

Federal Court



Cour fédérale

Date: 20250508

Docket: IMM-14006-23

Citation: 2025 FC 847

Ottawa, Ontario, May 8, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

(NO GIVEN NAME) MARKUS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, named Markus, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”), dismissing his appeal from the negative decision of the Refugee Protection Division (“RPD”).

[2] The Applicant claimed asylum in Canada due to his fear of persecution as a Christian by a militant Hindu nationalist organization and the police in India. His claim was dismissed because he was not found to be credible, and his supporting evidence did not back up his claim.

[3] The Applicant claims the RAD denied him procedural fairness and that its decision is unreasonable. I am not persuaded by these arguments. For the reasons set out below, the application for judicial review will be dismissed.

I. Background

[4] The Applicant is a citizen of India and is a practicing Christian. He claims that he attempted to convert drug addicts in his village to Christianity in order to help them overcome their addiction. Because of his conversion activities, the Applicant fears persecution by the Rashtriya Swayamsevak Sangh (RSS), a militant Hindu nationalist organization, and Indian police.

[5] The Applicant claims that he was attacked and threatened with death by the RSS on March 2, 2018, and August 10, 2018. He further claims that he was detained and tortured by the Indian police on August 11, 2018, and December 15, 2018. After the December 2018 attack, the Applicant went into hiding until he left India in March 2019. The Applicant claimed asylum in Canada based on his fear of religious persecution in India.

[6] The RPD dismissed the Applicant's refugee claim, finding his evidence lacked credibility and his supporting documentation was not sufficient to establish his claim. The Applicant appealed to the RAD, but it dismissed his claim.

[7] The RAD largely agreed with the RPD's credibility findings. The Applicant had submitted evidence before the RPD about his psychological condition, arguing that this explained the omissions in his Basis of Claim form and inconsistencies in his testimony. The RAD gave the psychological report little weight, although it did not agree with the entirety of the RPD's analysis of it. Based on its assessment of the report, the RAD concluded that it warranted very little weight because it was largely based on the Applicant's self-reporting rather than the usual battery of diagnostic tests. The RAD also found that the author of the report veered into advocacy on behalf of the Applicant, which diminished the weight to be attributed to the report.

[8] The RAD found that the RPD's assessment of the Applicant's credibility was not tainted by a microscopic examination of his evidence. In conclusion, the RAD "agree[d] with the RPD's analysis – largely uncontested – that the litany of negative credibility findings with respect to the [Applicant] outweigh his limited supporting evidence and that he is, overall, lacking in credibility." The RAD found that the Applicant had not been mistreated by the RSS or Indian police because he is Christian. Given the Applicant's profile and the country condition evidence, the RAD found that he had not established that he faced a forward-facing risk of persecution. The RAD dismissed the Applicant's appeal.

[9] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[10] The Applicant raises two issues:

- A. Did the RAD breach natural justice by failing to give the Applicant notice before raising new and determinative credibility issues not identified by the RPD?
- B. Did the RAD make unreasonable credibility findings?

[11] The first issue is to be assessed on a standard that is akin to “correctness,” although technically no standard of review is applied at all: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55 [*Canadian Pacific*]; see also *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. Under this approach, a reviewing Court is required to assess whether the decision-making process was fair in all of the circumstances, “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual...” (*Canadian Pacific* at para 54). The ultimate question is “whether the applicant knew the case to meet and had a full and fair chance to respond” (*Canadian Pacific* at para 56).

[12] The second issue is 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 confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*].

[13] 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 (*Vavilov* at para 85; *Mason* at para 8). The onus is on the Applicants to demonstrate that “any shortcomings or flaws ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). Absent exceptional circumstances, a reviewing court will not interfere with factual findings; it is not the role of a reviewing court to reweigh or reassess the evidence (*Vavilov* at para 125).

[14] In addition, the Respondent raised an objection to the admissibility of portions of the Applicant’s affidavit filed in this application. It will be convenient to dispose of this question before turning to the issues raised by the Applicant.

III. Analysis

A. *New evidence is not admissible on judicial review*

[15] As a general rule, new evidence (i.e. evidence not part of the record before the decision-maker) is only permitted on judicial review on an exceptional basis: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [*Access Copyright*]. None of the exceptions apply here.

[16] The Applicant acknowledges that portions of the affidavit he filed in support of his application for judicial review contains new evidence. I also observe that parts also contain legal argument which is not appropriate in an affidavit.

[17] I will therefore ignore the portions of the Applicant's affidavit that refer to new evidence that was not before the RPD or RAD, and those portions that put forward legal arguments.

B. *There was no denial of procedural fairness.*

[18] The Applicant submits that the RAD denied him procedural fairness by making credibility findings based on the psychological report, without giving him notice of its intention to do so or an opportunity to respond.

[19] I am not persuaded. In his appeal to the RAD, the Applicant made submissions about the RPD's treatment of the psychological report. Consequently, he was aware that the RAD would be examining it, and it was up to the Applicant to put forward his arguments about the report and its persuasive value.

[20] Moreover, the Applicant's argument ignores the fact that the RAD partially disagreed with the RPD's assessment of the psychological report, in the Applicant's favour. The RAD recognized that the RPD does not need professional evidence to find that someone with severe mental health concerns would likely have difficulty testifying. However, the RAD went on to find that this did not apply to the Applicant's situation, since the report did not explain why his memory lapses would cause omissions from his Basis of Claim form prepared with the assistance of counsel. The RAD also found that the diagnosis in the report was not based on independent testing but rather simply reflected the Applicant's narrative. Finally, the RAD found that the

report engaged in advocacy on the Applicant's behalf rather than presenting an objective medical opinion.

[21] These findings were open to the RAD to make based on the evidence in the record. There is no basis to find that the RAD's treatment of the report denied the Applicant procedural fairness. The RAD's analysis of the probative value of the psychological report reflects a careful assessment of the document itself, and is in conformity with the Court's jurisprudence, in particular the cases confirming that an expert report that engages in advocacy merits little or no weight: *Khan v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 309 at para 14; *Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 at paras 111–112.

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

[22] The Applicant advanced a number of arguments about why the RAD's assessment of the evidence was unreasonable. Much of this amounts to a request that the Court re-weigh the evidence, which is not its role: *Vavilov* at para 125.

[23] The RAD's analysis of the Applicant's arguments about the RPD's credibility findings is transparent, justified and intelligible. The RAD did not blindly accept the RPD's findings; instead, it appropriately engaged in an independent analysis. I find that the RAD decision demonstrates a genuine effort to grapple with the issues the Applicant raised, despite the lack of elaboration or specificity in his submissions on appeal.

[24] There is no basis to find the RAD's decision to be unreasonable. The RPD made many negative credibility findings, and the RAD noted that most of these were not challenged on appeal. The RAD analyzed the evidence, considered the Applicant's submissions on appeal, and concluded that he had not demonstrated any error on the RPD's part. That is a reasonable finding, and the RAD's analysis is clear and coherent.

[25] Based on the analysis set out above, the application for judicial review will be dismissed.

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

JUDGMENT in IMM-14006-23

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-14006-23

STYLE OF CAUSE: (NO GIVEN NAME) MARKUS v THE MINISTER OF
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PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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APPEARANCES:

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