

Federal Court



Cour fédérale

Date: 20250610

Docket: IMM-4289-20

Citation: 2025 FC 1039

Ottawa, Ontario, June 10, 2025

PRESENT: Madam Justice Pallotta

BETWEEN:

**DANIEL MICHAEL OOMMEN
DARIUS JOHN OOMMEN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are brothers from Pakistan who claimed refugee status based on threats and incidents of targeting they experienced as Christians, at the hands of three individuals, SK, MG, and MMG, who they allege are Muslim extremists. They challenge a Refugee Appeal Division (RAD) decision that dismissed their appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of

protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The key issue in this case was credibility. While the RPD was satisfied that the applicants are Christian, it did not believe their allegations and concluded that they both fabricated stories to support a refugee claim. The RAD found that the RPD had not erred in this regard, the applicants were not credible, and SK, MG, and MMG did not persecute them.

[3] The applicants argue that the RAD's decision was unreasonable and procedurally unfair. They tendered new evidence on appeal and allege that the RAD erred by refusing to admit it. They also argue that the RAD's assessments of the credibility of their core allegations, their residual claims as Christians, and the issue of state protection were unreasonable and procedurally unfair. The applicants identify the issues as:

1. Whether the RAD unreasonably refused to accept the new evidence.
2. In the alternative, whether the RAD breached procedural fairness in refusing to accept the new evidence.
3. Whether the RAD relied on unreasonable credibility findings.
4. Whether the RAD breached procedural fairness by relying on new credibility issues without providing an opportunity to respond.
5. Whether the RAD breached procedural fairness by relying on a new issue, state protection, which was not raised in the RPD decision, without providing notice.

6. In the alternative, whether the RAD's state protection analysis was unreasonable, as it relied on a selective interpretation of the evidence and failed to have regard to the totality of the record.
7. Whether the RAD's assessment of the applicants' residual claims as Christians was unreasonable, as it relied on a selective interpretation of the evidence and failed to have regard to the totality of the record.

[4] The applicable standards of review are not in dispute. Issues 1, 3, 6 and 7 relate to the merits of the RAD's decision and are reviewable on a standard of reasonableness. This is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13, 99 [Vavilov]. The allegations of procedural fairness (issues 2, 4 and 5) are reviewable on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [Canadian Pacific Railway]. The duty of procedural fairness is "eminently variable", inherently flexible, and context-specific: *Vavilov* at para 77, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 22-23, among other cases. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

A. *Issues 1 and 2: Did the RAD unreasonably or unfairly reject the new evidence?*

[5] The applicants sought an extension of time to perfect their appeal to the RAD in order to introduce evidence of events post-dating the RPD decision. They allege that their father returned

to Pakistan in June 2019 to find one of the family properties locked and learned that MG and MMG had taken over the property for their use. The applicants sought to file the following new documentary evidence: (i) a June 2019 letter titled “Legal Notice” that the applicants’ father instructed a lawyer to draft, demanding that MG and MMG cease and desist their unlawful actions and hand over the property; (ii) a copy of a July 2019 court action that the father filed against MG, MMG, and a police station, alleging among other things that MG and MMG were illegally occupying his property and the police had done nothing because they are highly influential people; the applicants also tendered an October 2019 letter from the lawyer indicating that he had been instructed to obtain a certified copy of the court action; (iii) a copy of an August 2019 complaint letter the father wrote and lodged with the police, stating that a few days earlier two bikers wearing helmets had fired warning shots at him, shouting that no court can compel them to hand over property being used for the cause of Islam; and (iv) an undated letter from a reverend stating that he knew the father, the father told him of problems with Muslim extremists that had worsened during his most recent trip to Pakistan, and he advised the father to leave the country.

[6] The RAD found the documents were not credible and refused to admit them. The RAD noted that the court action was issued on July 4, 2019 but referred to an event in the future—it stated that the father approached the police on July 8, 2019. The RAD also noted that the third named defendant was the Kalakot police station but the court action made allegations against a different police station, Soldier Bazar. The RAD found that these mistakes related to central points and undermined the authenticity of the allegations contained within the court action, and further, they undermined the credibility of the police complaint and reverend’s letter which

revolved around the fact of the court action. The RAD also observed that the RPD had drawn negative credibility inferences from the applicants' failure to take legal action for the harassment and threats by the agents of persecution and their failure to seek guidance or advice from their clergy, and found the timing of the post-RPD events that addressed these concerns was "too fortuitous to be true", relying on *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 [*Idugboe*]. Consequently, the RAD did not accept that any of the documents were credible and found they had been created in an effort to respond to inadequacies identified by the RPD.

