

CANADA / JUDGMENT

## TB9-12379

COURT

Refugee Appeal Division

DECIDED

29 July 2020

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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 File No. / N° de dossier de la SAR : TB9-12379

TB9-12380

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Person who is the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX

Personne en cause

Appeal considered at

Montreal, Quebec

Appel instruit à

Date of decision

July 29, 2020

Date de la décision

Panel

Me Patricia O'Connor

## REASONS FOR DECISION

- [5] Given the problems towards the Muslim community, the PA XXXX XXXX XXXX XXXX XXXX where he made a failed refugee claim. He returned to India XXXX XXXX XXXX. Upon his return to India, the PA was detained by the police XXXX XXXX XXXX.
- [6] The Appellants got married XXXX XXXX XXXX and remained living in their village. The police continued to harass the PA whenever an incident happened in the community.
- [7] In XXXX XXXX, members of the Hindu Munnani organization along with members of the right-wing Hindu nationalist organization Rashtriya Swayamsevak Sangh (RSS) and two local policemen came to the house to arrest the PA based on a police report against him for assaulting two local members of the Hindu Munnani organization. The PA was physically assaulted at the police station.
- [8] XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX without status. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX where he lived peacefully for the next year although he received some threatening phone calls from right-wing Hindu nationalists.
- [9] XXXX XXXX, the PA joined the Naam Manidhar Katchi which became a registered political party in XXXX XXXX and accepted the Party's XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. XXXX XXXX XXXX, the PA was informed that the right-wing Hindu Munnani group discovered XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. As such, the two XXXX XXXX XXXX XXXX XXXX XXXX XXXX, to live with their own relatives.
- [10] XXXX XXXX XXXX, Hindu Munnani members presented at the Appellants' home asking about XXXX XXXX. The PA was accused and threatened for trying to convert Hindus to Islam. The PA was advised by his party to be cautious.
- [11] When the Appellants XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, they were required to bribe an airport official to facilitate their departure and re-entry.
- [12] XXXX XXXX XXXX, he was stopped by six RSS members who beat him XXXX XXXX XXXX XXXX XXXX. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.
- [13] XXXX XXXX XXXX, the Appellants went into hiding XXXX XXXX XXXX XXXX. While in hiding, the PA received threatening calls. XXXX XXXX XXXX, members of the Hindu Front approached the Appellants and harassed them. XXXX XXXX XXXX XXXX they came to Canada with the assistance of an agent and made a refugee claim.
- [14] Following their departure from India, members of the Hindu Munnani presented at their home in India making inquiries about their whereabouts.

[15] The RPD found overriding concerns with the Appellants' credibility and rejected the claim based on omissions and inconsistencies in the evidence and the PA's lack of effort to obtain requested information regarding his failed XXXX refugee claim. Documentary evidence provided by the Appellants could not in itself, lead to a positive disposition of the claim. The RPD also determined that the Appellants' profile as Tamil Muslims living XXXX XXXX XXXX as well as the female Appellant's gender, did not establish a prospective risk in India.

### III. DETERMINATIVE ISSUE

[16] The Appellants submit that the RPD made overriding errors in the assessment of their credibility and prospective risk in India.

### IV. SCOPE OF THE RAD APPEAL

[17] The Refugee Appeal Division (RAD) reviews decisions on a standard of correctness after conducting an independent assessment of the evidence before it.<sup>3</sup> Deference may be required when the RPD enjoys a meaningful advantage in the assessment of the credibility of oral evidence.<sup>4</sup> I have applied the correctness standard in the present case.

### V. ANALYSIS

#### 1. Credibility

[18] The RPD found that the Appellants did not credibly establish that they are targeted by Hindu extremists based on their religious beliefs.

[19] First, the RPD considered the PA's evidence about his risk from local right-wing Hindu militants and the police stemming from his alleged involvement in political activities prior to his XXXX XXXX XXXX XXXX XXXX XXXX. In this regard, the RPD found that the evidence lacked credibility based on the following:

- The RPD reached a negative inference based on the PA's failure to provide documents related to his failed refugee claim XXXX XXXX which was not reasonably explained;
- The PA states that he initially fled XXXX XXXX XXXX XXXX XXXX after he was mistreated and falsely charged with XXXX XXXX XXXX XXXX. He decided XXXX XXXX XXXX XXXX XXXX XXXX because he thought his persecutors forgot about him with the passage of time and he missed his wife. This being said, he also testified that he needed to bribe officials upon his return given the outstanding charge related to communal violence against him. The RPD noted that the XXXX XXXX XXXX XXXX XXXX was omitted from the Appellants' twice-amended BOC. Considering that the omission was not reasonably explained, the RPD found that the PA's testimony that he paid a XXXX XXXX XXXX XXXX XXXX XXXX lacked credibility.

- The RPD further noted that while the PA states that he felt the need to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, this is incompatible with his statement that XXXX XXXX XXXX XXXX XXXX XXXX because he missed his wife and thought it was safe to return based on the passage of time. The RPD found that the PA was likely embellishing his claim when he testified about bribing the official which seriously undermined his credibility.
  - The Panel member noted that her finding that the PA was not actually wanted by anyone XXXX XXXX XXXX XXXX XXXX is consistent with the PA's own evidence that he was able to live peacefully with his wife XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The RPD noted that if local Hindu extremists had wished to harm the Appellant and if the authorities had wished to arrest him due to events that occurred XXXX XXXX, it is unlikely that the Appellants would have been able to live and work peacefully in India as alleged.
  - Given the identified credibility concerns, the RPD found that the Appellants' fear of harm related to alleged events prior to the PA's XXXX XXXX XXXX XXXX XXXX is not well-founded and that there is insufficient credible evidence of a forward-facing risk related to these issues.
- [20] Next, the RPD considered the credibility of the evidence following the PA's return to XXXX XXXX XXXX XXXX XXXX. In this regard, the RPD found that the Appellants did not credibility establish that they are at risk from politically connected Hindu extremist groups after they hosted and supported Hindu converts in their home. The RPD noted the following:
- The PA's evidence is inconsistent. While he states he joined the XXXX XXXX XXXX when it became an official party in XXXX and that it is his involvement in this group that has caused him to face harm in India, the PA mentioned at the Port of Entry (POE) that XXXX XXXX XXXX XXXX XXXX XXXX.
  - The PA provided insistent evidence about when the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. He testified that they came in XXXX XXXX XXXX XXXX XXXX XXXX XXXX. It was this role in supporting XXXX XXXX XXXX XXXX XXXX to flee India and make a refugee claim. In contrast, the PA stated at the CBSA interview that in XXXX XXXX members of the party XXXX XXXX XXXX XXXX converting to Islam XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX during which period he taught them about the Muslim faith. This significant discrepancy seriously undermines their allegation that they hosted the converts, as alleged.
  - Finding that the Appellants' evidence is generally not credible, the RPD also found that documentary evidence, including a membership card for the political party, a medical certificate and letter of support, is not capable of leading to a positive disposition of the claim.

- [illegible]

The RPD did not err in asking the PA to supply information about his past refugee claim XXXX XXXX

- [22] The RPD reached a negative inference from the PA's failure to provide documents regarding his failed 2008 refugee claim XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX to request a copy of the information was not reasonably explained.
- [23] Counsel submits that the RPD erred. To the contrary, the PA reasonably explained that he no longer had contacts XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and he was not able to reach his previous lawyer. Moreover, given that the PA XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, the RPD placed unreasonable expectations on the PA to contact government authorities to obtain information about his refugee claim.
- [24] I disagree. First of all, it bears noting that the PA states XXXX XXXX XXXX XXXX XXXX XXXX XXXX because he was persecuted in India by Hindu extremists who targeted Muslims. For this reason, he made a failed refugee claim XXXX XXXX. According to the PA, he has continued being the target of communal violence and anti-Muslim sentiment following XXXX XXXX XXXX XXXX XXXX XXXX and this is a significant issue underpinning his refugee claim.

- [30] With respect, I find that Counsel has misconstrued this aspect of the RPD decision.

