

Federal Court



Cour fédérale

Date: 20220405

Docket: IMM-6388-20

Citation: 2022 FC 478

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 5, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ZARQA WASEEM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Background and decisions on the merits**

[1] The applicant, Zarqa Waseem, is a citizen of Pakistan seeking the judicial review of the November 19, 2020, decision by the Refugee Appeal Division [RAD] confirming the September 6, 2019, Refugee Protection Division [RPD] decision finding that Ms. Waseem had an internal flight alternative [IFA] in Faisalabad, Lahore and Multan, in the Punjab province in

Pakistan. Ms. Waseem has been married to Waseem Ud Din since 2010 and is the mother of three children. She arrived in Canada alone and pregnant and gave birth to her third child shortly after her arrival. In Karachi, Pakistan, she taught at a college and was a school principal.

[2] In 2004 and 2008, Ms. Waseem's husband was invited to join the Muttahida Qaumi Movement [MQM], a political party, but he refused as he did not share the members' ideas. In August 2010, armed men attacked Mr. Ud Din and stole his personal items. A month later, the same men attacked Mr. Ud Din again and threatened to go after Ms. Waseem, stating that they knew she taught at the college and knew the route she took to get there. Because of these threats, Ms. Waseem and her husband decided to go to her parents' place in Islamabad temporarily. On their return to Karachi a month and a half later, the threats increased, and Mr. Ud Din began receiving phone calls from MQM members, encouraging him to join the party and threatening to go after him and his family if he did not comply. Ms. Waseem and Mr. Ud Din could not get the Karachi police to help, as the police station supported the MQM and they feared that their problems would worsen if they filed a complaint. Ms. Waseem also testified about the deteriorating security conditions in Karachi; she and her husband had experienced incidents that demonstrate the widespread violence there.

[3] In 2012, when she was pregnant with her second child, Ms. Waseem went to the United States to attend her cousin's wedding. She stated she was unable to remain in the United States because her uncle could not sponsor an immigration application and it would have been too expensive for her to give birth there. Upon her return to Karachi, Ms. Waseem learned that her husband had been attacked and injured in the street by the same men who had attacked him in

2010. During the attack, they again threatened Mr. Ud Din that they would go after his wife and child. Ms. Waseem and Mr. Ud Din tried to file a complaint at the police station, but the police refused to accept a complaint against members of the MQM. Ms. Waseem also heard people in the street saying that they would [TRANSLATION] “kidnap the teacher and throw acid in her face”.

[4] Following these events, they decided to move to Ms. Waseem’s mother’s place in Islamabad, in the Punjab region. Ms. Waseem stated that her husband was the victim of racism in that region because of his Indian origins and that they were subject to phone threats to the extent that Mr. Ud Din had to change his phone number. Fearing that the MQM members would be able to find them at Ms. Waseem’s mother’s home, they decided to rent another house in Islamabad. Mr. Ud Din tried to get a visa for the United States and a job in Dubai, and Ms. Waseem began the process to obtain a Canadian visa, but in vain. Ms. Waseem found a job as a school principal in Islamabad, and they tried to open a business and a school at their home. In the meantime, they learned the Mr. Ud Din’s cousin had been killed in the streets of Karachi after also receiving phone threats from the MQM. On July 28, 2017, three men entered their house in Islamabad and threatened Mr. Ud Din. He took refuge at Ms. Waseem’s sister’s house.

[5] With a US visa, Ms. Waseem left Pakistan for the United States on January 31, 2017, when she was pregnant with her third child, leaving her husband and two children behind. Ms. Waseem was lodged by her employers in the United States, one of which discouraged her from seeking asylum in the United States because of the US government’s politics. This employer helped her apply for a Canadian visa, but her application was refused in March 2017. At 38 weeks pregnant, Ms. Waseem did not have access to health care and could not enter

Pakistan by plane. She therefore decided to walk to the Canadian border on May 24, 2017, where she claimed refugee protection. Ms. Waseem stated that since she left Pakistan, the threats against her husband have continued.

