Federal Court  Cour fédérale

Date: 20211022

Docket: IMM-1431-20

Citation: 2021 FC 1129

Vancouver, British Columbia, October 22, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

NABEEL KHALID MALIK
NOSHEEN NABIL
SIMRA NABEEL
MARYAM NAZ
MUJTABA MEHMOOD MALIK

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Nabeel Khalid Malik (the "Principal Applicant") and his wife Nosheen Nabil and his children Simra Nabil, Maryam Naz and Mujtaba Mehmood Malik (collectively the "Applicants") seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), dismissing their appeal from a decision of the Immigration and Refugee

Board, Refugee Protection Division (the "RPD"). The RPD had found that the Applicants, a family of Shia Muslims from Gurjat, Pakistan were not Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The RPD dismissed the Applicants' claim on two grounds: first, it made negative credibility findings and second, it determined that an Internal Flight Alternative ("IFA") was available to them in Hyderabad.

[3] The RAD determined that the RPD had erred in making its negative credibility findings. However, it maintained the finding that an IFA was available to the Applicants in another part of the country.

[4] The Applicants argue that the decision of the RAD is unreasonable and was made without regard to the evidence.

[5] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision meets the applicable standard of review and that there is no basis for judicial intervention.

[6] The decision of the RAD is reviewable on the standard of reasonableness, following the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see *Vavilov, supra* at paragraph 99.

[8] The Officer applied the relevant test for an IFA as described in *Rasaratnam v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 706 (Fed. C.A.), at 710-711. The test is two pronged and provides as follows:

- First, the Officer must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA; and
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[9] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada (Minister of Employment & Immigration)* (1993), [1994] 1 F.C. 589 (Fed. C.A.), at 596-598.

[10] Considering the contents of the Certified Tribunal Record (the "CTR"), and the oral and written submissions of the parties, I am not persuaded that the RAD committed any reviewable error. I reject the Applicants' argument that the RAD failed to consider the evidence.

[11] I am satisfied that the RAD assessed the Principal Applicant's claim that he was at risk from terrorists who target Shia Muslim if he and his family moved to Hyderabad. In my opinion, it reasonably concluded that a viable IFA is available to the Applicants in Hyderabad where they could live and freely practice their religion.

[12] The burden lay upon the Applicants to show that an IFA was not reasonably available. The RAD determined that they had not discharged that burden, as they did not demonstrate that the terrorists are motivated to find them in Hyderabad. The ultimate conclusion is reasonable.

[13] In the result, the application for judicial review will be dismissed, there is no question for certification arising.

JUDGMENT in IMM-1431-20

THIS COURT'S JUDGMENT is that the application for judicial review will be dismissed, there is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1431-20
STYLE OF CAUSE:	NABEEL KHALID MALIK, NOSHEEN NABIL, SIMRA NABEEL, MARYAM NAZ, MUJTABA MEHMOOD MALIK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN ST. JOHN'S, NEWFOUNDLAND AND LABRADOR AND TORONTO, ONTARIO
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APPEARANCES:

John W. Grice	FOR THE APPLICANTS
David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John W. Grice Grice and Associates Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT