

Federal Court



Cour fédérale

**Date: 20220110**

**Docket: IMM-3434-20**

**Citation: 2022 FC 23**

**Ottawa, Ontario, January 10, 2022**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**SARABJEET KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Applicant is a victim of spousal abuse. She was found not to qualify as a refugee or a person in need of protection because she had a viable internal flight alternative [IFA] in Mumbai. This is the judicial review of that finding by the Refugee Protection Division [RPD].

II. Background

[2] The Applicant, a 46 year old citizen of India, claimed that she was forced to marry her husband. Her evidence outlined numerous incidents of physical, sexual and emotional abuse by her husband who was living in the UAE.

[3] The Applicant left her husband in the UAE and returned to India where she was pressured by her own family to return to her husband. She alleged that while in Amritsar staying with friends, those friends were threatened by people who knew her husband. The incident was reported to police in New Delhi and the Applicant claimed a police superintendent knew her husband and told her to do as her husband asked – presumably to return to him.

[4] The Applicant then went to the USA in early 2018 to stay with a friend and while staying there, her sister called to report that people had come to the sister's house asking about the Applicant and then assaulted and threatened to rape the sister.

[5] A few months later, the Applicant's American friend received a call from the husband in which he said he knew where the Applicant was, he threatened to come to the USA and if the Applicant did not return, he would rape her.

[6] In the RPD's decision, it found the determinative issue to be the existence of a viable IFA. The RPD also claimed it applied the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines].

[7] In the RPD's consideration of the safety of the IFA, it relied on India's large population and geography and the size of Mumbai as factors that limited the husband's ability to find the Applicant. It also discounted the husband's ability to use his police connections to find her because of the decentralized and siloed manner of police organization in India.

[8] The RPD discounted the husband's ability to find the Applicant in Mumbai because neither she nor her husband knew anyone there. It also discounted the ability to track her through social media or through her calls to siblings. The RPD considered her status as a highly educated individual in a high socio-economic class as indication that the Applicant was not at significant risk.

[9] On the issue of the reasonableness of the IFA, the RPD found it not unreasonable for her to seek refuge in Mumbai where she should be able to find employment given her language skills, level of education, work experience and her history of travels which suggested an ability to adapt to new circumstances.

### III. Analysis

[10] The issue is the reasonableness of the IFA determination. While the parties had different perspectives on standard of review, in my view, on the issue of the IFA, the standard is reasonableness as taught by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. To the extent that there is a fairness issue, I adopt the developing (if not yet developed) view that fairness is about whether the procedure was fair – it is either fair or not fair: see

*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*,  
2020 FCA 196 (de Montigny JA).

[11] In this case, given the central issue, the only relevant standard of review is reasonableness.

[12] With regard to the IFA, I find that it is unreasonable. The RPD's analysis discounted the possible means the husband could use to locate the Applicant. However, the RPD did not engage the question that, if as the RPD found, those means should not be effective, how was the husband able to locate the Applicant both in India and in the USA.

[13] The RPD does not address the fact that the husband had the motive to find the Applicant, the apparent means to do so and has the opportunity.

[14] It is not sufficient to look at the country's conditions, the police organization and not address how or why the husband would not repeat his successful location efforts when the Applicant moved to Mumbai.

[15] I do not see any issue of fairness arising in this case. The Applicant challenges the RPD procedure on the basis that it failed to consider the Gender Guidelines by creating a hostile environment through questions related to the Applicant's failure to not seek a divorce.

[16] Firstly, the RPD did consider the Gender Guidelines; the Applicant's quarrel is with how it was done.

[17] Secondly, having reviewed the questions, I find nothing untoward or insensitive about them. The Gender Guidelines are not a muzzle over pertinent questions that go to the core of a case or which raise issues of credibility.

#### IV. Conclusion

[18] As this matter will be referred back, the Court will refrain from addressing other but not necessarily determinative issues. The judicial review will be allowed, the decision quashed and the matter referred back to a differently constituted panel.

[19] There is no question for certification.

**JUDGMENT in IMM-3434-20**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted, the decision of the Refugee Protection Division is quashed and the matter is referred back to a differently constituted panel. There is no question for certification.

"Michael L. Phelan"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3434-20

**STYLE OF CAUSE:** SARABJEET KAUR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 8, 2021

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JANUARY 10, 2022

**APPEARANCES:**

Daniel Kingwell FOR THE APPLICANT

Idorenyin Udoh-Orok FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mamann, Sandaluk & Kingwell FOR THE APPLICANT  
LLP  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario