

Federal Court



Cour fédérale

Date: 20220914

Docket: IMM-7248-21

Citation: 2022 FC 1285

Ottawa, Ontario, September 14, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AMIN JAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated October 1, 2021 [Decision]. In the Decision, the RAD confirmed a decision of the Refugee Protection Division [RPD], which determined that the Applicant had a viable internal flight alternative [IFA] in Lahore, Pakistan. As such, the RAD confirmed the RPD's determination that the Applicant is neither a Convention Refugee nor a person in need of

protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the IFA analysis underlying the Decision.

II. **Background**

[3] The Applicant is a Pakistani citizen. He is from a small village located in the Kurram Agency, a federally administered tribal area of Pakistan. He fears persecution as a Shia Muslim at the hands of Sunni religious extremists, including the Tehreek-e-Taliban Pakistan [TTP].

[4] On September 16, 2018, the Applicant was interviewed by local journalists while he was volunteering at his local Iman Bargah in Parachinar. Parachinar, which is the closest city to the Applicant's village and the capital of the Kurram district, is located in a remote area of Pakistan near the border with Afghanistan. The Applicant's comments, which were published in local newspapers, expressed his concerns about religious extremism and stated his belief that the people in the Kurram district should cooperate with security agencies if they saw anything suspicious during upcoming meetings in the area.

[5] Following publication of his comments, the Applicant received a threatening letter from the TTP on December 5, 2018, a number of threatening messages on "WhatsApp" from an unidentified number between March 27 and April 10, 2019, a second letter containing a death

threat on April 17, 2019, and another threat on “WhatsApp” on May 18, 2019. The Applicant travelled to Canada later in May of that year, and claimed protection in June 2019.

[6] Following a hearing on March 2, 2021, the RPD issued a decision, dated March 19, 2021, determining that the Applicant was neither a Convention Refugee nor a person in need of protection. The determinative issue before the RPD was the availability of an IFA in Lahore, Pakistan. The Applicant appealed the RPD’s decision to the RAD.

III. Refugee Appeal Division Decision

[7] As a preliminary issue, the RAD accepted new evidence submitted by the Applicant on appeal, including a BBC video segment in which the Applicant was interviewed, dated October 2018, and an English translation thereof.

[8] The RAD applied the two-prong test for assessing an IFA, as described in *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706 (FCA), 140 NR 138 at paras 5-6 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA), 109 DLR (4th) 682 at paras 9, 11. This analysis considers whether: (a) there is a serious possibility of the claimant being persecuted in the part of the country proposed as an IFA; and (b) the conditions in the part of the country considered to be an IFA are such that it would not be unreasonable in all the circumstances for the claimant to seek refuge there. Once an IFA has been identified, both prongs of the test must be met, and the Applicant has the burden of proof to establish there is no viable IFA.

[9] Under the first prong of the test, the RAD concluded that the Applicant had not met his onus of establishing, on a balance of probabilities, that there was a serious possibility: (a) that he would be persecuted in Lahore, or (b) that there was a risk to his life, or danger of torture, or risk of cruel and unusual treatment or punishment in Lahore. In making this determination, the RAD considered the following findings made by the RPD:

- A. Most violence at the hands of the TTP is in large group settings (i.e., a focus on mass casualty attacks), rather than against individuals;
- B. The Applicant is not a high-profile person who would be the target of the agents of persecution or a person with the prominence that would gain the attention of Sunni extremists;
- C. The TTP did not act on any of the threats made against the Applicant, despite knowing his address; and
- D. Sectarian violence is decreasing in Pakistan, in part due to government efforts.

[10] In arriving at its conclusions under the first prong of the test, the RAD considered and agreed with the Applicant's submission that the TTP was involved in sectarian violence throughout Pakistan. However, the RAD disagreed that the presence of sectarian violence meant that the Applicant was not safe anywhere in Pakistan and, in particular, in Lahore. In support of

this conclusion, the RAD cited a portion of a U.K. Country Policy and Information Note for Pakistan:

2.4.3 Simply living in an area where militant groups are active is unlikely to give rise to a protection need. The level of risk will depend on the particular profile of the person, the nature of the threat and how far it would extend. Decision makers must consider whether there are particular factors specific to the person which would place them at real risk. Each case must be considered on its facts with the onus on the person to show that they would be at risk of being targeted by militant groups if returned to Pakistan.

[11] The RAD also relied on a portion of the National Documentation Package [NDP], which indicated that people are generally able to relocate to escape risk when their fear is from non-state actors.

[12] The RAD next addressed the Applicant's argument that the RPD erroneously concluded that the TTP does not target individuals. The RAD accepted the Applicant's contention that extremist groups target those practicing apostasy, particularly Shias. However, the RAD agreed with the RPD's conclusion that most violence takes place in large group settings with a focus on mass casualty attacks, as opposed to individualized attacks.

