

Federal Court



Cour fédérale

Date: 20210407

Docket: IMM-7762-19

Citation: 2021 FC 284

Ottawa, Ontario, April 7, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

AZFAL IQBAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On November 19, 2019, the Refugee Appeal Division [RAD] dismissed the appeal by the Applicant, Afzal Iqbal [Mr. Iqbal], from a decision of the Refugee Protection Division [RPD] dated January 9, 2019, which rejected Mr. Iqbal's claim for refugee protection based on the availability of a viable internal flight alternative [IFA] in Karachi.

[2] The RAD concluded that Mr. Iqbal could relocate to Karachi and concluded that the evidence did not support his claim that the persons seeking to harm him would have the means of searching for him across Pakistan.

[3] Mr. Iqbal has failed to convince me that the RAD's decision was unreasonable. Consequently, I would dismiss the application.

II. Facts

[4] Mr. Iqbal is a 50 year old citizen of Pakistan, a former driver for the Pakistani military; he was an active member of the Pakistan Muslim League – Quaid e Azam (PML-Q), a political party in Pakistan. He claims to face a risk of harm from individuals attempting to illegally take his land [land encroachers] who are affiliated with an opposition political party, Pakistan Muslim League – Nawaz (PML-N) through which the land encroachers would be able to locate Mr. Iqbal across Pakistan.

[5] Mr. Iqbal resided in the town of Pindi Hasna, District of Gujrat, Punjab, where his family owned their ancestral land. In 2006, he opened a mobile telephone shop in the City of Gujrat and would commute from Pindi Hasna to run his business.

[6] In 2007, while working for the PML-Q, Mr. Iqbal installed a water pump on unused public land that was adjacent to his land for the use of the town residents. He alleges that this upset certain individuals in the town who, he said, had connections with the PML-N.

[7] Prior to the 2008 elections in Pakistan, Mr. Iqbal asserts that the land encroachers came to his house, threatened his father and threatened to kill him over his ancestral land. When the PML-N along with another party came to power in both the federal and regional Punjab election, Mr. Iqbal leased his land in Pindi Hasna to a fellow property owner and moved to a nearby town in Gujrat District, about one hour away; he continued to commute to the City of Gujrat to run his business.

[8] In January 2010, Mr. Iqbal said he discovered that the man to whom he had leased his land had joined the PML-N and their land-encroaching supporters, and was working to encroach on and take over his ancestral land. Mr. Iqbal said he attempted to get his land back before the panchayat (a system of local self-government of villages in rural India) but was unsuccessful.

[9] In March 2011, while driving on his motorcycle after checking on his case before the panchayat, Mr. Iqbal was shot at by unknown persons whom he suspected were the land encroachers. Mr. Iqbal sustained life-threatening injuries and was hospitalized for 27 days. As conceded by counsel, there is no evidence that Mr. Iqbal continued to seek the return of his land through panchayat proceedings beyond 2011.

[10] In April 2013, Mr. Iqbal said armed men shot at his home while his family was inside. These armed men then attacked his father who was returning home at this time. Mr. Iqbal said the men told his father that they were going to “get Mr. Iqbal”. Mr. Iqbal was fortunate not to be home at the time of this incident. Mr. Iqbal and his family subsequently moved to a gated

community close to the City of Gujrat where he continued to operate his mobile telephone shop in the city.

[11] In February 2016, while driving from his home with his sons, Mr. Iqbal alleged that he was shot at again by individuals in another car; it was then that Mr. Iqbal decided to leave Pakistan.

[12] In June 2016, Mr. Iqbal moved with his family to another town to live with his wife's brother, and in October 2016, after obtaining a Mexican visa, Mr. Iqbal left Pakistan and travelled to the United States via Mexico where he resided until travelling to Canada; in April 2018, Mr. Iqbal crossed over into Canada where he sought refugee protection. His wife and children remained in Pakistan.

[13] Why the land encroachers would continue to pursue Mr. Iqbal after 2011 when there was no evidence that he continued to seek the return of his land through panchayat proceedings is unclear. Counsel for Mr. Iqbal speculated before me that it may have been continued political enmity which drove the land encroachers to continue to pursue Mr. Iqbal, but he also conceded that there was no evidence to support such an assertion.