[7] The applicants contend the RAD committed a reviewable error by failing to examine each document individually on its own merits, instead lumping the evidence together and dismissing it out of hand based on two concerns related to the court document and a global conclusion about the plausibility of the applicants' claims. They argue the RAD engaged in the type of impermissible reasoning described in *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at para 20 [*Chen*], of reaching a conclusion on the claim based on certain evidence and dismissing the remaining evidence as inconsistent with that conclusion. The applicants state it was not reasonable or justifiable to lump the evidence together and treat it as an undifferentiated mass, as the RAD was required to examine the evidence individually before drawing overall conclusions regarding the credibility or sufficiency of the evidence taken as a whole: *Nur v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1444 at para 32 [*Nur*].

[8] With respect to the dates in the court action, the applicants argue there was no basis for the RAD to assume that the pleading was effectively "closed" without possibility of amendment as of July 4, 2019, and they point out that each page of the pleading bears a court stamp next to a

date of July 15, 2019. Similarly, the applicants say there was no basis for the RAD to assume that Kalakot and Soldier Bazar are different police stations or that such a difference would constitute a fatal error—for example, two police stations might have been involved because the lawsuit made allegations about two property locations.

[9] Furthermore, the applicants submit the RAD concluded that all of the new evidence should be rejected based on mere suspicions about timing, which amounts to the type of unfounded plausibility finding this Court has rejected as unreasonable: *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 at para 8. They argue *Idugboe* is distinguishable because the factual circumstances were different (in *Idugboe*, the RAD's concern was a cluster of individual encounters by four people in different geographic regions that occurred within a short period of time following four years of inaction, whereas the new events in the applicants' case were acts of continued persecution by the same individuals) and because the RAD in *Idugboe* had not engaged in the type of impermissible reasoning described in *Chen*. The applicants contend that the only way the RAD could have rejected all of their new evidence out of hand was to form a global conclusion about their claim and then reason backwards to exclude evidence that did not conform to its conclusion.

[10] In addition, the applicants contend the RAD's suspicions about timing were based on a misapprehension of the timeline. According to the applicants, the RAD presumed they became aware of the RPD's decision on June 12, 2019, ignoring both the manner of service (by regular mail) and the statement in the notice of appeal that they received the RPD's decision on June 17, 2019. Given this timing and the June 15, 2019 date of the lawyer's notice letter, the applicants

say the RAD would have had to find that the lawyer fabricated a backdated letter after the applicants learned of the RPD's decision.

[11] Lastly, even if the RAD had concerns with the reliability of the contents of the court action, the applicants state the RAD did not point to anything that would lead to a conclusion that the action was never filed. The document bears court seals and a commissioner's signature, and it was accompanied by a lawyer's letter stating he had obtained a certified copy. Errors in the court document would not negate the fact of the filing itself and the events said to arise from that filing, and the RAD should have considered whether to admit the court document on this basis.

[12] Regarding procedural unfairness, the applicants contend they could not have foreseen the RAD's concerns with the new documentary evidence, and even if they were not entitled to expect an oral hearing, the RAD breached procedural fairness by denying them an opportunity to be heard in some way.

[13] I am not persuaded that the RAD unreasonably refused to admit the new documentary evidence.

[14] The Federal Court of Appeal explained in *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 [Singh] that the legislative framework for an appeal to the RAD reflects Parliament's clear intention to narrowly define the conditions for introducing new evidence: *Singh* at paras 35 and 51. For new evidence to be admitted on appeal, it must meet the express statutory requirements of *IRPA* subsection 110(4) as well as the implied requirements of

credibility, relevance, and materiality: *Singh*, including at paras 38, 49. To determine whether evidence is credible, the RAD is entitled to consider its source and the circumstances in which it came into existence: *Singh* at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13-15.

[15] The applicants have not established a reviewable error in the RAD's finding that the court action contained central mistakes that undermined the authenticity of the allegations in it. The RAD was entitled to conclude that a court action that pertained to genuine events would not contain errors with respect to significant facts such as the name of a defendant and relevant dates. I agree with the respondent that the applicants present possible explanations for the errors that are unsupported by evidence. The applicants have not established that the RAD's finding was unreasonable in light of the record that was before it.

[16] Moreover, the RAD's finding that the documents are not credible was not based on these errors alone. Due to the timing and the nature of the new evidence, the RAD found the new documents had been created in an effort to respond to inadequacies identified by the RPD. The RAD did not make this finding based on mere suspicions about timing or impermissible "backward reasoning". It was open to the RAD to find that the new evidence post-dating the RPD's decision and responding to the RPD's concerns that the applicants had not taken legal action for the harassment and threats by the agents of persecution and had not sought guidance or advice from their clergy was too fortuitous to be true.

