

Federal Court



Cour fédérale

Date: 20250616

Docket: IMM-16203-23

Citation: 2025 FC 1074

Ottawa, Ontario, June 16, 2025

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

AJIT SINGH HANSRA

Respondent

JUDGMENT AND REASONS

[1] In June 2023, the Refugee Protection Division [RPD] determined that the Respondent, Arjit Singh Hansra, was excluded from refugee protection by operation of s. 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and pursuant to Article 1F(b) of the *Convention Relating to the Status of Refugees* [Convention] for committing a serious, non-political crime while outside Canada; namely, uttering a forged passport contrary to s. 57(1)(b) of the *Criminal Code*, RSC 1985, c C-46 [Code].

[2] The Refugee Appeal Division [RAD] allowed the Respondent's appeal and referred the matter back to the RPD for redetermination after concluding that the Respondent's passport was not forged but instead genuine [Decision].

[3] The Applicant, the Minister of Citizenship and Immigration [Minister], seeks judicial review of the Decision. The Minister submits that the RAD erroneously reversed the RPD's finding that there are serious reasons for considering that the Respondent had used a forged passport to travel to Canada in 2008, and then relied on an inapplicable section of the Code to assess the seriousness of the crime. The Minister further submits that it was unreasonable for the RAD to find, on the evidence, that the Respondent was acting under duress when he used the false identity to obtain a work permit and travel to Canada.

[4] For the reasons that follow, I find that the RAD's Decision is plagued with numerous reviewable errors. The application is accordingly granted, and the matter is remitted to the RAD for redetermination by a different panel.

I. Facts

[5] The Respondent is an Indian citizen who resided near the city of Moga in the state of Punjab. In 2007, he used the services of a travel agent to apply for an Indian passport. According to the Respondent, he provided genuine documents to the agent containing accurate information; however, he ultimately received a passport bearing the name "Gurjit Singh Hansra." None of the information contained in the passport was accurate, except for the Respondent's photograph.

[6] The Respondent initially refused to accept the passport. However, the agent advised him that it would be very expensive to rectify the issue, and that if he attempted to do so, he would be implicated in criminal charges for obtaining a passport with false information. Despite his reservations, the Respondent accepted the passport. He subsequently used the passport, which he knew full well contained the false information, to travel to Canada on a work visa in 2008.

[7] Around the same time, unbeknownst to the Respondent, a whistleblower had approached the Moga police to divulge the existence of a wide criminal conspiracy involving various officials at the local passport and post offices, police officers, travel agents, and hundreds of applicants to obtain forged passports.

[8] When the Respondent's work visa expired around 2010, he applied for and was granted an extension using the same false identity. The Respondent's second application for a work visa extension under the same false identity was denied.

[9] In May 2012, the Respondent returned to India. He was arrested at the airport and charged with criminal conspiracy to procure a fraudulent passport. He was detained and then released on bond.

[10] Over time, the Respondent was repeatedly asked by various interveners not to provide oral testimony incriminating other people who had been charged in relation to the passport scam. While the Respondent gave assurances he would keep his mouth shut, he discreetly cooperated with the prosecution.

[11] When it became public in February 2017 that the Respondent had been called as a state witness at the trial and would be providing testimony to the effect that “it was the police officials, passport officials, and others involved that forged the documentation,” five police officers attended his residence and threatened him with arrest if he testified.

[12] The Respondent did not heed the warning. He, along with other individuals, provided testimony at trial against the police and passport officials. The Respondent also provided proof that all the supporting documents he gave to his agent in support of his passport application were genuine and authentic.

[13] In 2018, an Indian Court convicted 25 persons of conspiracy to procure fraudulent passports on the basis of false documents, including a passport office superintendent, a postal office employee, 19 travel agents and three police officers. In announcing the verdict, the judge noted there was no evidence that any of the passport holders themselves had conspired with the corrupt officials to prepare false documents. The Respondent and 43 other passport holders were acquitted of the charges against them.