- The RPD did not conflate the importance of inconsistencies between the PA's interview with the CBSA officer and his testimony at the RPD hearing

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- ## Other discrepancies in the evidence

- ## Documentary evidence

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that the letter was written and signed on XXXX XXXX XXXX XXXX, the PA changed his testimony, stating that he was unsure about when the letter was received. While the RPD reached an adverse inference as a result of this inconsistency, I agree with Counsel that nothing overriding turns on this issue.

- [43] This being said, I have considered whether the medical certificate is capable of supporting a positive disposition of the claim.<sup>15</sup> Even though the medical certificate says the PA was treated for injuries, it does not establish why he was injured nor does it establish the main allegations that the Appellants fear persecution or harm as a result of being targeted by Hindu extremists given their religious beliefs.
- [44] Political identity cards: The PA provided two political identity cards with the first one being issued in 2015 and the second one being issued on June 2, 2017.<sup>16</sup> While the RPD found it implausible that the PA would be issued a second card at a period which corresponds to when he says he was in hiding based on his fear of Hindu extremists XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, I agree with Counsel that nothing determinative turns on the fact that the PA was issued a renewal card that was sent to his family address while he was in hiding. This being said, the membership card in itself does not establish the political profile or allegations that he is at risk stemming from his political activities.

### Concluding comments about credibility

- [45] Up to this point in the analysis, I have addressed each issue raised by the Appellants on appeal. I have determined that it was an error for the RPD to impugn the Appellants' credibility based on discrepancies between the POE notes and the BOC. Likewise, a slight discrepancy in the date that the medical certificate was received and the fact that the PA received a membership card while in hiding are not determinative of the Appellants' credibility.
- [46] This being said, my review of the evidence as a whole, leads to the conclusion that the balance of the adverse credibility findings made by the RPD is correct, strikes at the crux of the claim and is well supported by the evidence, leading to the conclusion that the Appellants did not credibly establish their fear of Hindu extremists because they are Muslim and because of the PA's political involvement XXXX XXXX XXXX to Islam.
2. The Appellants' prospective risk as Tamil Muslims and the female Appellant's prospective risk based on her gender in India
- [47] Counsel argues that there was ample evidence on the record to support the Appellants' prospective risk based on their profile as Tamil Muslims and the RPD failed to assess this risk. To support this contention, Counsel refers to excerpts of different news articles including a leading academic who expressed concern about the deteriorating relationship between the RSS and Indian Muslims, in a context where RSS cadres are ruling India. It is noted that the Muslim minority is treated brutally. Many have been forced to convert to Hinduism and some have been burnt alive for consuming beef.<sup>17</sup>

[48] However, the RPD did in fact consider the documentary evidence, including the news articles submitted by the Appellants. In this regard, I endorse the following comments of the RPD:

The panel notes that the claimants are Tamil and lived in XXXX XXXX, where they would have been part of the ethnic majority. The counsel in written submissions provided prior to the claim, points out that there has been violence against Muslims, and links between the RSS, a group blamed for stoking or perpetrating these acts and the BJP, the current ruling party in the country. However, these citations fail to identify issues in XXXX XXXX, such that the panel could find that the claimants may face a serious possibility of persecution should they return there. The panel notes that the BJP do not appear to hold significant power in XXXX XXXX, with state election results showing the AIADMK holding power there.<sup>18</sup>

[49] There is no question that religious minorities are vulnerable to the threat of communal violence in India and Muslims who make up 15% of the population, have typically been a large majority of the victims. There is also a climate of rising Hindu nationalism since the election of the BJP party in 2014.<sup>19</sup>

[50] This being said, I find it significant that the Appellants live in the State of XXXX XXXX. As noted by the RPD, the AIADMK is the ruling party in XXXX XXXX. This party "espouses no particular ideology except the protection of the interests of the Tamil population in India and in Sri Lanka."<sup>20</sup>

[51] Counsel also faults the RPD for failing to consider the female Appellant's prospective risk in India based on her gender. This is a bald assertion unsupported by any substantive submissions.

[52] I note further that the Panel member did address the female Appellant's prospective risk of gender-based violence at paragraph 23 of the RPD decision. In this regard, the RPD acknowledged that there are reports of gender-based violence in India but this does not mean that women in general are at risk in India nor did Counsel provide documentary evidence that Muslim women are at particular risk of harm amounting to persecution in India.

[53] In my analysis, I have considered the female Appellant's prospective risk of gender-based violence through the lens of the Gender Guidelines which require that gender-based refugee claims be assessed with understanding and sensitivity.<sup>21</sup> I find that the RPD correctly acknowledged that women in India are at risk of gender-based violence. More specifically, objective evidence documents the risk of domestic violence, rape and workplace violence.<sup>22</sup>

[54] Against this backdrop, I have considered the factual presentation of this case. I note that the female Appellant indicated that she XXXX XXXX XXXX in India. Together with her husband, she lives in a home XXXX XXXX XXXX XXXX. She is not alone and can rely on her husband and family for support. Aside from her alleged difficulties with the Hindu extremists stemming from her husband's association XXXX XXXX XXXX which lacked credibility, I find nothing in the female Appellant's evidence to support the assertion that she has a well-

founded fear of persecution or risk of harm based on her gender in India. As such, this aspect of the appeal is also denied.

## VI. REMEDY

[55] For all these reasons, I confirm the decision of the RPD in accordance with ss. 111(1)(a) of the IRPA, namely that the Appellants are neither Convention refugees nor persons in need of protection. The appeals are dismissed.

Patricia O'Connor

Patricia O'Connor

July 29, 2020

Date

## PO/lp

1 In response to the COVID-19 disruption, the RAD sent an email to Counsel on June 15, 2020, advising that he has 30 days to submit additional documentation or submissions in support of the appeal. Counsel did not provide any further information.

2 The Basis of Claim is dated June 4, 2018 which was twice amended on December 18, 2018 and February 15, 2019.

3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), paras. 78, 103.

4 Ibid., paras. 58, 59 and 70.

5 Generic Application, RPD Record, p 70.

6 Deed of Partnership, RPD Record, p 168.

7 Rizwan v Canada (Citizenship and Immigration) 2017 FC 456 para 10.

8 RPD decision, para 8.

9 Cho v Minister of Citizenship and Immigration 2019 FC 398.

10 CBSA interview May 19, 2018, RPD Record, p 87.

11 Yankson v Canada (Citizenship and Immigration) 2019 FC 1608.

12 CBSA interview, May 20, 2018, RPD Record, p 118.

13 Attakora v Canada (Minister of Employment and Immigration), (1989) 99 NR 168 [1989] FCJ No. 444 (FCA).

14 XXXX XXXX XXXX XXXX XXXXX, XXXX XXXX, XXXX.

15 Olanrewaju v Canada (Minister of Citizenship and Immigration), 2018 FC 679.

16 Membership card XXXX XXXX XXXX, RPD Record pp 219-220.

17 Memorandum of Appeal, para 21.

18 RPD decision, para 23.

19 NDP for India, 29 March 2019, Tab 12.10: A Narrowing Space: Violence and discrimination against India's religious minorities, Minority Rights Group International; Center for Study of Society and Secularism, 29 June 2017, accessed 15 May 2018. I note this information is also included in the most recent NDP for India, 31 January 2020.

20 NDP for India, 29 March 2019, Tab 4.2: ?Information on the party All India Anna Dravida Munnetra Kazhagam (AIADMK), its structure, including selection of representatives and leaders; appearance, and content of membership cards, and process to obtain one (2012-May 2016). IRB. 20 May 2016. IND105525.E. I note this information is also included in the most recent NDP for India, 31 January, 2020.

21 Nour v Minister of Citizenship and Immigration, 2012 FC 805, para. 37.

22 NDP for India, 29 March 2019, Tab 5.2: Violence against women, including domestic violence, homelessness, workplace violence; information on legislation, state protection, services, and legal recourse available to women who are victims of violence (2013-April 2015). IRB. 15 May 2015. IND105130.E.

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