

CANADA / JUDGMENT

MB9-22207

COURT

Refugee Appeal Division

DECIDED

4 December 2020

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RAD File No. / No de dossier de la SAR : MB9-22207 MB9-22208 Private Proceeding / Huis clos
Reasons and decision ?Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Montréal, QC Appel instruit /
entendu à Date of decision December 4, 2020 Date de la décision Panel Me Martine Durocher
Tribunal Counsel for the persons who are the subject of the appeal Claude Whalen Conseil des
personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the
Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX (the male appellant) and XXXX XXXX (the associate appellant) are citizens of India (the appellants). They are appealing the decision rendered by the Refugee Protection Division (RPD) on July 25, 2019, rejecting their refugee protection claims, before the Refugee Appeal Division (RAD).
- [2] The male appellant's brother was allegedly murdered by police authorities in 1998. The appellants travelled to the United Kingdom in XXXX 2010. While the female appellant returned to India in XXXX 2010, the male appellant remained there until his deportation in 2013. In XXXX 2016, the male appellant allegedly contacted the police after coming across four individuals who had broken into his XXXX XXXX. Afterwards, he claims that he received anonymous threatening calls. On XXXX XXXX XXXX 2016, he was summoned by the police for a lineup, but he claims that he was pressured into falsely identifying one of the individuals. He consequently decided to flee his village and go to New Delhi with his family. He obtained Canadian visas for himself and the associate appellant, but not for his three children. The appellants arrived in Canada on XXXX XXXX XXXX 2016, and they filed their refugee protection claims on XXXX XXXX XXXX 2017.
- [3] The RPD found the appellants' testimony not credible. The determinative issue before the RAD remains that of credibility.

DETERMINATION

- [4] I dismiss the appeal. The RPD correctly determined that the appellants are not Convention refugees or persons in need of protection.

PROCEDURAL HISTORY

- [5] On June 15, 2020, following an administrative error, the RAD sent an email notice to counsel, inviting them to submit any documents or written submissions in support of the appeal, despite the fact that a decision had already been rendered. A decision in the case had already been signed and rendered by member Max Wolpert, but it had not been sent to the appellants due to the pandemic-related closure of the Registry.
- [6] On July 16, 2020, the counsel of record therefore responded to the notice by submitting documents and written submissions to the RAD. The record was no longer before Mr. Wolpert and he was unable to consider this new evidence.
- [7] As a result, on October 2, 2020, in applying the doctrine of legitimate expectations, which is part of the principles of natural justice, the RAD ordered an administrative reopening of the appeal and the file was assigned to a new member. NEW EVIDENCE The evidence presented by the appellants is rejected
- [8] According to the law,¹ I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that a person could not reasonably have been expected in the circumstances to have presented to the RPD before the decision.
- [9] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.²
- [10] On July 16, 2020, the appellants' counsel submitted two documents as additional evidence along with submissions about India's situation with regard to the COVID-19 pandemic.
- [11] The first document, entitled Worldometer, is a report on the state of the Coronavirus pandemic throughout the world. The appellants submit that the low testing rate in India is a disadvantage. They are of the opinion that it demonstrates the Indian health care system's poor preparation and ability to respond to the pandemic.
- [12] The second document, entitled How well is India responding to COVID-19?, describes the difficulties India faces in managing the pandemic.
- [13] I would like to point out that the letter sent by the Board after the Registry reopened, dated June 15, 2020, specifically mentions that rule 29 of the Refugee Appeal Division Rules (the Rules) and subsection 110(4) of the Immigration and Refugee Protection Act (IRPA) still apply.
- [14] I am of the opinion that the additional evidence does not meet the test of relevance as required by rule 29. First, I note that the appellants did not submit any arguments to explain the connection between the information in the documents and the allegations in support of their refugee protection claims. The appellants only argue that they could catch the virus if they had to return to their country of origin.