[13] The RAD then considered the Applicant's submission that the RPD had incorrectly concluded that the Applicant did not have a sufficiently elevated profile. The RAD did not accept the Applicant's contention that he gained the prominence or profile that would attract the attention of the TTP or Sunni extremists. Although the RAD was prepared to accept that the Applicant may have had an elevated profile in the local Peshawar area, due to the publication of

his comments in local newspapers, the RAD found that such an elevated profile would not extend to another province such as in Punjab, where Lahore is located.

[14] The RAD similarly concluded that the BBC video segment did not support the Applicant's submission regarding his elevated profile. Specifically, the RAD found the video segment was less than 4 minutes in duration, with the Applicant only appearing and speaking for 45 seconds, and focused on a local litter and garbage problem in Parachinar. The RAD could not determine whether the Applicant's name was mentioned in the segment, or whether his name appeared in any captions.

[15] In conclusion on the first prong of the test, the RAD found that the Applicant had not established that the TTP had the motivation or means to track him down should he return to Pakistan and live in Lahore. In so finding, the RAD noted that the TTP had not acted on their threats while the Applicant was still in Pakistan, despite knowing his address, and that neither he nor anyone in his family had been contacted by the TTP in over two years.

[16] With respect to the second prong of the IFA test, the RAD noted the Applicant's argument that, given the RPD's finding that the TTP is involved in attacks at mass gatherings of the Shia community, the RPD erred in finding that he will not have difficulty practicing his religion in Lahore.

[17] The RAD referred to the observations in the NDP that there is no credible evidence that systemic discrimination against Shia Muslims exists in gaining employment in the public

service, police, military, or private sector, and that Shia Muslims are represented in all walks of life. Additionally, the NDP stated that large urban centres, such as Lahore, tend to be ethnically and religiously diverse, which offers a level of anonymity for people seeking refuge from violence by non-state actors. The RAD also identified evidence in the NDP that people in Pakistan are generally able to practice their religion without official interference or discrimination. The RAD therefore disagreed with the Applicant's position that he would not be able to practice his religion in Lahore.

[18] Finding that he has a viable IFA in Lahore, the RAD dismissed the Applicant's appeal.

IV. **Issues and Standard of Review**

[19] The sole issue in this application for judicial review is whether the RAD's finding, that the Applicant has an IFA in Lahore, is reasonable. As indicated by this articulation of the issue, the applicable standard of review is reasonableness.

V. **Analysis**

[20] In challenging the reasonableness of the RAD's IFA analysis, the Applicant advances arguments under both prongs of the applicable test.

[21] In relation to the first prong, he submits that the IFA unwittingly erred by treating the Applicant's profile in his local community as irrelevant to whether Lahore represented a viable IFA. In support of this position, he notes the RAD's conclusion that, although the TTP has been

involved in sectarian violence throughout Pakistan, ordinary or low profile Shias are not specifically targeted. He submits that the RAD's error lies in further concluding that, even if the applicant has an elevated profile in the Peshawar area, this elevated profile would not extend to another province such as Punjab where Lahore is located.

[22] Similarly, the Applicant notes that, unlike the NDP's explanation of the low risk faced by ordinary or low profile Shias, the RAD accepted that he was specifically targeted. He submits that, as he had come to the attention of extremists in his local area, the RAD erred in failing to take his profile into account in assessing his risk in Lahore.

[23] I disagree with the Applicant's argument that the Decision demonstrates that the RAD treated his profile in his community as irrelevant. The RAD clearly recognized the elements of his local profile upon which he relies, but it found that he had not provided sufficient evidence to establish that he had gained prominence that would attract the attention of Sunni extremists in another province. As the Respondent submits, the Applicant's argument amounts to a disagreement with the RAD's assessment of the evidence, which does not represent a basis for the Court to intervene in judicial review.

[24] Under the second prong of the IFA test, the Applicant relies on the RAD's finding (made in its analysis under the first prong) that violence perpetrated by the TTP in Lahore involves mainly large-scale attacks upon Shias rather than targeting individuals. He submits that it is not reasonable to expect him to move to a city in which he may be targeted in a mass casualty attack against his community. He further argues that the RAD failed to meaningfully address his

position that he would not be able to freely practice his religion in Lahore because of the risk of such community attacks.

[25] Again, I agree with the Respondent's position that the Applicant's argument amounts to a request for the Court to re-weigh the evidence considered by the RAD. The RAD recognized the Applicant's argument under the second prong of the test but relied on evidence in the NDP surrounding the ethnic and religious diversity of large urban centres in Pakistan such as Lahore, including the resulting ability of people to practice their religion without official interference or discrimination.

[26] Moreover, the Applicant's argument relies on the risk analysis performed by the RAD under the first prong of the IFA test, which included reference to NDP evidence that most Shia in Pakistan face a low risk of sectarian violence. In my view, it cannot be concluded that the RAD failed to meaningfully address the Applicant's position under the second prong of the test. Rather, reading the Decision as a whole, the RAD's rejection of the Applicant's argument that he would not be able to practice his religion in Lahore is supported by the evidence in the NDP canvassed by the RAD in the course of its IFA analysis.

[27] Having found no reviewable error in the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-7248-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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