Federal Court  Cour fédérale

Date: 20220209

Docket: IMM-1026-21

Citation: 2022 FC 164

Ottawa, Ontario, February 9, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

YUVRAJ SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Yuvraj Singh, is a citizen of India. He seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated January 20, 2021, whereby it confirmed the decision of the Refugee Protection Division [RPD], dismissing his claim for protection on the basis that he had a viable internal flight alternative [IFA] elsewhere in India.

[2] The Applicant is a religious musician. He sought refugee protection based on his alleged fear of a drug trafficker who tried to forcefully recruit him to sell drugs in August 2018. This drug trafficker is allegedly well-connected to a member of the Punjab Legislative Assembly and the Punjab Police.

[3] The RPD found that, as the Applicant's fear concerned criminality, his claim under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], failed due to the lack of a nexus to a Convention ground. The RPD then assessed the claim under section 97 of the IRPA. It concluded that the Applicant had a viable IFA elsewhere in India after finding, *inter alia*, that he was not credible about his allegations of being located and arrested by the Punjab Police in a state outside its jurisdiction.

[4] The Applicant appealed the decision to the RAD. In support of his appeal, he filed new evidence in the form of fifteen (15) documents. The RAD found that none of the documents submitted were admissible as new evidence, and accordingly denied the Applicant's request for a hearing. The RAD also concluded that the Applicant had a viable IFA elsewhere in India.

[5] The RAD's decision is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]). When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "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). The "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[6] Upon considering the record and the submissions of the parties, the Applicant has failed to persuade me that the RAD's decision is unreasonable.

[7] Contrary to the Applicant's submissions before this Court, only his affidavit, the letter from his father and the lawyer's letter postdate the RPD's decision. The RAD reasonably found and explained why the Applicant's documents were inadmissible. They were an attempt to elaborate on the Applicant's testimony before the RPD, or they contained evidence that had arisen prior to the rejection of the claim. The Applicant had also failed to explain why he did not provide them before the RPD hearing.

[8] An appeal to the RAD is not an opportunity for an applicant to complete a deficient record, or to answer the weaknesses identified by the RPD (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 54; *Digaf v Canada (Citizenship and Immigration)*, 2019 FC 1255 at para 25; *Eshetie v Canada (Citizenship and Immigration),* 2019 FC 1036 at para 33). Moreover, a document's newness is not determined solely by the date on which it was authored. The focus is rather on the date of the event or circumstance that the document seeks to prove (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 16). Despite his onus to do so, the Applicant did not demonstrate how the proposed new evidence met the requirements of subsection 110(4) of the IRPA.

[9] Regarding the Applicant's arguments with respect to the RAD's findings of a viable IFA, the RAD did in fact consider the specific circumstances of the Applicant and his alleged fears. As was the case before the RAD, the Applicant's submissions before this Court focused on the potential means of the agents of harm to locate him in the IFA through methods, such as tenant registration, cellular towers, and police background and identity checks. The RAD reasonably found that while such methods speak to the possible means available to search for the Applicant, they did not establish that the agents of harm were motivated to search for him and pursue him outside of his village. The RAD found that the motivation of the Applicant's agents of harm was to recruit local young men in his village to sell drugs. The Applicant had not demonstrated that the agents of harm had the motivation to search and pursue him in the IFA, or that the member of the Punjab Legislative Assembly had any direct interest in him. The RAD also explained why it did not find credible the Applicant's allegation that the Punjab police had located and arrested him in another state, before bringing him back to torture him.

[10] Once the issue of an IFA was raised, the onus was on the Applicant to provide credible evidence demonstrating, on a balance of probabilities, that there was a serious possibility of persecution or risk of danger or harm throughout his country and that it would be unreasonable for him, in all the circumstances, to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 709–711 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA); *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43-45). The RAD reasonably concluded that the Applicant had not met his burden of proof. The Applicant has not identified any material evidence that the RAD failed to consider that would substantiate his allegations. While the

Applicant may not agree with the RAD's findings, it is not this Court's role to reassess and reweigh the evidence to reach a conclusion that is favourable to the Applicant (*Vavilov* at para 125; *Canada* (*Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[11] Finally, the Applicant's arguments relating to Article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, as well as Canada's obligation to comply with international law instruments and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, have already been addressed and rejected several times (*Sandhu v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 902 at para 2 (FCA); *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at para 39; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 17-18; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at paras 40-44; *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 at para 16).

[12] To conclude, I am satisfied that, when read holistically and contextually, the RAD's decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible.

[13] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-1026-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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