[17] The applicants have not established that the RAD's finding was tainted by a misapprehension of the timeline of events. The applicants contend the RAD wrongly presumed that they became aware of the RPD's decision on June 12, 2019, but the RAD did not make a finding about when the applicants became aware of the RPD's concerns, and I do not accept that the RAD's findings about the credibility of the new evidence depended on the date that the applicants received the RPD's decision. The applicants do not contend that they were surprised by the RPD's concerns and the decision indicates that the RPD raised them at the hearing. I also do not accept the applicants' argument that the June 15, 2019 date written on the lawyer's legal notice means that the RAD would have had to find that a lawyer in Pakistan fabricated a backdated letter after the applicants learned of the RPD's decision. The RAD had a reasonable basis for concluding that the document was not credible, and that finding was not premised on an assumption that the applicants first learned of the RPD's concerns when they received a copy the RPD's decision on June 17, 2019. Furthermore, the applicants bear the burden of establishing a reviewable error in the RAD's reasoning or its conclusion that the legal notice is not credible. They have not met that burden on judicial review by pointing to the date and author on the face of the very document that was found to be non-credible and created to respond to inadequacies in the claim, and treating them as established facts to demonstrate a reviewable error. As the respondent points out, a fraudulent document can bear any date.

[18] While there are some differences between the factual circumstances of *Idugboe* and this case, they are not material and they do not distinguish *Idugboe*. The RAD was entitled to consider the fortuitous timing of the events in Pakistan in deciding whether the evidence was sufficiently credible to warrant its admission.

[19] Also, *Idugboe* is not distinguishable on the basis of impermissible reasoning. I am not persuaded that the RAD engaged in the type of impermissible reasoning described in *Chen* or erred by treating the evidence as an “undifferentiated mass” without examining each piece individually, as in *Nur*. The new documentary evidence emanated from the same person, and it was proffered to prove his narrative—the applicants sought to prove that they would face risk upon return to Pakistan because their father “upon his visit to Pakistan in 2019 has faced problems and has been targeted by the same Muslim extremists”. It was not an exercise in circular or impermissible reasoning for the RAD to find that the errors undermining the allegations in the court action would undermine the police complaint and reverend’s letter that continued the narrative. Like the RAD in *Idugboe*, the RAD in this case rejected new documentary evidence based on the collective implausibility of events that were said to occur immediately after the RPD’s decision and that responded to inadequacies that the RPD raised.

[20] The applicants suggest that the RAD either made an unreasonable finding that their father never filed a court action (contrary to the presumption that government issued documents are valid), or it erred by failing to consider whether, despite any concerns with content, the court document was admissible as proof that an action was filed. The RAD did not err in either of these ways. The RAD’s credibility finding clearly related to content and whether the document represented a genuine lawsuit to obtain legal redress for the allegedly illegal actions of MG, MMG, and the police. The RAD did not find the court action to be fake in the sense that it was never filed, and its statement that fraudulent documents are widely available in Pakistan does not suggest otherwise as the applicants contend—particularly since the support for the statement is a section in the National Documentation Package (NDP) that describes the availability of forged

and fraudulent documents generally, including genuine documents that have been issued under false pretences or as a result of bribes and cannot be relied on for their content. The RAD was not required to consider whether, despite concerns with its content, the court document was admissible as proof that the action was filed. The applicants were required to satisfy the RAD that it should admit new evidence on appeal, and they sought to admit the court document for its content. They tendered the document to show that their father recently suffered persecution in Pakistan due to his Christian faith by the same two Muslim extremists who had targeted Darius Oommen, and that he sought legal redress against them. Having found that the document was not credible for this purpose, the RAD was entitled to reject it. The RAD was not required to consider alternative reasons for admission that the applicants had not advanced.

[21] Lastly, the applicants have not established that the RAD breached procedural fairness by failing to provide an opportunity to respond to what they contend were unforeseen concerns about the new documents. I do not accept that the RAD's concerns were unforeseen, and the errors in the court action were apparent on the face of the document. In the circumstances of this case, the RAD was not required to afford the applicants an opportunity to address concerns with the credibility of their own documents.

B. *Issues 3 and 4: Did the RAD rely on unreasonable credibility findings or breach procedural fairness by relying on new credibility issues without giving the applicants an opportunity to respond?*

[22] The RAD reviewed the RPD's credibility findings and determined that it had not erred when it concluded that the applicants are not credible, and that they are not being persecuted by SK, MG, and MMG. In doing so, the applicants submit that the RAD relied on unreasonable and

unfair credibility findings, in that the RAD: (i) endorsed the RPD's findings that SK is not real, which amounted to improper implausibility findings, and rejected the credibility of evidence simply because it was unlikely that events happened in the manner stated; (ii) relied on at least one RPD finding that had been made without regard for Daniel Oommen's basis of claim (BOC) narrative; (iii) made credibility findings against them based on three letters that the RAD found to be fraudulent, which were unreasonable because the letters were found to be fraudulent for having minor typographical errors, and procedurally unfair because the RAD was raising a new credibility issue that the RPD had not raised (the applicants contend the RPD effectively found the letters to be genuine) and the RAD did not provide notice and an opportunity to respond to the new issue.

[23] I do not accept the applicants' arguments. The applicants filed a short memorandum on appeal to the RAD, containing general and vague submissions on how the RPD had erred in finding that SK, MG, and MMG do not exist. The RAD fully addressed the submissions.

[24] Regarding points (i) and (ii) above, the applicants did not argue in their RAD memorandum that the RPD's finding that SK does not exist amounted to an implausibility finding, and the RAD did not rely on implausibility to conclude that the RPD was correct to find that SK was fabricated. Similarly, the applicants did not argue in their RAD memorandum that the RPD had made a finding without regard for Daniel Oommen's BOC narrative, and in any event, I am not persuaded that the BOC narrative calls the finding into question.

[25] Turning to point (iii), the RAD did not rely on minor typographical errors to conclude that the three letters in question were fraudulent. The errors were misspellings of the author's first or last name in two of the letters, which differed from the spelling in the letterhead. Lastly, the RAD did not raise a new credibility issue that required notice and an opportunity to respond to its concerns that the letters were fraudulent. I disagree with the applicants that the RPD effectively found the letters to be genuine. To the contrary, the RPD determined that the letters had been created for the purpose of supporting a refugee claim. While the RPD did not rely on the misspelled author name to support its finding, and while the RAD found that the RPD had erred by assessing the letters for what they did not say, the applicants were clearly on notice that the RPD took issue with the credibility of the letters. The RAD's finding stemmed from that issue and it was entitled to reject the same letters the RPD had rejected, based on errors that were apparent on their face, without first providing notice.

C. *Issues 5, 6, 7: Did the RAD breach procedural fairness by relying on a new issue of state protection, unreasonably analyze the issue of state protection, or unreasonably assess the applicants' residual claims?*

[26] For these issues, the applicants rely on their written submissions. The applicants provided very brief submissions in oral argument and my analysis will also be brief.

[27] The applicants argue that: (i) the RAD erred by relying on the issue of state protection, which was not considered by the RPD, without first providing notice and an opportunity to respond; (ii) alternatively, if state protection was not a new issue, the RAD erred by relying on a selective reading of the country condition evidence without accounting for evidence that directly contradicted its conclusions, including within the documents that the RAD relied on; and (iii) the

RAD's analysis of the applicants' residual claims as Christians was similarly undermined by a selective consideration of the evidence.

[28] I am not persuaded by the applicants' arguments.

[29] State protection was not a new issue, but rather one that was raised in the applicants' memorandum to the RAD. Furthermore, the RAD provided an opportunity for submissions on item 12.4 of the then-current NDP index for Pakistan (March 2020), which focuses on state protection of minority religions in Pakistan.

[30] While the applicants raised the issue of state protection, their submissions (in the RAD memorandum and in response to the RAD's notice regarding item 12.4) were quite brief. I am not persuaded that the RAD erred in finding, based on its review of the applicants' submissions and the accompanying articles, that the applicants had failed to rebut the presumption of state protection. In any event, I agree with the respondent that the RAD's findings on state protection were not determinative. The RAD addressed state protection even though it found that the applicants had not been accused of blasphemy and their arguments that they will eventually be accused of blasphemy were speculative.

[31] Lastly, with respect to the RAD's analysis of the applicants' residual claims as Christians, the applicants contend that the RAD relied almost exclusively on the conclusions of a UK Home Office report that is not binding on Canadian decision makers and disregarded other evidence that directly contradicted its conclusion. It is not clear to me from the applicants'

submissions on judicial review, or their submissions to the RAD, precisely what contradictory evidence the applicants are referring to. In any event, the respondent is correct that the RAD did not rely exclusively on the UK Home Office report. The RAD considered the applicants' evidence and information about their own experiences in Pakistan and the experiences of their family members in assessing risk. Furthermore, the RAD found the allegations of threats by SK, MG, and MMG were not credible, and this left "little else to support" the applicants' allegation that they would face a serious possibility of persecution. The applicants have not persuaded me that the RAD's findings were unreasonable.

[32] In conclusion, the applicants have not established that the RAD's decision was unreasonable or procedurally unfair. Accordingly, this application is dismissed. The parties did not propose a question for certification and there is no question to certify.

JUDGMENT IN IMM-4289-20

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4289-20

STYLE OF CAUSE: DANIEL MICHAEL OOMMEN, DARIUS JOHN
OOMMEN v THE MINISTER OF CITIZENSHIP AND
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