

Federal Court



Cour fédérale

Date: 20220127

Docket: IMM-1136-20

Citation: 2022 FC 95

Ottawa, Ontario, January 27, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**SHAFQAAT UI HAQ
ZAHID MAJEED ASIM
AROOSHA ZAHID
SHARJEELA SHAFQAAT
TOOBA ZAHID
AIZA ZAHID
TAAIBAH BINTE SHAFQAAT
TEHREEM BINT-E-SHAFQAAT
TASBEET BINT-E-SHAFQAAT
HIBA ZAHID**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants comprise two families. Sharjeela Shafqaat and Aroosha Zahid are sisters. One family consists of the Principal Applicant Shafqaat Ui Haq, his spouse Sharjeela Shafqaat and their children Taaibah, Tehreem and Tasbeet, while the other family consists of Aroosha Zahid, her spouse Zahid Majeed Asim and their children Tooba, Aiza and Hiba. The Applicants are citizens of Pakistan and Shia Muslims.

[2] The sisters, who were teachers, held Shia gatherings for women, known as “majlis,” in their shared home. At one such gathering, a guest speaker made comments that were reported to, and considered blasphemous by, their Sunni neighbours and the Sunni community. After numerous threats and attacks, including an attempted kidnapping, the families fled Pakistan. They arrived in Canada in May 2018 and sought refugee protection. They fear persecution and risk to their lives in Pakistan for practising their religion, including targeting by anti-Shia elements or extremists, such as Sipah-e-Sahaba Pakistan [SSP] and Lashkar-e-Jhangvi [LEJ].

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected the Applicants’ claims on October 16, 2019, on the basis of credibility concerns, and found that a viable Internal Flight Alternative [IFA] exists in Hyderabad. In light of the IFA finding, the RPD concluded that the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. See Annex “A” for relevant provisions.

[4] The Refugee Appeal Division [RAD] found that the RPD had erred in its credibility assessment of the Applicants, and accepted the Applicants' new evidence on this issue. The RAD nonetheless denied the appeal on January 17, 2020, holding that the determinative issue is the availability of an IFA in Hyderabad [Decision]. The RAD concluded that the Applicants will not face a serious possibility of persecution on a Convention ground nor will they be subjected personally to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment, on a balance of probabilities, in Hyderabad, Pakistan.

[5] The Applicants now seek judicial review of the Decision.

[6] There is no dispute that the presumptive reasonableness standard of review is applicable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], at paras 10 and 25. I find none of the situations that can rebut this presumptive standard is present in the circumstances: *Vavilov*, at para 17.

[7] Having considered the parties' material, including their written and oral submissions, as well as the applicable law, I am not satisfied that the Applicants have met their onus of demonstrating the RAD's determination of a viable IFA in Hyderabad is unreasonable: *Vavilov*, above at para 100. For the reasons that follow, I therefore dismiss the Applicants' judicial review application.

II. Analysis

[8] In a judicial review, the Court must not engage in reassessing and reweighing the evidence that was before the decision maker: *Vavilov*, above at para 125; *Gesite v Canada (Citizenship and Immigration)*, 2017 FC 1025, at para 18; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799, at para 39. Yet I find this is the essence of what the Applicants request the Court to do in the matter before me.

[9] The Applicants assert that the RAD did not consider fully the country condition evidence in determining the viability of an IFA for the Applicants in Hyderabad. In doing so, the Applicants argue, the RAD erred in the first part of the applicable two-part test articulated in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]. There, the Federal Court of Appeal held that a refugee protection claim will fail if the claimant can seek safe refuge within their own country (in other words, a possible IFA exists); in that event, “there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country.”

[10] To maintain the claim for protection, the refugee claimant thus bears the burden of establishing, on a balance of probabilities, that:

- (i) there is a serious possibility of persecution in the proposed IFA; and
- (ii) objectively, considering all the circumstances including those particular to the Applicants, it would be unreasonable or unduly harsh for them to move there: *Olasina v Canada (Citizenship and Immigration)*, 2021 FC 103, at para 4; and *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141, at para 29.

[11] With this test in mind (as indicated by the RAD's conclusion summarized in paragraph 4 above), the RAD made the following determinations in upholding the RPD's IFA finding:

- The threat against Shia Muslims in Pakistan is focused largely in Balochistan and the Federally Administered Tribal Area or FATA, on a balance of probabilities;
- The Applicants are not subject to a serious possibility of persecution based on their profile as Shia Muslims or Shia professionals (teachers); apart from threats and attacks largely localized in their neighbourhood, the Applicants did not testify to any other incidents related to their religion, such as being denied work, lodging or other discrimination;
- The Applicants have not established that they are being sought by the SSP or other actors in Pakistan, other than by their neighbours at their home for having organized Shia majlis;
- The Applicants can relocate safely and reasonably to Hyderabad; the evidence does not support the conclusion that the risk they faced in their previous home would be repeated in Hyderabad, even if they hold majlis, nor that they could not obtain similar work in the school system (or other work in the services industry) in Hyderabad.

[12] The Applicants' written and oral submissions have not convinced me that the RAD ignored or misapprehended key evidence in the country condition documentation of record in this matter, or otherwise treated such documentation unreasonably, in its assessment of the Applicants' risk of persecution as Shia Muslims in Pakistan, or whether the Applicants can relocate safely and reasonably to Hyderabad.

[13] The RAD is presumed to have reviewed all evidence before it and is not required to refer expressly to each piece: *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765 at para 32. The presumption is not a complete answer, however, to the Applicants' concerns.

[14] Having considered the certified tribunal records (including a supplemental record permitted by the Court) and the specific portions that counsel referenced at the hearing, I find that the RAD's reasons are consistent with a careful and holistic review of the country condition evidence.

[15] In my view, the RAD's reasons demonstrate that the RAD considered and weighed the Applicants' supporting documentation and provided intelligible conclusions that permit the Court to understand the reasoning process. In other words, I find the RAD's determinations are "based on an internally coherent and rational chain of analysis" and justified in relation to the facts and law that constrained them: *Vavilov*, above at para 85. Noting that the RAD's reasons must not be assessed against a standard of perfection, I am satisfied that the reasoning does not exhibit a reviewable failure of justification, intelligibility or transparency but rather that it "adds up": *Vavilov*, above at para 91 and 104; *Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2021 FCA 157 at paras 15 and 25.

III. Conclusion

[16] For the above reasons, I therefore dismiss the Applicants' judicial review application.

[17] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-1136-20

THIS COURT'S JUDGMENT is that:

1. The Applicants judicial review application is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27

<p>Convention refugee</p> <p>96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p style="padding-left: 40px;">(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p style="padding-left: 40px;">(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>Définition de réfugié</p> <p>96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p style="padding-left: 40px;">a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p style="padding-left: 40px;">b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p>Person in need of protection</p> <p>97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p style="padding-left: 40px;">(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p style="padding-left: 40px;">(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p style="padding-left: 80px;">(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p style="padding-left: 80px;">(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p style="padding-left: 80px;">(iii) the risk is not inherent or incidental to lawful sanctions, unless</p>	<p>Personne à protéger</p> <p>97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p style="padding-left: 40px;">a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p> <p style="padding-left: 40px;">b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p style="padding-left: 80px;">(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p style="padding-left: 80px;">(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,</p> <p style="padding-left: 80px;">(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf</p>

imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1136-20

STYLE OF CAUSE: SHAFQAAT UI HAQ, ZAHID MAJEED ASIM,
AROOSHA ZAHID, SHARJEELA SHAFQAAT,
TOOBA ZAHID, AIZA ZAHID, TAAIBAH BINTE
SHAFQAAT, TEHREEM BINT-E-SHAFQAAT,
TASBEET BINT-E-SHAFQAAT, HIBA ZAHID v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: JULY 6, 2021

JUDGMENT AND REASONS: FUHRER J.

DATED: JANUARY 27, 2022

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