

Federal Court



Cour fédérale

Date: 20250422

Docket: IMM-3159-24

Citation: 2025 FC 719

Ottawa, Ontario, April 22, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

GURSEWAK SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Gursewak Singh seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, rejecting his claim for refugee protection. In its decision, the RAD agreed with the conclusion of the Refugee Protection Division [RPD] that Mr. Singh's allegations regarding the risks he faced from the politically-connected family of his former romantic partner, JK, were not credible.

[2] Mr. Singh challenges both the fairness of the process leading to the decision and the merits of the decision itself. For the following reasons, I conclude Mr. Singh has not established either that the process was unfair or that the decision was unreasonable. The application for judicial review must therefore be dismissed.

[3] Mr. Singh's argument regarding the fairness of the process relates to the interpreter who translated his testimony at the RPD hearing. He claims he had difficulty understanding the interpreter since they spoke a different dialect of Punjabi than the one he speaks, and that the interpreter did not properly or adequately translate the questions put and answers given at the hearing. He contends that this faulty translation, rather than any flaw in his own testimony, was the source of the inconsistencies the RPD and the RAD relied on in their credibility findings.

[4] I cannot accept this argument. As a preliminary matter, if there were shortcomings in the interpretation, this is a matter that ought to have been raised with the RPD, the RAD, or both. Although Mr. Singh filed an affidavit on this application stating that he was confused and unable to understand the translation properly, he made no such statements to the RAD, and presented no argument regarding the quality of the translation to the RAD. As a general rule, arguments that were not placed before an administrative decision maker cannot be raised for the first time on judicial review: *Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 23-25; *Camara v Canada (Citizenship and Immigration)*, 2008 FC 362 at para 31; *Ruchika v Canada (Citizenship and Immigration)*, 2024 FC 1737 at paras 28–29.

[5] Further, and more centrally, there is insufficient evidence on the record to substantiate Mr. Singh's argument with respect to the translation provided by the interpreter. The legal framework applicable to translation and interpretation errors was summarized clearly and thoroughly by Justice Gascon of this Court in *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 27–32. I need not repeat that summary, other than to note that the standard is one of “continuous, precise, competent, impartial and contemporaneous” translation, and not one of perfection: *Paulo* at paras 27, 30, citing *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191. To demonstrate that the RAD's decision should be set aside on the basis of inadequate or inaccurate translation, Mr. Singh was required to show that the alleged translation issues or errors were serious and non-trivial, that they hindered his ability to present his allegations and to answer questions, and that they were material to the RAD's findings: *Paulo* at paras 29, 32.

[6] Mr. Singh has not met this standard. Mr. Singh filed no evidence demonstrating that either the questions that were put to him or the answers that he gave were mistranslated or translated in a dialect of Punjabi that was different from his own. No evidence from a certified translator and no evidence setting out examples of the purported differences in translation were filed. Mr. Singh's general statement that he was “unable to understand the translation properly” is insufficient to meet the legal standard.

[7] In the absence of any such evidence, the best counsel could do was point to several instances in the transcript of the hearing in which an apparent difficulty in understanding questions was raised. While these passages show that Mr. Singh or the interpreter occasionally

stated that Mr. Singh was unable to understand questions, I am not satisfied they show there was a general problem with the translation itself or with Mr. Singh's ability to understand the interpreter. Still less do they demonstrate that the translation was not continuous, precise, competent, impartial and contemporaneous, or that any errors or mistranslations owing to differences in dialect were serious or material to the RAD's findings.

[8] I therefore conclude that Mr. Singh has not demonstrated any unfairness arising from the nature or quality of the interpretation services provided at the time of his hearing before the RPD.

[9] Mr. Singh's second argument is that the RAD erred in its credibility findings. On judicial review, this Court will only set aside the factual findings of an administrative decision maker, including their credibility findings, if the applicant demonstrates those findings were unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25, 100, 125–126; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6.

[10] Mr. Singh's main argument regarding the RAD's credibility findings is that they were principally based on his oral testimony, which was inadequately translated. This argument must be rejected, for the same reasons set out above.

[11] Mr. Singh's other arguments on the RAD's credibility findings were presented primarily in his written submissions. They amount to little more than generalized assertions that the RAD

made implausibility findings unsupported by the evidence, made adverse credibility findings based on peripheral omissions from his basis of claim form, conducted a microscopic examination of irrelevant issues, and did not consider the context of the omissions. Such generalized assertions, unconnected to the actual findings made by the RAD, are insufficient to establish the unreasonableness of the RAD's credibility findings: *Nasrallah v Canada (Citizenship and Immigration)*, 2024 FC 2050 at para 3. Indeed, a number of the arguments are entirely misplaced, as the RAD made no credibility findings based on either implausibility or omissions from the basis of claim form.

[12] Rather, as the Minister points out, the RAD's credibility findings were directly tied to Mr. Singh's own evidence, and in particular to his evolving, evasive, and inconsistent testimony with respect to central aspects of his claim. This included contradictory responses in respect of his efforts to obtain documents supporting his allegations that JK's father falsely denounced him to police for having kidnapped and raped JK, as well as aspects of his testimony regarding his relationship with JK, which is said to be the source of his risk. Having reviewed the RAD's reasons and the evidence underlying its credibility findings, I am not satisfied that Mr. Singh has met his burden to demonstrate that the RAD's credibility determinations were unreasonable.

[13] Mr. Singh's third argument is that the RAD erred in not providing its position on the RPD's finding that he had a viable internal flight alternative [IFA] within India. In oral argument, counsel did not pursue this argument, which must in any case be rejected. The RAD did in fact provide its position on the RPD's IFA finding. It concluded at the outset of its analysis that the RPD had committed a serious error in its IFA findings, as a significant portion of them

referred to matters unrelated to Mr. Singh's case, apparently reproduced in error from an unrelated matter. The RAD found this was a serious error that impugned the entirety of its IFA analysis. However, it found that it did not need to address the IFA issue since Mr. Singh's credibility was determinative of his refugee claim. This approach was open to the RAD, which was not required to address the existence of an IFA given its conclusions on the credibility of Mr. Singh's claim: *Ashraf v Canada (Citizenship and Immigration)*, 2023 FC 377 at para 15.

[14] Finally, I note that at the hearing of this application, counsel raised issues regarding the quality of the representation that Mr. Singh received before the RPD and the RAD, when he was represented by different counsel than he was on this application. Counsel noted in particular that the interpretation issue was not raised before the RAD, and that the RPD's decision states that no post-hearing submissions were filed with the RPD despite the opportunity to do so. At the same time, counsel confirmed that no allegations of incompetence or negligence were being raised against former counsel, and the record is clear that the procedural requirements for such allegations were not undertaken. The concerns identified by counsel therefore raise no grounds to set aside the RAD's decision.

[15] As Mr. Singh has not demonstrated either that there was a procedural unfairness in respect of the interpretation provided before the RPD or that the RAD's decision was unreasonable, the application for judicial review must be dismissed.

[16] Neither party proposed a question for certification, and I agree that none arises.

JUDGMENT IN IMM-3159-24

THIS COURT’S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3159-24

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

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 15, 2025

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: APRIL 22, 2025

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