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# Singh v. Canada (Citizenship and Immigration), 2025 FC 564

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Federal Court Cour fédérale

**Date: 20250327**

**Docket: IMM-6981-24**

**Citation: 2025 FC 564**

2025 FC 564 (CanLII)

**Ottawa, Ontario, March 27, 2025**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**GURMEET SINGH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated March 27, 2024 [Decision]. The RAD upheld the decision of the Refugee Protection Division [RPD], finding the Applicant is neither a *Convention* refugee nor person in need of protection under ss 96 and 97(1) of the *Immigration*

*and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD based its finding on credibility issues given multiple contradictions and inconsistencies in the Applicant's submissions.

## II. Background

[2] The Applicant is a 21-year-old citizen of India. He seeks refugee protection on the ground of religion. The Applicant is Sikh and alleges he was in a relationship with a Muslim girl, whose family disapproved of their relationship. I have deleted her name. He says her brothers severely beat him, sending him to the hospital, and people with batons and swords destroyed his house and tried to set it on fire. He alleges police declined to assist, saying they did not want to get involved in "religious matters"; the Applicant alleges this is because the young lady's father has strong political connections and/or bribed them.

[3] The Applicant says after these attacks he went to stay with a relative elsewhere in India (several hours' drive away), but continued his relationship with the young lady. When her brothers found out, they came to find him, beat and threatened the Applicant and his uncle, and left. The Applicant was then sent back home.

[4] The Applicant alleges the threats and attacks at his home continued for several weeks, until eventually he came to Canada on a visitor visa in 2021. He submitted his claim for refugee protection in 2022.

2025 FC 564 (CanLII)

A. *RPD hearing and decision*

[5] As summarized in the RPD's decision, the Applicant was unrepresented at the hearing:

> [2] The claimant's initial hearing was scheduled for January 23, 2023. A request for a change of date and time (CDT) for this hearing was granted. The matter was rescheduled for April 25, 2023. On this date, counsel representing the claimant at that time made a request for a further CDT. This request was denied. The matter was scheduled for a show-cause hearing pursuant to r. 65 of the RPD Rules set for May 10, 2023. Cause was shown and a regular hearing was scheduled on July 7, 2023. Claimant's counsel sent a correspondence dated June 9, 2023, indicating a request for a further CDT and unavailability until August 18, 2023. This CDT was granted. The matter was rescheduled for August 23, 2023. A pre-hearing conference was held to determine if the claimant required a designated representative (DR) pursuant to r. 20 of the RPD Rules. The Board determined a DR was not required. However, the matter was once again rescheduled as the claimant's counsel had been removed from the file and the claimant was waiting for counsel to obtain the necessary license to continue with his file. Counsel had been removed from the file on July 1, 2023, due to the counsel's licensing body, College of Immigration and Citizenship Consultants (CICC), having changed the way consultants are licensed and the counsel no longer having the required licence to appear before the Board. I do note that despite the claimant's counsel being removed, counsel did provide submissions ahead of this removal.
>
> [3] The hearing was rescheduled for November 28, 2023, and the claimant was advised that this hearing date would be peremptory. The claimant requested a further CDT for the November 28, 2023, hearing date given that he was still unrepresented and due to his mental health. This requested was denied given that: the matter was marked peremptory, and the claimant was made aware of this previously on August 23, 2023; the right to counsel is not absolute; and the lengthy delay on the file.

[6] At the RPD hearing, the panel put to the Applicant several inconsistencies between his testimony and his Basis of Claim [BOC]. In response, the Applicant testified:

2025 FC 564 (CanLII)

> CLAIMANT: When I was telling my whole story to my counsel ... he told me you don't need to tell everything in details. And honestly speaking I did not tell him every details. I did not tell him the whole truth.
>
> MEMBER: Why not?
>
> CLAIMANT: Because I was not mentally stable whatever I was going through. Even today too I'm not that prepared, mentally prepared or mentally stable. It is just it is mandatory for me to do the hearing. That's why I'm doing this but I cannot explain everything whatever happened to me. But since you gave me chance, so I'm telling you the whole truth.

2025 FC 564 (CanLII)

[7] He provided a similar response about an inconsistency in the number of assaults.