- [15] I also note that, under section 97 of the IRPA, the risk cannot be caused by the inability of a country to provide adequate health or medical care. Furthermore, the appellants' written submissions make no arguments connecting the evidence to one of the Convention grounds. Alternatively, even if I were to accept the documents under the aegis of rule 29 of the Rules and if the criteria of section 110(4) of the IRPA were met, because the pandemic arose after the RPD decision, I am of the opinion that the Singh/Raza criteria, including that of relevance, havenot been met.
- [16] Again, I note that the onus is on the appellants to demonstrate how the new evidence meets the criteria in subsection 110(4) of the IRPA and how it is related to the appellants' allegations.³ I am of the view that it does not satisfy the Singh/Raza criteria, including that of relevance. The appellants failed to establish how the evidence submitted affects their allegations in support of their refugee protection claims or how the documents show that they would be subjected to a serious possibility of persecution or a risk to their lives within the meaning of section 97 of the IRPA, if they returned to India. I note in particular that the appellants are XXXXandXXXX XXXX years old and are therefore not part of the older segment of the population that is more vulnerable to the Coronavirus. As a result, I refuse to admit this new evidence for lack of relevance. ROLE OF THE REFUGEE APPEAL DIVISION
- [17] I will review the RPD's decision on a standard of correctness after conducting an independent assessment of the entirety of the evidence before me, including the hearing recording.⁴

ANALYSIS

- [18] The RPD concluded that the male appellant adjusted his testimony when he explained that he was afraid of the police who pressured him to falsely identify one of the individuals as a terrorist, but that in fact he had feared the police since his brother's murder in 1998.⁵ On appeal, the male appellant criticizes this conclusion and claims that the hearing recording does not demonstrate that he tried to adjust his testimony. He argues that it was not inconsistent to have feared the police generally following his brother's murder in 1998 and then personally following the events of XXXX 2016.⁶
- [19] Listening to the hearing recording led me to note that it is unclear whether the male appellant testified that he feared the police because of the incident in XXXX 2016 or whether he fears them because the police murdered his brother in 1998. On the one hand, he stated that the police pressured him into falsely identifying someone, which he interpreted as a threat. On the other, he clearly testified that he has been afraid of the police since his brother's death in 1998.⁷ I agree with the appellants that these two fears are not incompatible in principle and that one may have influenced the other.
- [20] However, I note that, after discovering the intruders in his pumping station, he called and collaborated with the police, despite his alleged fears. I also note that, following the so-called threatening calls of XXXX 2016, he called the police again to report the situation, but

that the police did nothing. He also answered a police summons to identify suspects, and stayed at the police station for at least one hour. I note that this behaviour is inconsistent with that of someone who fears the police. In these circumstances, I agree with the RPD's conclusion that the male appellant's explanations regarding the basis of his fear are ambiguous and that he attempted to adjust his answers according to the questions he was asked.

- [21] Next, the RPD concluded that the appellant [translation] "improvised" answers when asked why he did not claim asylum when he was in the United Kingdom from XXXX 2010 to XXXX 2012, given that he had feared the police authorities since his brother's death in 1998. It rejected the explanations provided by the male appellant, who testified that he did not claim asylum because he missed his children in India.⁸ The male appellant argues that this conclusion is unreasonable. On appeal, he alleges that he had every reason to fear the police since 1998, but that he was not personally persecuted at the time of his stay in the United Kingdom. Furthermore, he missed his children and wanted to go back to India. The appellants argue that the fact that they left their children in Canada when they claimed refugee protection there shows instead that their fear is well-founded.⁹
- [22] I agree with the RPD's analysis and conclusion that the male appellant's testimony seemed improvised. Listening to the recording reveals that the male appellant testified that he did not claim asylum because he missed his children.¹⁰ However, the evidence shows that he stayed in the United Kingdom for at least three years and that he left because he was deported. He did not spontaneously explain that he did not feel personally at risk at that time, contrary to his argument on appeal. In light of the case law cited at paragraphs 21 and 22 of the RPD's decision, I agree that the male appellant's not claiming asylum during his stay in the United Kingdom casts doubt on his subjective fear related to the alleged risks in his country.
- [23] The RPD also concluded that the male appellant improvised when he was asked how it was possible that the police only kept him at the station for one hour even though they were willing to do anything to obtain false information.¹¹ On appeal, the appellants allege that listening to his testimony does not make it possible to conclude that he improvised, and that he did not contradict his written account. They also argue that the duration of his interview at the police station depended on the behaviour of a third party; it is not the male appellant's responsibility to justify it. They are of the opinion that the panel identified improvisations where there were none.¹²
- [24] Listening to the recording reveals that the male appellant seems to have tried to justify his alleged fear of the police at the interview in XXXX 2016 by explaining that he overheard the police having a conversation about how, if he could not identify someone the next time, they would not let him go.¹³ I note that this conversation is not mentioned in the appellants' Basis of Claim Form, in which the male appellant notes that he was pressured and promised rewards for falsely identifying a suspect. As a result, I agree with the RPD's analysis that this explanation appears to have been improvised in order to answer the member's question.

