal flaws in its overarching logic that warrants the Court's intervention: *Vavilov* at para 102.

JUDGMENT in IMM-3321-24

THIS COURT'S JUDGMENT is that:

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

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3321-24

STYLE OF CAUSE: JAGJEET SINGH v THE MINISTER IMMIGRATION,
REFUGEES AND CITIZENSHIP

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: GO J.

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APPEARANCES:

Jonas Dubas	FOR THE APPLICANT
Matisse Emanuele	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dubas & Company Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT