

Federal Court



Cour fédérale

Date: 20250611

Docket: IMM-11591-24

Citation: 2025 FC 1052

Toronto, Ontario, June 11, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HARSIMRAN SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision [the Decision] of the Refugee Appeal Division [RAD] dated June 14, 2024, which upheld the decision of the Refugee Protection Division [RPD] dated February 19, 2024, rejecting the Applicant's claim for refugee protection.

[2] As explained in greater detail below, this application for judicial review is dismissed, because the RAD correctly concluded that the RPD's hearing process was fair.

II. **Background**

[3] The Applicant is a citizen of India. He entered Canada in 2019 with a study permit and subsequently filed a claim for refugee protection in April 2021, alleging fear of his uncle due to a family property dispute.

[4] While the Applicant was initially represented by counsel, his counsel withdrew in June 2023, as he was no longer authorized to represent claimants at the Immigration and Refugee Board of Canada. The Applicant's hearing before the RPD took place on January 11, 2024. The Applicant did not have legal representation at the hearing.

[5] On February 19, 2024, the RPD refused the Applicant's claim, with the determinative issue being credibility. The Applicant appealed to the RAD. On June 14, 2024, the RAD dismissed the Applicant's appeal in the Decision that is the subject of this application for judicial review.

III. **Decision under Review**

[6] In his appeal to the RAD, the Applicant's new counsel argued that the Applicant was deprived of procedural fairness because the RPD ended the Applicant's hearing abruptly and did not continue it at a later date, thereby depriving the Applicant of a full hearing on the relevant evidence. In the Decision, the RAD noted the Applicant's argument that the lack of a full hearing

resulted in the RPD failing to consider the evidence in arriving at its findings. The RAD also noted that the Applicant did not otherwise challenge the specific credibility findings made by the RPD.

[7] Following consideration of the evidence, the transcript of the hearing before the RPD, and counsel's arguments, the RAD found that there had been no breach of procedural fairness. The RAD further found that the RPD's credibility analysis was correct and that there was insufficient credible evidence to establish the Applicant's allegations.

[8] The RAD therefore dismissed the Applicant's appeal and confirmed the RPD's finding that he was neither a Convention refugee nor person in need of protection.

IV. **Issues**

[9] The sole substantive issue raised by the Applicant for adjudication by the Court is whether the RAD erred in finding that there had been no breach of procedural fairness in the hearing before the RPD.

[10] However, this matter also raises the preliminary issue of the identification of the applicable standard of review. Both parties' written submissions take the position that the applicable standard is correctness or akin to correctness, whereby the reviewing court must consider whether the procedure followed by an administrative decision-maker was fair having regard to all the circumstances.

[11] Notwithstanding this alignment in the parties' positions, the Court identified at the hearing a divergence that has developed in the jurisprudence considering the standard of review applicable to the Court's consideration of a decision by one administrative decision-maker (such as the RAD) that assessed whether the process adopted by another administrative decision-maker (such as the RPD) was procedurally fair. Consistent with the parties' positions in this application, some authorities have applied the correctness standard, However, other authorities have concluded that the reasonableness standard applied. This jurisprudential divergence is explained in *Rodas Tejada v Canada (Citizenship and Immigration)*, 2025 FC 215 at paragraphs 48 to 58.

[12] Neither party provided substantive submissions on this point at the hearing. While the Respondent recognizes the conflict in the jurisprudence, the Respondent's counsel was content to be bound by the position taken in his written submissions, that the standard of correctness applies. The Respondent also argues that, regardless of whether the Court were to apply the correctness standard or the more deferential reasonableness standard, the Decision should withstand judicial review.

[13] As both parties are content to have the Court apply the correctness standard, i.e., considering whether the procedure followed by the relevant administrative decision-maker was fair having regard to all the circumstances, and as that standard has jurisdictional support, I will conduct my review of the Decision on that basis.

V. Analysis

[14] The Applicant submits that a refugee claimant's right to an oral hearing is well-established and that, in the case at hand, the Applicant was not provided with the benefit of a full oral hearing of his claim and therefore a reasonable opportunity to make his case in relation to the evidence that would be considered by the RPD.

[15] The Applicant argues that the RPD ended the Applicant's refugee hearing prematurely, because the interpreter had another hearing to attend, and consequently issued to the Applicant what the Applicant characterizes as vague and unclear instructions to provide written submissions as to why his claim should be accepted. The Applicant emphasizes his profile as a self-represented and unsophisticated young adult.

[16] The RAD's decision identified excerpts of the transcript of the RPD hearing upon which the Applicant's argument is based. Near the conclusion of the hearing, the Applicant asked the RPD to confirm the work he was to perform post-hearing, involving the production of written submissions to be translated into English. The RPD confirmed the Applicant's description of this work, stating, "Yes, because we don't have time for you to do it today and I also think it would be good for you to consider it and write it down ...".

[17] The RAD then considered the Applicant's argument that the above-referenced excerpts demonstrated that the RPD cut the hearing short because of time constraints and that the failure to resume the hearing at a later date resulted in the Applicant not being provided a full and complete hearing.

[18] In analysing this argument, the RAD first considered other portions of the transcript that demonstrated the RPD's efforts to ensure procedural fairness for the self-represented Applicant during the hearing. This included rescheduling the hearing to allow the Applicant additional time to find counsel, advising the Applicant on the availability of legal aid, and recommending that the Applicant collect documents to support his claim and carefully follow the instructions in his Basis of Claim form [BOC], regardless of whether he ended up being represented by counsel.

[19] The RAD also identified that, in the course of the hearing itself, the RPD took time to ensure that the Applicant understood the procedural aspects of the hearing and explained in simple terms what a refugee claimant needs to show in order to succeed. The RPD also agreed to admit evidence that had not been translated ahead of the hearing as required, noting that the Applicant would be afforded time to submit the required translations after the hearing and that these translations would be reviewed before making the decision. The RAD found that the RPD gave clear instructions on what the Applicant needed to do to ensure that the translations would be accepted into evidence.

[20] The RAD observed that, during questioning, when the RPD identified potentially material inconsistencies in the Applicant's testimony compared to his BOC, the RPD clearly put these to the Applicant and sought explanations. The RAD found no indication that the Applicant did not understand the credibility concerns put to him. Notably, the RAD further observed that, when the RPD had finished its questioning on the evidence, it provided the Applicant with an opportunity to add anything else to support his claim, and the Applicant declined to add to his

evidence. Based thereon, the RAD found the Applicant's assertion, that the hearing of the evidence was cut short, was not accurate.

[21] The RAD then turned to the RPD's instructions that the Applicant was to follow if he wanted to submit translations of his documentary evidence after the hearing. The RPD offered the Applicant the opportunity to make submissions in writing, focusing upon the discrepancies that the RPD had identified at the hearing, to give him a chance to explain why he thought the RPD should accept his claim. The RAD found this to represent an extra step to provide the unrepresented claimant an opportunity to consider his testimony and the RPD's questions on credibility, so that he could take time to organize his arguments and make his case in writing. The RAD observed that such practice was commonplace in relation to counsel's submissions.

[22] The RAD also observed that the RPD had then identified an additional line of questioning that it wanted to pursue, which it did with the assistance of the interpreter. It was at the conclusion of that questioning that the Applicant sought clarification of his post-hearing work to provide written submissions and the RPD made the comment about there not being time that day. The Applicant then asked if there would be another hearing after he provided his written submissions, and the RPD responded that there would not be another hearing unless the RPD had questions about the documents that the Applicant was going to submit.

[23] Against the backdrop of that analysis, the RAD found that the RPD's comment, about there not being time, was not a comment about time to complete the hearing but rather a comment that there was not enough time for post-questioning oral submissions. The Applicant

argues before the Court that this is a contradictory finding as, if there is not enough time for oral submissions, then there is not enough time to complete the hearing.

[24] I find no merit to this argument. I read the RAD's finding as an explanation that the RPD had afforded the Applicant the necessary opportunity to provide evidence orally and that the remaining process, involving submissions, would take place in writing. The Applicant has not advanced any compelling argument as to why the adoption of such a process was procedurally unfair. The RAD found that this process represented an opportunity to give the Applicant time outside the hearing room environment to collect his thoughts and to make his case, an approach that the RAD considered to be consistent with the interests of procedural fairness. The Applicant submits that giving a self-represented claimant this opportunity is not equivalent to giving such an opportunity to counsel. While I appreciate that the Applicant may not be as adept as legal counsel in formulating written submissions, the same reasoning would apply to the provision of oral submissions, and I accept the reasoning of the RPD and the RAD that the use of written submissions had the advantage of affording the Applicant time to prepare his arguments.

[25] The Applicant also references excerpts from the hearing transcript in which the RPD provided the Applicant with instructions on getting his documentary evidence translated and providing his written submissions. While the Applicant characterizes these instructions as unclear and rushed, he provides no compelling support for that characterization, and I find no basis to conclude that those instructions lacked clarity and therefore deprived the Applicant of procedural fairness.

[26] The Applicant notes the RAD's observation that, while paragraph 170(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 affords the Applicant the right to make representations to the RPD, Rule 10(7) of the *Refugee Protection Division Rules*, SOR/2012-256 provides that such representations must be made orally at the end of the hearing unless the RPD orders otherwise. The RAD found that the RPD's direction to have representations made in writing was consistent with this Rule. The Applicant argues that the RAD's reasoning is contradictory, in that it characterizes the RPD's procedural approach as both an opportunity and a direction. Citing *Umlani v Canada (Citizenship and Immigration)*, 2008 FC 1373 at paragraph 61, he also argues that the discretion to direct that submissions be made in writing cannot be exercised arbitrarily.

[27] While I accept the general principle that discretion cannot be exercised arbitrarily, otherwise I find no merit to these arguments. The RAD's analysis recognized the RPD's authority to direct the manner in which representations would be received, and the RAD approved of the RPD's approach, as it provided the Applicant an opportunity to prepare his submissions with time for reflection. Like the RAD, I find that approach consistent with the interests of procedural fairness.

[28] Finally, the Applicant takes issue with the reasoning that he would have a better opportunity to make his case in writing, rather than orally at the hearing with the use of an interpreter. He submits that, if he had been allowed to make oral submissions, either on the original hearing date or on a later date, this could have resulted in further questioning by the RPD and therefore additional evidence to support his claim. The Applicant argues that it is

impossible to know what additional evidence may have thereby been adduced, as that opportunity was not afforded to him.

[29] I find this submission entirely speculative. It is available to an applicant in a judicial review application to seek to adduce evidence, in support of a procedural fairness argument, in an effort to demonstrate additional evidence that would have been before the administrative decision-maker if the alleged breach of procedural fairness had not occurred. The Applicant has not adduced any evidence or argument of this nature.

[30] In conclusion, taking into account the Applicant's arguments and all the circumstances of this case, I agree with the RAD that the process followed by the RPD was procedurally fair. My Judgment will therefore dismiss this application for judicial review. Neither party raised any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-11591-24

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: HARSIMRAN SINGH v. THE MINISTER OF
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