[14] The Respondent claims that he continued to receive threats from police following his acquittal. He lived in hiding in different locations in India until he fled to Canada in December 2018 to request refugee protection. The Respondent alleges a risk of harm from the police in India, as they implicated him in the passport fraud case.

II. The Decisions

A. *RPD Decision*

[15] As stated earlier, the RPD determined that the Respondent was excluded from refugee protection pursuant to Article 1F(b) of the Convention, as there were serious reasons for considering that he knowingly used a forged passport to travel to Canada in 2008 on a work permit.

[16] The RPD found that the Respondent's actions, had they been committed in Canada, were similar to "uttering" a forged passport contrary to para. 57(1)(b) of the Code.

[17] Subsection 57(1) reads as follows:

57(1) Every one who, while in or out of Canada,	57 (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, étant au Canada ou à l'étranger, selon le cas :
(a) forges a passport, or	a) fait un faux passeport;
(b) knowing that a passport is forged	b) sachant qu'un passeport est faux :
(i) uses, deals with or acts on it, or	(i) soit s'en sert, le traite ou lui donne suite,
(ii) causes or attempts to cause any person to use, deal with or act on it, as	(ii) soit fait, ou tente de faire, accomplir l'un des actes visés au sous-alinéa (i).

if the passport were
genuine,
is guilty of an indictable
offence and liable to
imprisonment for a term
not exceeding fourteen
years.

[18] In so finding, the RPD rejected the Respondent's suggestion that his actions were more akin to an offence under s. 57(2), which provides as follows:

(2) Every one who, while in or out of Canada, for the purpose of procuring a passport for himself or any other person or for the purpose of procuring any material alteration or addition to any such passport, makes a written or an oral statement that he knows is false or misleading	(2) Quiconque au Canada ou à l'étranger, afin d'obtenir un passeport pour lui-même ou pour une autre personne ou afin d'obtenir une modification ou une addition importante à un tel passeport, fait une déclaration écrite ou orale qu'il sait être fausse ou trompeuse est coupable :
(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or	a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;
(b) is guilty of an offence punishable on summary conviction.	b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

[19] In its analysis of the seriousness of the crime, the RPD applied the rebuttable presumption of seriousness because a maximum prison sentence of 14 years could have been imposed for uttering a forged passport in Canada, pursuant to s. 57(1)(b) of the Code (as opposed to s. 57(2), which carries only a two year minimum sentence): see *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at para 62.

[20] The RPD recognized, on the one hand, that the use of a forged passport is non-violent in nature, and it did not involve direct harm to an individual or property. However, on the other hand, the RPD considered that there was a “high level of deception” on the part of the Respondent and that his actions had inflicted harm on Canadian society and its immigration system. Overall, the factors presented weighed in favour of finding that the Respondent’s offence of uttering a forged passport was serious.

[21] The RPD rejected the Respondent’s argument that there were mitigating circumstances which lessened the seriousness of the crime. More specifically, it found that the Respondent was not coerced by Indian passport officials or police to use the passport to travel to Canada in 2008, despite certain threats made by officials should he try to amend the passport. The RPD noted that the Respondent confirmed he was not fleeing persecution or imminent danger at the time and wanted to use the fraudulent passport to “save some money.”

[22] Having excluded the Respondent from protection by operation of s. 98 of the IRPA and Article 1F(b) of the Convention, the RPD did not undertake an assessment of his claim under s. 96 or ss. 97(1) of the IRPA.

B. *RAD Decision*

[23] The RAD allowed the Respondent’s appeal. In a nutshell, the RAD found that there was no legal or factual authority to apply s. 57(1)(b) of the Code because the Respondent’s passport was genuine and not forged.

[24] The RAD concluded that since the Respondent's passport was officially issued by a competent authority and not altered in any way, it was not a forgery, citing *Hasani v Canada (Citizenship and Immigration)*, 2020 FC 125 [*Hasani*]. The RAD found that the Respondent's passport was procured through false statements made by his agent, which were directly attributable to the Respondent. The RAD agreed with the Respondent that his actions, if committed in Canada, would have qualified instead as making a false statement for the purpose of procuring a passport, contrary to s. 57(2) of the Code.