[8] The Applicant was also asked if the photographs he provided were from the same incident. He stated:

> CLAIMANT: So, it is not taken, these pictures are not taken at the same time. … [M]y brother took these pictures. I don't exactly remember when he took this picture.
>
> MEMBER: Can you please explain what do you mean when you say that they are not taken at the same time?
>
> CLAIMANT: Because that time I was not conscious and I don't even know when this was taken. I don't remember.
>
> …
>
> MEMBER: … In the first picture the items are arranged in the room in a certain way. In the second picture they appear to have been shifted and moved. Can you explain why this has occurred?
>
> CLAIMANT: Like I said I was not conscious. I have no idea when exactly they took the picture, what exactly happened there.

[9] The RPD found the Applicant was not credible because "[t]here were various instances of omissions, contradictions, and vague and evolving testimony without reasonable explanation." Most notably, the RPD found he had not established his relationship with the young lady:

> DELETED *and the relationship*
>
> [15] The claimant's oral testimony was vague, evasive, often non-responsive and at times incoherent. Questions were repeated and answers prompted. The allegation that the claimant was in a relationship with a person named DELETED, a Muslim, was not established with reliable evidence. The claimant was unable to clarify central issues written in his narrative and unable to explain reasonably the omissions or the discrepancies in his evidence.
>
> *Commencement of Dating DELETED*
>
> [16] There were discrepancies in the claimant's testimony about when he commenced dating DELETED. The claimant's BOC alleges having met DELETED in 2020 at school and they started dating in August 2020. The claimant testified that they started dating in April 2020. When this discrepancy was pointed out to the claimant, the claimant testified that they used to meet on a regular basis but officially started dating in August 2020. Later the claimant testified that in April 2020 they became friends and started "seeing each other" but not that frequently and in August 2020 they started dating.
>
> [17] I do not find these to be reasonable explanations. It would be reasonable to expect that the date the claimant and DELETED started dating would be a significant date for the claimant given his alleged feelings towards DELETED and the risk both were taking. However, instead, the claimant's explanation became vague and evolving and did not explain the discrepancy itself. I find that this undermines the claimant's credibility in connection to his relationship with DELETED.
>
> *Vague testimony describing DELETED and their relationship*
>
> [18] The claimant's testimony regarding DELETED and their relationship was vague. When asked to describe DELETED, the claimant testified that: she was studying with the claimant; and she was one year junior.
>
> [19] When asked about their relationship, the claimant testified that he was 16 years old when he met her, they started dating after two

2025 FC 564 (CanLII)

> (2) or three (3) months. Further that they would skip school five (5) or (6) times per month for dates. The claimant was asked at least three (3) times regarding his dates with DELETED. The claimant testified: they would "spend time together"; they would go out "for coffee or something"; and, sometimes to different places like "sometimes for shopping".
>
> [20] I find it unreasonable that the claimant could only give such vague and general testimony about DELETED and their relationship. I provided the claimant ample opportunity to elaborate but he did not. I find that the claimant was not forthcoming about who DELETED was, her interests or what occurred on their dates, in particular, given the alleged significant number of dates they had per month. I find it is reasonable to expect that given the claimant's alleged feeling for DELETED, the risk the claimant knew he was taking in an interfaith relationship, and the disapproval of DELETED's family, he would be able to provide more meaningful and detailed information about DELETED in a spontaneous, comprehensive, and extensive manner. In contrast, I find the claimant was not forthcoming in his testimony and provided little meaningful detail of DELETED and their relationship. I find the claimant's hesitance and lack of spontaneity in providing details about DELETED and their relationship undermines his credibility.

[10] The RPD held these inconsistencies were not explained by issues with counsel or the Applicant's mental health issues:

> [32] … Firstly, there is a strong presumption that Counsel is competent and there have been no allegations otherwise. To the contrary, the claimant had hoped that his counsel would overcome the new licencing requirements of the CICC and continue to represent him. Secondly, the claimant confirmed at the beginning of the hearing that his BOC was complete, true, and correct as of the date of the hearing. Thirdly, the BOC itself indicates that details of the claimant's claim are to be provided and that to "INCLUDE EVERYTHING THAT IS IMPORTANT ... ". Lastly, although I acknowledge the claimant's testimony and supporting documents relating to his mental health, I note again that the claimant was represented by counsel at the time of completing his BOC and until July 2023. There is insufficient evidence before me to demonstrate that the claimant's mental health issues were so severe that it impacted his ability to provide his counsel the "whole truth". As such, I do not find the claimant credible in his

2025 FC 564 (CanLII)

> attendance at the police station. It further follows that I cannot find the claimant credible in his allegation that DELETED's father has political ties as this knowledge was derived directly from his attendance and events at the police station.

B. *Submissions before the RAD*

[11] The Applicant was represented before the RAD by the same immigration consultant as at the RPD level (noted above) although this time the consultant was present. The Applicant argued:

> a. The Applicant was a minor at the time he was assaulted, and that he was left traumatized with significant anxiety and mental health issues. On this basis, counsel sought to have the RAD reconsider the weight placed on the Applicant's mental health issues at the time of his hearing;
>
> b. He provided vague testimony was on account of the trauma he suffered;
>
> c. The findings about the Applicant not actually being in school during the start of the COVID-19 pandemic were unreasonable, given that the Applicant lived in a small village not as impacted by COVID-19 as other cities in India;
>
> d. He was only a teenager during some of the incidents that were detailed, and that given the trauma he encountered, he may not have been able to properly recall all the details; and
>
> e. There was a reasonable explanation for the different positions of items in several pictures that were taken and submitted.

III. Decision under review

[12] The RAD agreed with the RPD and held the determinative issue was credibility.

2025 FC 564 (CanLII)

[13] The Decision concludes:

> [34] I am not persuaded that the RPD committed the errors alleged. The RPD's reasons disclose that it considered every item of evidence presented to it. Having independently reviewed that evidence, I agree with the RPD that the Appellant:
>
> > a. provided vague testimony about the core allegation (his relationship with DELETED);
> >
> > b. provided testimony which was inconsistent with material allegations expressed in his BOC (where he was assaulted and how many times); and
> >
> > c. omitted material events from his BOC (going to the police on a second occasion and the arrest of DELETED's father).
>
> [35] I find that the vague testimony and the material inconsistencies and omissions undermine the credibility of the Appellant's allegations.
>
> [36] I have also considered the documentary evidence submitted to the RPD and I find that it is not capable of independently proving the core allegation that the Appellant was in a relationship with DELETED. The documentary evidence only speaks to the alleged incidents of harm caused by DELETED's family; there is no documentary evidence to corroborate the Appellant's relationship with DELETED. I find that the RPD was correct to conclude that, because the relationship with DELETED had not been credibly proven, it follows that the incidents of harm which flowed from that relationship were also not credible.

A. *New evidence*

[14] On appeal to the RAD, the Applicant sought to introduce 29 items of new evidence, namely:

a. A school certificate showing attendance from 2020-2021 (1 document);

b. Notes from DELETED re: the Applicant and his uncle (2 documents);

2025 FC 564 (CanLII)

c. Medical records regarding the Applicant's mother's depression (3 documents);

d. A doctor's note from Canada regarding the Applicant (1 document);

e. The Applicant's father's letter to the Panchayat (1 document);

f. Affidavits (6 documents) from the Applicant's classmates, parents, uncle, neighbour, and the Panchayat member;

g. Photographs of damage to uncle's house (6 photographs);

h. Articles (7 articles in new evidence section of Appeal Record, and 2 articles appended to Memorandum). These all concerned the prevalence of honour crimes in India and the impacts of trauma on memory.

2025 FC 564 (CanLII)

[15] The RAD considered and rejected the purported new evidence, finding they were either not relevant to the material issue of the Applicant's credibility (items (a), (c)–(f), (h)) or could reasonably have been expected to be submitted before the RPD (items (b), (f), and (g)). In particular:

> [11] The updated note from the Appellant's medical practitioner, item (d), is rejected. The Appellant's mental health status is not in dispute and the updated note does not otherwise provide relevant evidence as it is silent on how the Appellant is impacted by his mental health diagnos(es) and on the accommodations which may have been required to give evidence at the RPD.
>
> [12] Item (e) arose after the RPD's decision. It is a letter from the Appellant's father to the Panchayat dated February 26, 2024, which asks the Panchayat to intervene and help deal with the problems with DELETED 's family. I find that the father's request for help is not relevant to assessing the core credibility concern raised by the RPD, namely, whether the Appellant was in a relationship with DELETED which caused him to be targeted by DELETED 's family. Accordingly, item (e) is rejected.
>
> …

> [14] The affidavit from the Appellant's parents, contained in item (f), is the only item of new evidence which describes events which potentially occurred after the RPD's rejection of the claim. The parents state that "recently, the 2 brothers of DELETED […] along with 4 other men came to our house with sticks and started attacking us." However, I reject this evidence for the same reason I rejected the father's letter to the Panchayat. I find that the new information contained in the parents' affidavit is not relevant to assessing the core credibility concern raised by the RPD, namely, whether the Appellant was in a relationship with DELETED which, in turn, caused him to be targeted by DELETED 's family.
>
> [Emphasis added]

2025 FC 564 (CanLII)

B. *Credibility findings*

(1) Relationship with the young lady

[16] The RAD agreed with the RPD that the Applicant had not credibly established his relationship with the young lady due to inconsistencies with objective country condition evidence about the COVID-19 pandemic and school closures in India. The Decision states:

> [20] The Appellant alleges that he met DELETED at school in 2020 and that they took the same bus to and from school. When asked about the impact of COVID-19 on his schooling, the Appellant testified that his school closed for five to six months in 2019 and reopened in 2020. When confronted with the fact that COVID-19 became a global issue in early 2020, the Appellant reiterated that the school closed in 2019 and that after 2020, the school decreased the number of students in attendance but did not close. The RPD considered country evidence relating to the COVID-19 pandemic in India and found that the Appellant's evidence that he met DELETED in school in 2020 is undermined.
>
> [21] The Appellant seeks to rely on new evidence to challenge the RPD's finding; however, I have rejected the new evidence of his school confirmation. As noted above, confirmation that the Appellant was registered in school is not the same as confirmation that he and DELETED were physically in attendance at school. I agree with the RPD and find that it is not credible that the Appellant met DELETED in August 2020 at school and their

> relationship, which lasted until December 2020, was fostered in the school environment. This is because this time frame coincides with the early days of the COVID-19 pandemic when most schools had been closed for in-person attendance. As noted by the RPD, school closures and the massive disruption in the education of millions of children in India due to the COVID-19 pandemic is confirmed by country evidence. I find that the Appellant's evidence about the circumstances of his relationship with DELETED in 2020 is inconsistent with the COVID-19 pandemic and is, therefore, not credible.
>
> [Emphasis added]

(2) Police report and arrest of the lady's father

[17] The RAD agreed with the RPD that the Applicant's testimony about the police report was inconsistent, and found this inconsistency was not explained by his age, the passage of time, or mental health issues:

> [27] I see no error in the RPD's analysis. Attempts to complain to the police about being attacked are material events. Inconsistent evidence about material events is a valid basis for a negative credibility finding. I reject the Appellant's argument on appeal that he was only a teenager when he experienced trauma. The Appellant was 16 years old at the time of the material events, which occurred four years ago. I find that the Appellant was a mature minor at the time of the material events, and neither his age nor the passage of time explains why he would say in his BOC that he went to the police station once when he actually went twice. It also does not explain why his BOC states that the police would not accept his complaint, but he testified that the police accepted his complaint which resulted in the arrest of DELETED 's father. There is also insufficient evidence to connect the deficiencies in testimony to the Appellant's mental health diagnos(es). The Appellant has failed to produce medical evidence which explains how his diagnos(es) impact his functioning and, despite being directed to suggest accommodations which would facilitate the Appellant's testimony, he has not done so. Accordingly, I am satisfied that the inconsistencies in the Appellant's evidence undermine the credibility of the allegation that the Appellant reported to the police that he was attacked by DELETED 's family.

2025 FC 564 (CanLII)

[Emphasis added]

(3) Altered photos

[18] The RAD further held that the Applicant's new explanation for why the items in the photos were repositioned, despite allegedly being taken during the same incident, was speculative and that he had presented staged photographs to bolster his claim which "seriously and irreparably compromised his credibility in all other aspects of the claim":

> [29] On appeal, the Appellant seeks to introduce new explanations for the repositioned items. He explains that the pictures were taken throughout the morning after the attack, and the positioning of items is different due to the physical presence of other people who could have stumbled upon things on the ground. I reject this explanation because it is speculative. The Appellant explained that the photographs were taken by people other than himself and that he was unconscious at the time and, despite seeking to introduce voluminous new evidence, he did not introduce new evidence from the photographer explaining what is seen in the photographs and why items are repositioned depending on the photograph.
>
> [30] I find that the RPD was correct to conclude that the presentation of staged photographs to bolster the Appellant's claim seriously and irreparably compromises the Appellant's credibility in all other aspects of the claim.

(4) Impacts of trauma on memory

[19] The RAD agreed with the Applicant that trauma may impact memory but found the Applicant had not established this *in the context of his own testimony*:

> [32] The Appellant submits that he has suffered a lot of trauma, including witnessing his mother's depression about his situation. He claims that trauma causes people to forget and have vague memory of incidents.
>
> [33] I find that the RPD was correct in its assessment of the Appellant's testimony about his relationship with DELETED. In

2025 FC 564 (CanLII)

> my own independent assessment of the Appellant's evidence, I find that his inability to spontaneously provide depth or detail about DELETED or aspects of their relationship demonstrates, on a balance of probabilities, that the relationship is not credible. While I accept the general submission that trauma can cause people to forget and have vague memory of incidents, I find that the Appellant has not adduced sufficient evidence to show that that is why his testimony was deficient. Given that I, too, find that the Appellant has not credibly established he was in a relationship with DELETED, it follows that he has not established that he has suffered trauma at the hands of DELETED's family.
>
> [Emphasis added]

2025 FC 564 (CanLII)

## IV. Issues

[20] The Applicant asks:

1. What is the appropriate standard of review?
2. Did the Member err in refusing to accept certain new evidence and provide a new hearing?

[21] I respectfully agree with the Applicant that the determinative issue is whether the RAD reasonably decided not to admit new evidence or hold an oral hearing.

## V. Standard of review

[22] The parties agree, and I concur, the standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued contemporaneously with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[23] Per the Supreme Court of Canada's more recent judgment in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, the purpose of reasonableness review is to uphold the rule of law while according deference to administrative decision-makers:

> [57] *Vavilov* explained that the purpose of reasonableness review is "to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law" (para. 82).

2025 FC 564 (CanLII)

> Reasonableness review starts from a posture of judicial restraint and "a respect for the distinct role of administrative decision makers" (para. 13), arising from the legislature's institutional design choice to give administrative decision makers rather than courts the jurisdiction to decide certain issues (para. 24). Reasonableness review also serves to "maintain the rule of law" (para. 2) and "to safeguard the legality, rationality and fairness of the administrative process" (para. 13). Thus, the purpose of reasonableness review is to uphold "the rule of law, while according deference to the statutory delegate's decision" (*Canada Post*, at para. 29).
>
> [Emphasis added]

2025 FC 564 (CanLII)

[24] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[25] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right

> to be heard: Baker, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[26] With respect to credibility determinations and deference upon review, I follow Justice Rochester (as she then was) in *Onwuasoanya v Canada (Citizenship and Immigration)*, 2022 FC 1765 at paragraph 10:

> [10] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review *(Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases*" (Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact […] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).
>
> [Emphasis added]

2025 FC 564 (CanLII)

[27] As credibility is the central issue in the decisions of both the RPD and RAD, constraining law is summarized in *Khakimov v Canada,* 2017 FC 18 at paragraph 23:

> [23] …To begin with, the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68. The Federal Court of Appeal has stated that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA) [*Giron*]. The RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. And see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at para 24 (FCA), where the Federal Court of Appeal said that the RPD:
>
> > … is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.
>
> [24] The RPD may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1197 at para 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11 [*Lubana*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. The RPD may reject uncontradicted evidence if it "is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence": *Lubana*, above at para 10. The RPD is also entitled to conclude that an applicant is not credible "because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in 'clear and unmistakable terms'": *Lubana*, above at para 9.

2025 FC 564 (CanLII)

## VI. Legal framework

[28] Section 110 of *IRPA* governs the procedure of appeals to the RAD. Subsection 110(4) outlines new evidence that may be presented on appeal to the RAD:

| **Evidence that may be presented** | **Éléments de preuve admissibles** |
|---|---|
| **(4)** On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. | **(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet. |

[29] If the RAD is satisfied the requirements of s 110(4) are met, it must then decide if the evidence is credible, relevant and material before admitting it (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 38–49 [*Singh*], citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–15 [*Raza*]).

[30] The *Refugee Appeal Division Rules*, SOR/2012-257 [*RAD Rules*] further state at s 29(3):

| **Documents — new evidence** | **Documents — nouvelle preuve** |
|---|---|
| **(3)** The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the | **(3)** La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux |

2025 FC 564 (CanLII)

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| requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being presented in response to evidence presented by the Minister. | exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne, à moins que le document ne soit présenté en réponse à un élément de preuve présenté par le ministre. |
| **Factors** | **Éléments à considérer** |
| **(4)** In deciding whether to allow an application, the Division must consider any relevant factors, including | **(4)** Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment : |
| **(a)** the document's relevance and probative value; | **a)** la pertinence et la valeur probante du document; |
| **(b)** any new evidence the document brings to the appeal; and | **b)** toute nouvelle preuve que le document apporte à l'appel; |
| **(c)** whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record. | **c)** la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique. |
| [Emphasis added] | [Je souligne] |

[31] Subsections 110(3) and (6) of *IRPA* provide that the RAD must proceed without a hearing unless it accepts documentary evidence that raises a serious issue of credibility, is central to the decision, and would justify allowing or rejecting the claim:

2025 FC 564 (CanLII)

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| **Procedure** | **Fonctionnement** |
| **(3)** Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board. | **(3)** Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission. |
| … | … |
| **Hearing** | **Audience** |
| **(6)** The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3) | **(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois : |
| **(a)** that raises a serious issue with respect to the credibility of the person who is the subject of the appeal; | **a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause; |
| **(b)** that is central to the decision with respect to the refugee protection claim; and | **b)** sont essentiels pour la prise de la décision relative à la demande d'asile; |

2025 FC 564 (CanLII)

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| **(c)** that, if accepted, would justify allowing or rejecting the refugee protection claim. | **c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas. |
| [Emphasis added] | [Je souligne] |

2025 FC 564 (CanLII)

[32] The *RAD Rules* also require an appellant's memorandum to include "full and detailed submissions" on "why the Division should hold a hearing under subsection 110(6) of the *Act* if the respondent is requesting that a hearing be held" (s 3(3)(g)(v)).

VII. Submissions of the parties

[33] The Applicant submits the Decision unreasonably assessed the admissibility or value of the new evidence submitted on appeal, which led to an unreasonable conclusion that no oral hearing was required. At the hearing he emphasized the former.

[34] The Respondent submits the RAD reasonably found that the Applicant damaged his credibility due to many significant omissions, contradictions and inconsistencies in his testimony and evidence, and that its credibility findings should not be disturbed.

[35] I agree with the Respondent that the merits of the RAD's decision are justified, intelligible, and transparent and thus reasonable per *Vavilov*. In my view the only issue is whether the RAD reasonably determined not to admit the 29 pieces of allegedly new evidence.

A. *Did the RAD reasonably reject new evidence?*

[36] The Applicant submits the RAD misapprehended the criteria for admitting new evidence, and unreasonably found it not relevant because it did not specifically prove the Applicant was in a relationship with the young lady. He focusses on the doctor's letter from Canada, articles about the impact of trauma on memory, his father's letter to Panchayat, and his parents' Affidavit.

[37] The Applicant argues this evidence explains his vague testimony and memory lapses at the RPD hearing, shows the young lady's family is still looking for the Applicant, and is circumstantial evidence of his relationship with her, all of which could have led to a new hearing and changed the outcome of the Decision.

[38] I disagree.

[39] First, I note the Applicant failed to put any medical or professional evidence before the RAD to establish that *his* trauma affected *his* memory leading to *his* confusing, vague and inconsistent answers. He had a physician's note, but notably and quite inexplicably it says nothing on the key point the Applicant himself set out to address, namely that *he* suffered from trauma affecting *his* memory, leading to *his* many inconsistencies and contradictions in his evidence in this case. He simply failed to make his case.