[6] The RPD found that Ms. Waseem did not present sufficient credible evidence to support the allegations that are the basis of her claim for protection, namely that her husband was the victim of threats by MQM members. The RPD did not consider the IFA question.

[7] The RPD refused to accept Mr. Ud Din's letter as testimony since it did not have the opportunity to question him about his claims. It also noted that Ms. Waseem had not produced any evidence about her mental state, having only submitted a letter from her social worker and nurse clinician from Quebec. The RPD noted that Mr. Ud Din was still living in Pakistan with their two other children, that there was no evidence on file showing that they had attempted to get out of the country and that the letters of recommendation only mentioned their problems in Karachi very generally, if at all. Additionally, the RPD concluded that Ms. Waseem's behaviour was inconsistent with that of someone who feared for her life, since she went to the United States twice without requesting protection and claimed protection in Pakistan after her first trip to the United States. Although the RPD recognized that there was generalized violence in Pakistan, the evidence in the file did not show that Ms. Waseem had a subjective fear.

[8] For the RAD, the determinative question was the possibility of an IFA in Faisalabad, Lahore and Multan, in the Punjab province. Ms. Waseem had the opportunity to provide additional submissions and new documentary evidence from the National Documentation

Package [NDP]. Ms. Waseem asked to submit this new evidence under subsection 110(4) of the IRPA. However, since these documents are part of the NDP, no application was required. As a result, since the RAD did not receive any new evidence, it did not have the jurisdiction to hold a hearing.

[9] The RAD proceeded with the two-pronged analysis required to establish an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 [*Rasaratnam*]). For the first prong, the RAD was not satisfied, on a balance of probabilities, that there was a serious possibility that Ms. Waseem would be persecuted in Faisalabad, Lahore or Multan since, according to the objective evidence in the NDP, the MQM is a political party active in Karachi, Hyderabad and Nawabshah that does not use force or harassment methods to recruit members. Moreover, the RAD found that Ms. Waseem did not show that she and her husband were being actively pursued by MQM members.

[10] With regard to the second prong of the *Rasaratnam* test, Ms. Waseem submitted that it was not reasonable for her to settle in Faisalabad, Lahore or Multan because of her profile as an educated woman who teaches girls at college. She added that the police would not and could not protect her and that she would not be able to move to one of the localities suggested as an IFA because of the tenant registration system. The RAD concluded that there was no objective documentary evidence showing that teachers were targeted by violent groups in the communities suggested as IFAs. According to the RAD, the documentary evidence indicates that in particular, women from lower socio-economic environments are the ones who are reluctant to seek police protection and that Lahore has police stations for women, intended to protect them from

violence. Moreover, Ms. Waseem did not show that there were obstacles caused by the tenant registration system. The RAD also considered the letter from Ms. Waseem's social worker and nurse clinician, but found that, since the symptoms of anxiety and distress were caused by the fact she was separated from her husband and her children, a return to Pakistan would allow for these concerns to be resolved. Lastly, the RAD considered Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution [Guideline 4] and concluded that Ms. Waseem would not face undue hardship in reaching the IFA and establishing her residence there.

II. Issue and standard of review

[11] This application for judicial review raises a single question: Was the RAD decision reasonable?

[12] The applicable standard of review for the RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [Vavilov]). The role of the Court is therefore to determine whether the decision as a whole is reasonable, meaning whether it was based on "an internally coherent and rational chain of analysis" and whether the decision as a whole "is transparent, intelligible and justified" (Vavilov at paras 15 and 85).

III. The Refugee Appeal Division's decision was reasonable

[13] It is worth stating again that the test for establishing the existence of an IFA has two prongs. The RAD must be satisfied, on a balance of probabilities, that (1) there is no serious risk

of persecution for the claimant in the part of the country where, in its opinion, there is an IFA; and (2) in all the circumstances, including the claimant's personal situation, it is not unreasonable for the claimant to seek refuge there (*Rasaratnam* at pp 709 to 711). To determine what would constitute an unreasonable IFA, there must be nothing less than the existence of conditions which would jeopardize the life and safety of the claimant (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) at para 15). It is a flexible criterion that takes into account the particular situation of the claimant and the particular country involved, and an objective criterion for which the claimant has the onus of proof (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at p 597).

[14] According to the Minister of Citizenship and Immigration, the RAD decision is reasonable because Ms. Waseem simply did not provide any genuine and concrete proof to refute the existence of a viable IFA in Faisalabad, Lahore or Multan.

[15] Ms. Waseem is not challenging the RAD's findings regarding the first component of the test. She submits instead that the RAD did not duly take into account the issue of violence towards women in Pakistan in its analysis of the second prong of the test. According to Ms. Waseem, the persecution against her because of her profile as a teacher of young girls is an essential element to consider when determining whether it is reasonable for her to take refuge in one of the proposed IFAs. Ms. Waseem submits that the RAD did not take into consideration the following information from the objective documentary evidence that was in the NDP, in particular: close to 3,000 acts of violence against women and girls were identified in Pakistan in

2019; the Taliban and other militant groups often attack teachers, schools and students, in particular girls' schools; several NGOs have been subject to persecution, in particular in the Punjab province; women victims of violence who file complaints note that they are not taken seriously by the police and several acts of violence have been identified against women despite the February 2017 adoption of a law to protect them (Amnesty International Belgique, "Rapport annuel 2017 : Pakistan" (22 February 2017), Exhibit X of Applicant's Record; Human Rights Watch, "World Report 2019. Pakistan: Events of 2018" (January 2019), NDP, 21 January 2019, Tab 2.4; Amnesty International "Report 2017/2018: The State of the World's Human Rights. Pakistan" (22 February 2018), NDP, January 31, 2019, Tab 2.3; Human Rights Watch, "World Report 2017. Pakistan: Events of 2016 (January 2017)" Exhibit Z of Applicant's Record).

[16] The RAD's reasons show that it assessed the objective evidence in the NDP and acknowledged the violence against teachers in certain regions of Pakistan, but noted that there was nothing that indicated this threat was present in the suggested IFAs:

[20] At the hearing, the Appellant testified that, as a teacher of girls, she was able to influence their thoughts and ideas about politics, and that she received threats at one point while teaching at a college in Karachi. She stated that one other teacher received threats, but she knew of no others among the 40 to 50 teachers at that school. Item 5.11 of the NDP is a report by the International Crisis Group on women, violence, and conflict in Pakistan. This report states that militant violence has undermined access to education, and intimidation of, and threats and attacks on, women who are teachers happen regularly in conflict zones that include the Federally Administered Tribal Areas and Khyber Pakhtunkhwa and its Provincially Administered Tribal Areas. There is no indication in this document that there is a similar situation in Faisalabad, Lahore, or Multan. I find that the Appellant has not established, on a balance of probabilities, that she would be targeted as a teacher in the suggested IFAs

[17] Ms. Waseem did not persuade me that the RAD finding was unreasonable; none of the passages in the NDP on which she relied indicated that teachers are particularly targeted by violent groups in the IFAs. During the hearing, Ms. Waseem took me through several sections of the NDP that provide examples of attacks against women and the impunity with which the police and paramilitary forces act when they commit violations of human rights against them. There is no doubt that women generally face greater risks in Pakistan, but the evidence of crimes against women usually includes elements that do not correspond to Ms. Waseem's profile or to the suggested IFAs. The evidence involves honour crimes—and there is nothing to indicate that Ms. Waseem is at risk of being the victim of such a crime because she belongs to a higher socio-economic class—or attacks against teachers and schools in regions of Pakistan that do not include the suggested IFAs. In the end, there was nothing to indicate that the RAD had not considered any evidence that directly contradicted any of its conclusions. In fact, the RAD specifically addressed the issue of the inherent risk of being a teacher of young girls in Pakistan. It concluded that incidents of militant groups compromising access to education by acts of intimidation, threats and attacks against teachers and students seem to be limited to conflict areas, including tribal areas. Additionally, there is nothing to indicate that there is a similar risk in any of the suggested IFAs. I am not satisfied that such a decision was unreasonable.

[18] Ms. Waseem also submits that the RAD did not adequately apply Guideline 4 since she could not reach the suggested IFAs safely or establish herself there without undue hardship. In her opinion, the evidence on file showed that the Pakistani government is unable to ensure adequate protection against gender-based persecution.

[19] Yet, in its reasons, the RAD noted that Guideline 4 required it to consider the capacity of a woman, because of her gender, to reach the IFAs safely and remain there without undue hardship (RAD decision, para 18). Then, it noted that the objective evidence did now allow it to find, on a balance of probabilities, that Ms. Waseem would not be able to receive protection from the police in the proposed IFAs:

[21] Regarding the Appellant's submission that she would not receive protection from the police in the proposed IFAs, the objective evidence indicates that, while women who are victims of crime may be reluctant to approach police stations due to fear of harassment, it is particularly women of lower socioeconomic status who would fear going to police stations. The Appellant would not be considered a woman of lower socioeconomic status, given her educational background and her occupation. The objective evidence further indicates that some cities, including Lahore, have women's police stations intended to protect women from violence by police officers and to inspire confidence and free communication. Also, the country condition evidence states that the security situation in Lahore, in particular, remains better than many other places in Pakistan, with lower levels of generalized and sectarian violence. As a result, the Appellant is unlikely to need to resort to police protection if she chooses to relocate to Lahore specifically. In any event, I find that the Appellant has not established, on a balance of probabilities, that she would not receive protection from the police in the proposed IFAs

[20] Ms. Waseem did not rely on any specific evidence in her statement that [TRANSLATION] "the evidence on file seems clear and convincing" that the police is unable to ensure adequate protection against gender-based persecution in the suggested IFA localities. She was unable to refute the RAD finding that the objective evidence showed that certain cities, including Lahore, had police stations for women, intended to protect them from violence.

[21] Lastly, Ms. Waseem felt that the RAD did not adequately analyse the psychological evidence she submitted in its analysis of the second prong of the test since she had trouble seeing

[TRANSLATION] “how [her anxiety] could suddenly disappear, considering all the circumstances, should she return to Pakistan”.

[22] The RAD indeed concluded that Ms. Waseem’s anxiety symptoms were attributable to the fact she was unable to communicate with her husband and her two other children who were still in Pakistan. I find that it was entirely reasonable for the RAD to reach this conclusion considering the content of the letter submitted by Ms. Waseem’s social worker and nurse clinician:

[TRANSLATION]
Several times, he had to change locations and contact information to ensure his protection and that of his children, leaving Ms. Waseem in uncertainty and with a worry that was difficult to bear. She would wonder if her family was still alive until she received a communication from them; sometimes she had no word from them for several days or even weeks, keeping her in a state of distress. . . .

Despite Ms. Waseem’s model integration, we have observed accentuated symptoms of anxiety, sadness and distress while she awaits the regularization of her status. She states that she has insomnia and ongoing worry about the safety of her family. At each meeting, she cries when she tells us what has been reported to her about the situation by her family members in Pakistan.

[23] Considering the above, I see no error in the RAD decision that would justify the intervention of the Court. I therefore dismiss the application for judicial review.

[24] Lastly, under paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, and subsection 4(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the appropriate respondent in the circumstances is the Minister of Citizenship and Immigration. Since the applicant names the Minister of Immigration, Refugees

and Citizenship, the respondent in the style of cause is amended and replaced by the Minister of Citizenship and Immigration.

JUDGMENT in IMM-6388-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The respondent in the style of cause is amended and replaced by the Minister of Citizenship and Immigration.
3. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6388-20

STYLE OF CAUSE: ZARQA WASEEM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 21, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: APRIL 5, 2022

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