[25] In assessing the elements of the crime and the underlying facts, the RAD accepted that the Respondent was aware of the incorrect information in the passport at the time of receipt and that, despite this knowledge, he used the passport to travel to Canada on a work visa and seek monetary gain. According to the RAD, this amounted to "some level of deception" on the part of the Respondent.

[26] The RAD went on to find that the Respondent was under "significant duress, both economic and otherwise" because the agent told him he would have to pay a significant sum to amend the passport, and he had been warned that he would be implicated in criminal charges if he tried to obtain a new passport. The RAD found it plausible that the Respondent was threatened with criminal charges if he did not use the passport in 2008. For these reasons, the RAD concluded that there was sufficient evidence to support a defense of duress.

[27] The RAD further found that a presumption of serious crime that might be raised by evidence of the commission of heinous crimes, such as homicide, rape, drug trafficking and armed robbery, does not apply to the offences under ss. 57(1) or 57(2) of the Code.

[28] The RAD found that the non-violent nature of the crime and the mitigating factor of duress outweighed the deception, and the harm the Respondent's actions caused to Canadian society and its immigration system. On a contextual assessment of the Respondent's actions, the RAD concluded his conduct would result in a sentence at the low end of the range and exclusion from refugee protection was not warranted in the circumstances.

[29] The RAD concluded that whether the relevant provision of the Code was ss. 57(1) or 57(2), exclusion was not warranted in the circumstances. It therefore allowed the Respondent's appeal and referred the matter back to the RPD for redetermination.

III. Analysis

[30] It is important to set out the applicable legal framework before turning to the parties' submissions.

A. *The Applicable Legal Framework*

(1) Exclusion from Refugee Protection

[31] Section 98 of the IRPA states that a person described under Article 1F or E is not a Convention refugee under s. 96, or person in need of protection under ss. 97(1).

[32] Article 1F(b) states that the “Convention shall not apply to any person” for whom there are “serious reasons” to consider “has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.”

[33] It follows that a refugee claimant is excluded from international protection if there are serious reasons to believe that the claimant committed a serious, non-political crime outside of Canada. This is a low evidentiary standard. The standard is more than a mere suspicion but less than a balance of probabilities: *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at paras 101-102.

(2) Offences Under the Code

[34] Anyone who knowingly uses a forged passport is guilty of the indictable offence of uttering a forged passport under s. 57(1)(b) of the Code and is liable to imprisonment for up to 14 years.

[35] Conversely, anyone who makes false or misleading statements for the purpose of procuring a passport is guilty of making a false statement under s. 57(2) of the Code. This offence is punishable either by indictment with a prison term of up to two years or on summary conviction.

B. *Whether the RAD Erred in Finding that s. 57(1)(b) of the Code did not Apply*

[36] The Minister submits the RAD's finding that section 57(1)(b) of the Code is not applicable was unreasonable since its analysis was based on an erroneous finding that the Respondent's passport was not forged, but rather genuine. I agree.

[37] The RAD found that the Indian Court did "not suggest that the passports were forged documents, but that forged personal documents were utilized to obtain genuine Indian passports." In doing so, the RAD placed great reliance on the decision in *Hasani*.

[38] In that case, the Court found that forgery "has a specific meaning in Canadian law ... [and that] to make a false document includes making material changes to a genuine document": *Hasani* at para 61. The Court stated that in the absence of any evidence that the documents were not genuine or, if genuine, had been altered in a material way, it was unreasonable for the decision-maker to have concluded that they were forged: *Hasani* at paras 8, 61.

[39] I consider the RAD's application of *Hasani* to the Respondent's case to be unreasonable since it failed to recognize that the case is distinguishable on the facts. In *Hasani*, the applicant had obtained genuine travel documents from the United States Citizenship and Immigration Services [USCIS] as a result of submitting authentic personal documents belonging to someone else and misrepresenting her identity. There was no suggestion in that case that the USCIS was aware of the misrepresentation, let alone that any official in the agency was engaged in making false documents. The critical difference in the present case is that the Indian Court found that

various corrupt officials, including, in particular, regional passport office [RPO] officials, “in connivance with each other had forged passport files and passports.”

[40] As stated at page 80 of the Indian Court’s judgment, the criminal conspiracy was perpetrated by different people acting in concert at different stages of the passport application process to produce fraudulent passports:

From the facts and corroborative evidence on record, it is writ large that the travel agents in active collusion with police officials, postman and officials of RPO, had woven an intricate nexus which included four distinct processes i.e. preparation of forged documents, submission of these documents before the passport authorities, wrongful verification of the forged documents by the police and ultimate issuance and delivery of passport to the applicant.

[41] The RAD interpreted *Hasani* to mean that any document issued by an official authority is genuine without considering that the principle did not apply where corrupt officials have intentionally made false documents. It appears that the RAD did not have the benefit of the decision in *R v Aline Zeitoune*, 2018 ONSC 2846 [*Zeitoune*] in rendering its Decision. In that case, the defendant was formerly employed as a passport officer and was found guilty of making forged passports available. The Court held as follows at para 113:

A person commits forgery when they make a false document, knowing it to be false, with intent that it should be acted upon as genuine: s. 366(1) of the Criminal Code. A document can be “false” in a number of ways, but for present purposes it is sufficient to say that pursuant to s. 321 a document that is false in some material particular is a false document, and that a document that is false in reference to the very purpose for which it was created is false in a material particular: *R. v. Gaysek*, 1971 CanLII 11 (SCC), [1971] S.C.R. 888. A passport that falsely states the identity of the person to whom the passport was issued is clearly false with reference to the very purpose for which it was created

and it is therefore a false document...A person who makes such a document knowing that it is false is engaged in forging a passport.

[Emphasis added.]

[42] The defendant in *Zeitoune* used her position to allow passport applications to bypass required screening and proceed to the next stage, where other employees of Passport Canada would produce them. The Court found that in playing this role, the passport officer became a party to the offence of forgery notwithstanding that she did not personally make the passports (para 115).

[43] The same logic would apply to the actions of the Indian passport officials in the present case. Section 321 of the Code defines a “false document” to mean a document that is “false in some material particular,” even if made by or on behalf of the person who purports to make it. The Indian Court found that passport officials involved in the scheme “gave life to the conspiracy” by causing the fraudulent passports to be created. These officials were principals in the act of making forged passports: see *R v Berryman*, 1990 CanLII 286 (BCCA).

[44] For the above reasons, the RAD’s finding that there is “no evidence that the [Respondent’s] passport was forged” is not justified. The matter is accordingly remitted to the RAD to determine whether there are serious reasons to believe that the Respondent committed the crime of uttering a forged passport within the meaning of paragraph 57(1)(b). The focus should be on whether the Respondent intended to travel with a passport he knew to be forged – that is, intentionally false with respect to the most material of particulars: his identity.

[45] I should add that the RAD also erred in accepting the Respondent's submission that for the purposes of ss. 57(2), his passport was procured with false information through written and/or oral statements made by the Respondent's agent on his behalf and that the false statements are attributable directly to the Respondent.

[46] The Respondent's uncontradicted testimony establishes that all the supporting documents he submitted for his passport application were genuine and true. There is simply no evidence that the Respondent ever made a false or misleading statement to the Indian authorities. Moreover, it is common ground that the Respondent was the victim of fraud by his agent and other corrupt officials. The RPD correctly stated at para 23 of its decision that the criminal act being reproached was the fact that the Respondent had used a passport, which he knew to be forged, to travel to Canada. In the circumstances, the RAD had no reason to intervene and apply ss. 57(2).

[47] Although not strictly necessary in light of the above, I will deal briefly with the manner in which the RAD assessed the seriousness of the crime.

C. *Whether the RAD Erred in its Assessment of the Seriousness of the Crime*

[48] The RAD determined, contrary to the RPD, that the Respondent's crime was not sufficiently serious to warrant exclusion under Article 1F(b) of the Convention, irrespective of whether para 57(1)(b) or ss 57(2) of the Code applied, in part because the Respondent was under significant duress, economic or otherwise, to use the passport to travel to Canada, and there was only "some level" of deception by the Respondent. With respect, I consider that the RAD had no reason to intervene as it did.

[49] The legal test for the defence of duress includes the perpetrator of the crime being in danger of imminent harm and having no safe avenue of escape: *R v Ryan*, 2013 SCC 3 [Ryan]. It considers “the particular circumstances in which the person alleging duress found themselves in and their ability to perceive a reasonable alternative to committing a crime, with an awareness of their background and essential characteristics”: *R v Latimer*, 2001 SCC 1 at para 61. The common law of duress includes a requirement of proportionality between the threat and the criminal act to be executed, in the eyes of a reasonable person similarly situated. While there is a subjective component, the test engages objective factors in considering the imminent harm and avenues of escape: *R v Ruzic*, 2001 SCC 24 at paras 61-63.

[50] The Federal Court of Appeal in *Jayasekara v Canada (Citizenship and Immigration)*, 2008 FCA 404 [Jayasekara] held at para 45 that “a constraint short of the criminal law defence of duress may be a relevant mitigating factor in assessing the seriousness of the crime committed.” While the Respondent did not need to meet the strict requirements of the criminal defence of duress in Canada, it remains that he was required to establish that a threat was made, the purpose of which was to compel him under duress to commit an offence: *Ryan*, at para 20. There is no evidence that such a threat is made in the present case.

[51] The Respondent was repeatedly asked at the hearing before the RPD (by my count at least seven times) whether he was forced to use the passport for travel, and if so, by whom. He avoided the questions and simply stated that he was “stuck.” According to the Respondent, he had no choice because if he did not use the passport, “I would have lost my money.” The Respondent added that he was forced to travel to Canada because if he did not, “then everything

will go waste” and he would get implicated in criminal charges if he tried to amend the passport or obtain another one.

[52] The Respondent was obviously placed in a conundrum. Arrangements had been made for a work permit in Canada for which he had paid his life savings; however, he had no means to get there. He had two stark choices to get to Canada – either break the law by using a false passport or try to amend the document and face what he characterized as “serious consequences.” He chose the former.

[53] The RAD found it plausible that the Respondent was threatened with criminal charges if he did not use the passport in 2008. However, there is no evidence to support this finding. More specifically, there was no evidence of any threat to the Respondent’s personal integrity if he declined to use it.

[54] The Respondent admitted that he came to Canada out of financial motivation to work. At that time, he was not fleeing persecution or imminent danger and wanted to use the passport, knowing that it was a false document, to “save some money”. Any suggestion that the Respondent was threatened to leave India using the passport is at odds with his Amended Basis of Claim and his testimony before the RPD, where he acknowledged that, had he faced a threat in India, he would not have returned in 2012, and would have made a claim for protection in Canada during the four years he worked here. For the above reasons, I concluded that the RAD’s analysis of the defence duress was not supported by the evidence and fundamentally flawed.

[55] Finally, the RAD agreed with the Respondent that the RPD failed to undertake a contextualized and just analysis of the factors set out in *Jayasekara* when assessing potential exclusion. In particular, the RAD disagreed with the RPD's finding that there was a high level of deception required to use a fraudulent passport.

[56] Deception is the act of hiding the truth, especially to get an advantage, see Cambridge English Dictionary, "DECEPTION" (accessed online 12 June 2025). The person creating the deception knows it to be false while the receiver of the information does not. It is often done for personal gain or advantage.

[57] There is no question that the Respondent's conduct in using a false identity was deceptive. While it was open to the RAD to disagree with the RPD on the degree of deception, its bald conclusion that there was only "some level" of deception is not transparent and justified.

IV. Conclusion

[58] The application is allowed, and the matter is remitted to the RAD for redetermination by a different panel, in accordance with the Court's reasons.

JUDGMENT IN IMM-16203-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is remitted to a different panel of the Refugee Appeal Division for redetermination.

“Roger R. Lafrenière”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16203-23

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v AJIT SINGH HANSRA

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