Federal Court Cour fédérale

Date: 20250606

Docket: IMM-7545-24

Citation: 2025 FC 1025

Ottawa, Ontario, June 6, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SYED HASSAN TAHIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Pakistani national of Shia Muslim faith. He claimed refugee status in Canada alleging that he had become the subject of a *fatwa* after discussing sensitive religious issues with a Sunni coworker. The Refugee Protection Division [RPD] rejected his claim because he was not credible, and found that it had no credible basis. On judicial review, the Applicant argues that the RPD unreasonably conflated a negative credibility finding with the finding that his claim had "no credible basis." I agree. For the reasons that follow, this application is granted.

[2] The sole issue is whether the decision under review is reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness—justification, transparency, and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[3] A "no credible basis" finding differs from a negative credibility finding. The former occurs when the "[RPD] is of the opinion, in rejecting a claim, that there was no credible basis on which it could have made a favourable decision" (subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]). Most importantly, such a finding precludes an appeal to the Refugee Appeal Division [RAD] (paragraph 110(2)(c) of the IRPA). By contrast, the latter goes to the reliability of evidence; a negative credibility finding is a determination that a source of evidence is not trustworthy in some way (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 42). Rejecting a claim on the issue of credibility does not bar an appeal to the RAD (*Perez Aquila v Canada (Citizenship and Immigration)*, 2022 FC 231 at para 11 [*Perez Aquila*]).

[4] The RPD explained its "no credible basis" finding in paragraph 23 of its reasons:

> [23] The panel has considered if the claimant's claim has no credible basis. The Act requires the panel to make a finding that a claim has no credible basis if it is of the opinion that there is no credible or trustworthy evidence on which it could have made a

> favourable decision. (*IRPA*, s. 107(2)) The panel finds that this claim has no credible basis because the claimant has failed to establish, on a balance of probabilities, his allegations. [emphasis added]

[5] In my view, this reasoning is flawed. The RPD cannot ground a finding of "no credible basis" in the mere failure to establish a claim on the balance of probabilities (*Sepulveda Venegas c Canada (Citoyenneté et Immigration)*, 2024 CF 1510 at para 35). Nor does a negative credibility finding necessarily entail that the claim had "no credible basis" (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51).

[6] Rather, as held by Justice Walker (as she then was) in *Perez Aquila* at paragraph 11:

> [11] The RPD cannot conclude that there is no credible basis unless there is no trustworthy or credible evidence that could support a recognition of the claim (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19 (*Ramón Levario*)). The case law emphasizes that the bar for finding that a claim for refugee protection has no credible basis is very high (*AB v Canada (Citizenship and Immigration)*, 2020 FC 562 at para 30). This is because such a finding precludes the usual right of appeal to the Refugee Appeal Division, as well as the statutory stay of removal pending the outcome of such an appeal and any subsequent application for leave and judicial review.

[7] As in *Perez Aquila* (at para 13), the RPD did not provide any reasons or analysis to support its conclusion that the Applicant's claim has no credible basis, other than to track the language of the IRPA. Therefore, the Court cannot determine whether the panel understood the important distinction between a claim having no credible basis, and a claim being dismissed on a negative credibility finding relating, for example, to contradictions between an applicant's testimony and basis of claim.

[8] The flaw in the RPD's chain of analysis causes the Court to lose confidence in the outcome reached. Devoting a single and conclusory sentence to a "no credible basis" finding does not meet the standard of justification incumbent upon members of the RPD, especially considering the serious implications that result from such a finding (*Perez Aquila* at para 16). A rational chain of analysis justified in light of the relevant legal and factual constraint was required (*Vavilov* at para 85). In this vein, I note that the RPD never disputed that the Applicant was a devout Shia Muslim or discarded the documentary evidence on the risks faced by members of his religious community in Pakistan. At the very least, this constitutes some "credible or trustworthy evidence on which it could have made a favourable decision" (subsection 107(2) of the IRPA). It will be the RPD's responsibility, on reconsideration, to determine whether the evidence on file, considered as a whole, is sufficiently credible to allow the Applicant to establish his claim.

[9] For the reasons above, this application for judicial review is granted.

JUDGMENT in IMM-7545-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision is set aside and the matter is remitted for redetermination before a different decision maker.
3. There is no question of general importance for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7545-24
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