[14] In any event, no issue as to Mr. Iqbal's credibility was raised by the RPD. For its part, the RAD assumed Mr. Iqbal's assertions to be credible, and although it identified errors in the RPD's analysis, the RAD nonetheless concluded that the RPD's finding as to the viability of an IFA in Karachi was correct.

[15] The RAD noted that even though Mr. Iqbal moved several times and tried to keep a low profile while operating his business, he always remained in the same general area, close to his cellular store in Gujrat and the land in Pindi Hasna that he leased to his neighbour. The RAD was therefore not surprised that the agents of persecution continued to find him “given his continued operation of the store in Gujrat, the fact that he continued contact with his neighbour in Pindi Hasna (who was apparently in league with the land encroaching persecutors) well into his persecution, and the extremely close proximity he maintained to his agents of persecution throughout all of his moves”.

[16] As to the ability of the persecuting agents to locate and harm Mr. Iqbal in Karachi, the RAD noted that the only evidence was the testimony of Mr. Iqbal who stated that the agent of persecution “are land encroachers known locally as the ‘Khaari Group’ and that they [...] are supporters of and have connections with the PML-N”. The RAD noted that the PML-N is an opposition party that holds no seats in the Sindh Province, where Karachi is located. The RAD also noted that Pakistan is governed by a coalition of which Mr. Iqbal’s PML-Q is part. Although the RAD accepted that it was possible, as submitted by Mr. Iqbal, that the PML-N would cooperate with the police in their search for him, there was no evidence that the police had ever cooperated with the Khaari Group in particular in pursuit of land belonging to others.

[17] Finally, the RAD found it significant that there was no evidence that Mr. Iqbal’s family members were being threatened or harmed in any way after 4 years. Mr. Iqbal argues that this is because the family is taking measures to protect themselves and are living in a gated community, and that, in any event, he was the main focus of the wrath of the agents of persecution.

[18] In the end, the RAD agreed with the RPD that the proposed IFA in Karachi was reasonable, and hence dismissed Mr. Iqbal's appeal.

III. Issue

[19] The determinative issue in this case is the viability of the proposed IFA in Karachi. Mr. Iqbal submits no argument as to the reasonableness of the IFA, the second prong of the IFA test. Accordingly, the sole issue before me is whether the RAD unreasonably concluded that there was no serious possibility of Mr. Iqbal being persecuted in Karachi.

IV. Standard of Review

[20] It is not disputed that the applicable standard of review is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10 and 23; *Boluwaji v Canada (Citizenship and Immigration)*, 2020 FC 416 at para 15).

V. Discussion

[21] The two pronged test for the determination of an IFA was recently set out by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 [*Olusola*]:

[8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.

[9] Both of these “prongs” of the test must be satisfied to conclude that a refugee claimant has a viable IFA. [...]

[22] Once the issue of an IFA is raised, the onus is on the refugee claimant to show that the IFA is not viable (*Olusola* at para 9). Mr. Iqbal submits two arguments; first, he argues that it was unreasonable to conclude that the interest of land encroachers had waned in recent years, and secondly, he submits that it was unreasonable to find that the land encroachers did not have the ability to locate and harm him in Karachi.

A. *Did the RAD unreasonably conclude that the land encroachers’ interest in Mr. Iqbal had waned in recent years?*

[23] Mr. Iqbal argues that it was unreasonable to decide that the land encroachers’ interest had waned because they have not targeted Mr. Iqbal’s family in the last three years. Mr. Iqbal argues that he, not his family, was the object of persecution, and that the agents of persecution are probably aware of his departure from Pakistan.

[24] Mr. Iqbal further submits that the RAD’s conclusion on this issue was highly speculative and that it was inconsistent with its acknowledgement that the RPD had erred in finding that the agents of persecution lacked any ongoing interest in Mr. Iqbal.

[25] I cannot agree with Mr. Iqbal, and I conclude that it was reasonable for the RAD to infer from the absence of any ongoing issues of concern regarding Mr. Iqbal’s family – individuals who were also in the line of fire and threatened at the time, and who are still living in their hometown – that the agents of persecution were also no longer interested in Mr. Iqbal. The RAD

reasonably found that this was a relevant consideration in the overall analysis of Karachi being a viable IFA.

B. *Did the RAD unreasonably find that the persecuting agents did not have the ability to find Mr. Iqbal in the proposed IFA?*

[26] Mr. Iqbal submits that it was unreasonable to conclude that the agents of persecution could not harm him in the IFA because previous incidents have shown that he continued to be persecuted notwithstanding several relocations on his part.

[27] Mr. Iqbal also submits that it was unreasonable for the RAD to seek “further” evidence that the agents of persecution had connections in Karachi or the ability to find specific individuals there. According to Mr. Iqbal, it was unreasonable for the RAD not to be satisfied with the evidence that the agents of persecution had connections with the PML-N, a national political party in Pakistan; the fact that the PML-N party holds no seats in the Sindh Province, and that it was one of the opposition parties, has no relevance as to the ability of the party to locate him.

[28] According to Mr. Iqbal, the RAD ignored or failed to properly consider the following aspects of his testimony, evidence and arguments:

- a) The PML-N is a national party with a presence in Sindh Province, within which Karachi is located; and

- b) The agents of persecution are affiliated with the PML-N and have a network that extends to Sindh Province with ties to powerful politicians and government officials, including in Karachi.

[29] I am of the view that it was reasonable for the RAD to conclude that Mr. Iqbal's bare statement that the land encroachers have "unspecified connections to a political party" did not show that they had the means or motivation to locate him in a distant and large city (*Olusola* at paras 15-21). The RAD's reasons do not suggest that the political landscape was a determinative factor in its decision, but simply that it was not unreasonable to consider, as part of the analysis as to whether Karachi was a viable IFA, the fact that the party that Mr. Iqbal had problems with is not in power in the proposed IFA region or on the national level.

[30] In any event, it is clear from the RAD's reasons that it took into consideration Mr. Iqbal's arguments and evidence to the effect that the agents of persecution were affiliated with the PML-N and that this party had a presence in the region. However, the RAD, reasonably in my view, attributed little weight to this evidence.

[31] The RAD addressed Mr. Iqbal's argument to the effect that the land encroachers are affiliated with the PML-N, a national party, but found that this was insufficient to establish that they (or even the party) had the capacity to locate Mr. Iqbal in a region where the party is not even represented. Considering the lack of evidence before the RAD, that is not an unreasonable determination.

[32] This is not a case where the RAD required “further” evidence from Mr. Iqbal. This is simply a case where the RAD concluded that there was insufficient evidence to support the proposition that Mr. Iqbal would not be safe in Karachi, a city of 16.6 million people situated over 1,300 km from Gujrat, where the incidents occurred, or that the agents of persecution had the means to find Mr. Iqbal in Karachi. I see nothing unreasonable with that conclusion.

[33] Mr. Iqbal argues that the RAD did not take into consideration the articles which spoke to the pervasiveness of land encroachment in Pakistan. I cannot agree. There is a presumption that the RAD has reviewed the entirety of the evidence (*Adnani v Canada (Citizenship and Immigration)*, 2020 FC 21 at paras 27-28; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 38). Further, the fact that no specific article was addressed by the RAD may easily be explained by the fact that, as conceded by Mr. Iqbal, none of the articles addressed the issue of the ability of the land encroachers to pursue and find their targets in large cities like Karachi; none of the articles in question contradicted findings of the RAD on any of the determinative issues.

[34] Finally, Mr. Iqbal made no written submissions regarding the reasonableness of the IFA; yet, before me, Mr. Iqbal argued that the wording of the RAD’s reasons suggests that he would have to cut ties with his family and with his business so as to render the IFA viable. I do not read the reasons of the RAD in that way, and do not agree that the finding of the viability of the IFA is conditional upon such cutting of ties.

[35] There is no ambiguity in the RAD's decision. I find the reasoning to be clear and consistent and the decision to be reasonable.

VI. Conclusion

[36] I would dismiss the application.

JUDGMENT in IMM-7762-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7762-19

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