- [25] With regard to the appellants' alleged fear of the intruders, or terrorists, the panel rejects the male appellant's explanation relating to anonymous death threat calls and why these seemed so serious in the circumstances.¹⁴ The appellants did not voice any specific grievance with regard to this aspect of the decision.
- [26] I agree with the RPD's analysis on this point. The description of the alleged telephone death threats that the male appellant received was general both in terms of the frequency and the content of the calls. The male appellant testified that that he received one or two calls per day from XXXX 2016 to XXXX 2016, but he stated that there was no follow through on any of them because he was in New Delhi. However, he claims that the terrorists could easily find him because his sister lived in that city. I consider his testimony on this matter to be contradictory. If he could easily be found because of his sister, it is curious that the appellants could have lived there without incident, whether they went out on the streets or not. I agree with the RPD that these explanations must be rejected and that this further undermines the male appellant's credibility regarding the allegations in support of his refugee protection claim.
- [27] Lastly, the RPD rejected the male appellant's explanation justifying the five-month delay between his arrival in Canada and the filing of their refugee protection claims.¹⁵ The appellants argue on appeal that the explanation that they waited until their children were in Canada before filing their refugee protection claim is reasonable and that the panel did not provide reasons to support its conclusion on this matter. They also argue that the five-month delay cannot be determinative in the assessment of their credibility in this case.¹⁶
- [28] I am not of the view that the five-month delay and the reason for not claiming earlier are inherently unreasonable, especially if the appellants had visas that allowed them to legally remain in Canada on a temporary basis. However, in a context where the male appellant's credibility relating to his fears of returning to India is seriously undermined, I am of the opinion that this conclusion has no impact the final determination.
- [29] In light of the appellants' lack of credibility, the RPD did not give probative value to any of the documentary evidence filed by the appellants, including a lawyer's letter, an affidavit from the Numberdar, from the female appellant's father, a property registry for agricultural land and a photograph of the pumping station.¹⁷ The appellants did not address this conclusion on appeal.
- [30] Considering that the majority of the RPD's conclusions have been confirmed in this appeal and having reviewed the documents in question, I am of the opinion that the RPD correctly concluded that these documents cannot have any probative weight, especially since the documentary evidence reports that it is easy to obtain false documents in India.¹⁸
- [31] I therefore conclude that the appellants failed to establish, on a balance of probabilities, the allegations made in support of their refugee protection claims.

[32] As a result, I am of the view that the RPD correctly concluded that the appellants failed to establish that they would face a serious possibility of persecution within the meaning of the Convention, or that they would be subjected to a risk to their lives, a risk of cruel and unusual treatment or punishment, or a danger of torture if they returned to India.

CONCLUSION

[33] I dismiss the appeal and confirm the determination of the RPD that the appellants are not Convention refugees or persons in need of protection. (signed) Me Martine Durocher Me Martine Durocher December 4, 2020 Date IRB translation Original language: French 1 Subsection 110(4) of the Immigration and Refugee Protection Act. 2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza, FC 385. 3 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 (CanLII), para. 45. 4 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 5 Refugee Protection Division (RPD) decision, paras. 14-17. 6 Appellants' memorandum, paras. 14-17. 7 Hearing recording, at approximately 33 minutes. 8 RPD decision, paras. 18-20. 9 Appellants' memorandum, paras. 18-23. 10 Hearing recording, at approximately 35 minutes. 11 RPD decision, paras. 26-28. 12 Appellants' memorandum, paras. 24-28. 13 Hearing recording, at approximately 46 minutes. 14 RPD decision, paras. 29-34. 15 RPD decision, paras. 35-37. 16 Appellants' memorandum, 29-33. 17 RPD decision, paras. 36-37. 18 National Documentation Package on India, July 17, 2020, Tab 3.10: Status of the National Register of Indian Citizens (NRIC) and the Multi-purpose National Identity Cards (MNICs). Immigration and Refugee Board of Canada. May 13, 2014 IND104841.E

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Disponible en français 3 Immigration and Refugee Board of Canada Refugee Appeal Division
Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (January 14, 2020) Disponible en français

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