

Federal Court



Cour fédérale

Date: 20250409

Docket: IMM-214-24

Citation: 2025 FC 659

Calgary, Alberta, April 9, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SUDHIR ADHIKARY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sudhir Akdhikary, seeks judicial review of the refusal of his application for a Pre-Removal Risk Assessment (“PRRA”) by a senior immigration officer (the “Officer”) on September 29, 2023. In the PRRA refusal, the Officer determined the Applicant was not a refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant submits the PRRA refusal is unreasonable and was rendered in a procedurally unfair manner.

[3] I disagree. For the reasons that follow, this application for judicial review is dismissed.

II. **Background**

[4] The Applicant is a citizen of Bangladesh. He is Hindu.

[5] The Applicant alleges that he was attacked by three prominent Muslim men in 2011 for refusing to sell them farmland that the Applicant inherited from his family. The Applicant alleges that the men attacked him at his home, extorted him, and threatened to kill him if he continued to cultivate the disputed land.

[6] The Applicant states that he approached the police twice, but did not receive assistance. According to the Applicant, “[the police] said they would make some inquiries, but it was clear that they were reluctant to help a Hindu like [him] against such powerful men.”

[7] The Applicant fled Bangladesh, arriving in Canada in August 2011.

[8] In September 2011, the Applicant submitted a refugee claim. The RPD refused the Applicant’s claim in July 2014 due to credibility issues and the Applicant’s failure to establish his identity and ownership of the stolen lands.

[9] In December 2021, the Applicant submitted a PRRA application, which was refused by the Officer on September 29, 2023. The Officer found that the Applicant did not establish that he was a landowner and failed to rebut the presumption of state protection. This is the decision that is presently under review.

III. Issues and Standard of Review

[10] The two issues in this application for judicial review are whether the Officer's decision is reasonable and was rendered in a procedurally fair manner.

[11] The parties submit that the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("Vavilov")). I agree.

[12] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 ("Canadian Pacific Railway Company"); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[15] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28; *Canadian Pacific Railway Company* at para 54).

IV. **Analysis**

[16] The Applicant submits the Officer’s decision is unreasonable and procedurally unfair. The Applicant submits the Officer erred by relying on the RPD’s determination that he had failed to establish he is a landowner. The Applicant submits the Officer undertook a selective review

of the country condition evidence and applied an elevated standard in assessing his risk, contrary to section 96 of the IRPA. The Applicant further submits the Officer made veiled credibility findings that warranted an oral hearing pursuant to paragraph 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[17] The Respondent submits the Officer made no reviewable error. The Respondent asserts that the Officer reasonably relied on the RPD’s findings with respect to the Applicant’s claims of being a landowner, as the Applicant’s PRRA submissions did not displace the totality of the RPD’s findings on this point. The Respondent further submits the Officer was entitled to weigh the country condition evidence and prefer some material over others. The Respondent submits that no hearing was required, as the Officer made no negative credibility determinations additional to those rendered by the RPD.

[18] I agree with the Respondent.

[19] The Officer reasonably relied on the RPD’s findings with respect to the Applicant’s claims of being a landowner. The Applicant submits the RPD’s findings on this issue turned on his failure to establish his identity. As the Applicant established his identity by providing a Bangladeshi passport in his PRRA application, the Applicant asserts that the RPD’s findings no longer apply. I am not persuaded by this submission. Identity was not the sole ground on which the RPD rejected the Applicant’s claims of landownership. At the RPD hearing, the Applicant stated he had no documents to prove he owned the lands in question. When asked if he had requested the documents, the Applicant gave “a variety” of inconsistent and contradictory responses. The Applicant later produced property deeds, stating that they “conveniently arrived

just prior to the second session” of the RPD hearing. The RPD discounted these documents due to the suspicious timing of their arrival, “the [Applicant]’s contradictory testimony about acquiring these documents,” “the prevalence of fraudulent documents” per the country condition evidence, and “the [Applicant]’s demonstrated propensity for obtaining fraudulent documents.” Considering the totality of the RPD’s findings, the passport provided in the Applicant’s PRRA application is insufficient to demonstrate “different circumstances or a new risk” (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 47). Moreover, the Applicant did not indicate whether the land ownership documents provided in his PRRA application were distinct from those rejected by the RPD, despite the burden of proof lying with the applicant in PRRA matters (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 21). The Applicant also did not address the RPD’s concerns with the land ownership documents. I therefore find no error in the Officer’s reliance on the RPD’s findings or their determination that the Applicant failed to demonstrate his identity as a landowner in Bangladesh.