[40] Instead he now invites this Court (as he did the RAD) to speculate on what is at its core an essentially medical issue without any expert evidence in support. This I decline to do

[41] It is also the case, as the Respondent notes, that the Applicant confuses the operation of the test under s 110(6) of *IRPA*:

2025 FC 564 (CanLII)

> 21. The RAD explained that the central credibility issue, evidence of which would justify granting or refusing the Applicant's appeal, lay with the inconsistencies and contradictions identified by the RPD. The RAD explained that, in its view, the newly submitted documents did not address any of these central credibility concerns. As such, it follows that the evidence, even if admitted, would not justify allowing or rejecting the claim.

2025 FC 564 (CanLII)

[42] In any event, the RAD noted many other shortcomings in the Applicant's arguments not linked to alleged trauma and memory loss, including going to school with the young lady during COVID-19 when in fact schools were closed, explanations for alleged ineffectiveness of police regarding alleged complaints, contradictions between his testimony and his BOC, including his claim not to have told the whole truth to his counsel, timeline discrepancies, including the number of times he was assaulted, and his use of altered and staged (fake) pictures to bolster his claims. In respect of the last point, in my respectful view the RAD reasonably concluded the Applicant's egregious conduct "seriously and irreparably compromised his credibility in all other aspects of the claim."

B. *Did the RAD reasonably refuse to provide an oral hearing?*

[43] The Applicant submits that "[i]n light of the above, and given the paramountcy in this case of the issue of credibility, the Member's decision not to hold an oral hearing is unreasonable."

[44] Given the RAD considered but rejected all the proposed new evidence, such that it did not admit any of the 29 matters, I respectfully agree with the Respondent that the RAD reasonably found it did not have the jurisdiction to grant the requested oral hearing (see *IRPA*, ss

110(3)-(6); *Yusuf v Canada (Citizenship and Immigration)*, 2023 FC 1032 at paras 18-19; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1022 at para 52; *Fabunmi v Canada (Citizenship and Immigration)*, 2020 FC 1009 at para 7; *Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54 at para 29; *Ibrahim v Canada (Citizenship and Immigration)*, 2016 FC 380 at para 30; *Iqbal v Canada (Citizenship and Immigration)*, 2020 FC 170 at para 55). In my view, admission of new evidence is a necessary precondition of a RAD considering an oral argument, such that *Gnanasekaran v MCI*, 2023 FC 79 (per Walker J as she then was) is not relevant to this case.

2025 FC 564 (CanLII)

[45] Finally, in my respectful view, the Applicant may not ignore the fact he declined to follow the rules by providing the RAD with no submissions on how his allegedly new evidence met the requirements of section 110(6) of *IRPA*. In his submission to the RAD, the Applicant said only:

> APPELANR WANTS THE RAD TO HOLD A HEARING AS HE FACES SERIOUS LIFE THREATENING ISSUES IF HE WERE TO RETURN TO HIS HOME COUNTRY. ACCORDING TO THE NEW EVIDENCE PROVIDED AND THE EXPLANATIONS HE JS ABLE TO PROVE THE SAME.
>
> (All *sic*)

[46] However, as noted above, the *RAD Rules* place the onus on the Applicant to inform the RAD why he was requesting an oral hearing and to provide “full and detailed submissions” supporting this request. The Federal Court of Appeal holds that the RAD’s role and rules of evidence “must be respected”: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraph 55. While in any event there is no merit in the substance of the Applicant’s argument as I have found, this serious failure to comply with the *RAD Rules* also debars him.

## VIII. Conclusion

[47] This application must be dismissed.

## IX. Certified question

[48] Neither party proposes a question for certification and I agree none arises.

2025 FC 564 (CanLII)

**JUDGMENT in IMM-6981-24**

**THIS COURT'S JUDGMENT is that** this application is dismissed, no question of general importance is stated, and there is no Order as to costs.

"Henry S. Brown"
Judge

2025 FC 564 (CanLII)

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6981-24 |
| **STYLE OF CAUSE:** | GURMEET SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY WAY OF ZOOM VIDEOCONFERENCE |
| **DATE OF HEARING:** | MARCH 25, 2025 |
| **JUDGMENT AND REASONS:** | BROWN J. |
| **DATED:** | MARCH 27, 2025 |

**APPEARANCES:**

| | |
|---|---|
| Adam Avi Hummel | FOR THE APPLICANT |
| Idorenyin Udoh-Orok | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |

2025 FC 564 (CanLII)