[20] Furthermore, I find no error in the Officer’s determination that the Applicant failed to rebut the presumption of state protection. Contrary to the Applicant’s submissions, the Officer gave due regard to the Applicant’s evidence, acknowledging “letters from family and friends stating the assailants have been asking about his whereabouts as recently as 2019.” The Officer similarly recognized gaps in state protection for Hindus in Bangladesh, but nonetheless found that, “while the system is not perfect, the State provides police protection for its citizens, including those of the Hindu faith.” In making this determination, the Officer quoted directly from passages addressing the mistreatment of Hindus in the country condition evidence and, as in *Aloysious v Canada (Citizenship and Immigration)*, 2019 FC 1050, “was very frank” about the issues of discrimination and violence alleged by the Applicant (at para 16). In light of “the

presumption that [the] Officer has reviewed the entirety of the documentary evidence” and the Officer’s entitlement to “prefer certain documentary evidence over others,” I do not accept the Applicant’s contention that the Officer undertook a selective review of the evidence on this point (*Pathinathar v Canada (Citizenship and Immigration)*, 2015 FC 1312 at para 17).

[21] In my view, the Officer’s findings on state protection were justified given the vague and speculative nature of the Applicant’s claims. In his PRRA submissions, the Applicant stated that he twice sought assistance from the police. The Applicant describes these efforts as follows:

On this occasion I decided to report what had happened to the local police. They said they would make some inquiries, but it was clear that they were reluctant to help a Hindu like me against such powerful men.

...

I reported the matter to the police, but they were again unwilling to assist me.

The Applicant’s statements do not disclose details about his attempts to obtain police assistance or the alleged inadequacies with the police’s response. As noted by the Officer:

The [A]pplicant does not discuss if he was able to file a report or not. The [A]pplicant does not demonstrate that he followed up after his initial interaction. The [A]pplicant does not describe what made it clear to him they were reluctant to help a person of Hindu faith.

The [A]pplicant does not clarify if the police were willing to file a report. The [A]pplicant does not demonstrate they attempted to escalate past speaking to a single individual at his local police station.

The threshold for rebutting the presumption of state protection is high, with the Supreme Court of Canada finding in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 1993 CanLII 105 (SCC) that, “[a]bsent a situation of complete breakdown of [the] state apparatus...it should be assumed that the state is capable of protecting a [refugee] claimant” (at 725). Given the brevity of the Applicant’s submissions, the Officer did not err by finding his evidence vague, speculative, and insufficient to meet this threshold.

[22] I similarly find no error in the Officer’s application of the legal test for risk pursuant to section 96 of the IRPA. The Applicant submits the Officer required evidence of a personalized risk. This submission is meritless. The refusal decision was plainly focused on generalized risk.

The Officer wrote:

The [A]pplicant states his status as a Hindu minority made him a target of persecution, and unable to seek state protection...

...I do not find the [A]pplicant has adequately demonstrated state protection is not available to those of the Hindu faith...

...I find it is possible, the [A]pplicant faced some anti-Hindu discrimination by members of law enforcement during his initial visits. But given the role law enforcement has played in trying to stem anti-Hindu violence; In the absence of more detail, evidence or documentation, I do not find the [A]pplicant has sufficiently rebutted the assumption of state protection.

[Emphasis added]

[23] Turning to the issue of procedural fairness, I find the Officer was not obliged to hold an oral hearing pursuant to paragraph 113(b) of the IRPA and section 167 of the Regulations. The Applicant submits the Officer made veiled credibility determinations in the PRRA refusal. I

disagree. In my view, the Officer's findings were based on the sufficiency of the Applicant's new evidence and the negative credibility determinations made by the RPD.

[24] The Officer's reliance on the RPD's credibility findings does not constitute a reviewable error. As in *Alexander v Canada (Citizenship and Immigration)*, 2021 FC 762 (at para 51):

...the question before the Officer was whether any of [the Applicant's new] evidence justified a different conclusion about the risk [the Applicant] faces in [Bangladesh] than the one drawn by the RPD. Since the RPD's rejection of the claim turned on adverse findings with respect to [the Applicant]'s credibility, the key question before the Officer was whether any of that evidence was capable of displacing the RPD's adverse credibility findings.

The Applicant's new evidence did not address the RPD's credibility concerns. Instead, "[a]ll the [A]pplicant [did] is reiterate his allegations – allegations that were found to be not credible by the Board" (*Sayed v Canada (Citizenship and Immigration)*, 2010 FC 796 at para 37). As a result, I find that, although the Officer discussed serious issues with the Applicant's credibility, these issues were rooted in the Applicant's evidence before the RPD, rather than the new evidence submitted in his PRRA application (Regulations, s 167(a)). As the factors in section 167 of the Regulations are not satisfied, no oral hearing was required pursuant to paragraph 113(b) of the IRPA.

V. **Conclusion**

[25] For these reasons, this application for judicial review is dismissed. The Officer's refusal to conduct an oral hearing did not constitute a breach of the Applicant's procedural rights (IRPA,

s 113(b); Regulations, s 167). The Officer's decision accords with the evidentiary record, the submissions of the parties, and the provisions in the IRPA for the assessment of risk in PRRA applications (*Vavilov* at paras 126, 127, 108).

JUDGMENT in IMM-214-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-214-24

STYLE OF CAUSE: SUDHIR ADHIKARY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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DATE OF HEARING: MARCH 19, 2025

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