

Federal Court



Cour fédérale

Date: 20221116

Docket: IMM-5357-21

Citation: 2022 FC 1569

Ottawa, Ontario, November 16, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HARSIMRAN KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India who, fearing her father, sought protection. The Refugee Protection Division [RPD] denied her claim, finding her to be neither a Convention refugee nor a person in need of protection because she has an internal flight alternative [IFA]. The Refugee Appeal Division [RAD] upheld the RPD's findings in a decision dated April 29, 2021.

[2] The Applicant brings this application for judicial review of the RAD's April 29, 2021 decision under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] For the reasons that follow, the Application is denied

II. Background

[4] The Applicant, a 27-year-old Indian citizen, arrived in Canada in 2013 on a student visa. She began dating another student and in 2016 became pregnant. The Applicant's mother entered Canada in 2016 and lived with her daughter and her boyfriend. The Applicant's mother became aware of the pregnancy, was abusive to the Applicant and threatened to disclose the pregnancy to the Applicant's father, a conservative Sikh. On her mother's insistence, the Applicant gave the child up for adoption.

[5] In October 2019, the Applicant filed a claim for refugee protection. Although the Applicant's parents divorced in 2018, they remained in contact and she believed it to be "only a matter of time" before her mother told her father about the pregnancy and adoption. The Applicant reports that she fears her father will harm her for having had a child out of wedlock.

[6] Just prior to her RPD hearing in February 2020, the Applicant reports she was informed through a chain of friends that her father had become aware of her pregnancy from her mother. The RPD found the Applicant to be generally credible, but did not believe the allegation that her mother had disclosed her pregnancy and the child's adoption to her father. Inconsistent testimony and the lack of any evidence from the friend with more direct knowledge led the RPD to

conclude the Applicant had “embellished” the allegation that her father knew of her pregnancy in order to strengthen her claim. Despite this negative finding, the RPD based the IFA analysis upon the assumption that there was a serious possibility the Applicant’s father would eventually become aware of the pregnancy and, as such, posed a risk of harm to the Applicant.

[7] The RPD concluded the Applicant had an IFA in India, finding her father lacked the influence or means to pursue her beyond the state of Punjab. The RPD found the evidence did not establish that her father had influence among politicians or police outside Punjab. The RPD also found the proposed IFAs in the provinces of Goa or Kerala were not unreasonable having considered the Applicant’s personal circumstances.

III. Decision under review

[8] In upholding the RPD determination, the RAD first addressed a request to admit as new evidence an affidavit sworn by the friend who had reported the Applicant’s father had become aware of her pregnancy. The RAD refused to admit the affidavit because the evidence failed to satisfy the statutory requirements for admission. However, the RAD also held that refusing to accept the affidavit was of little consequence, noting the RPD’s analysis had proceeded on the assumption that the Applicant’s father would become aware of her pregnancy.

[9] The RAD concluded the RPD had correctly determined there was a less than serious possibility the Applicant’s father would pursue her in the proposed IFAs. The RAD found that for her father to do so would result in the very consequence she testified her father sought to avoid – a negative impact on his reputation. The RAD reasoned that because the Applicant will

return to India without a partner or child, there is no reason anyone in the country would become aware of the pregnancy and adoption, other than the Applicant's parents. It would be highly unlikely her father would disclose this information to politicians or police in an effort to locate the Applicant. The RAD noted the Applicant's evidence also established that her father lacked the financial resources to locate her on his own.

[10] In addressing the second prong of the IFA test, the RAD found it would not be unreasonable for the Applicant to relocate to either of the proposed IFAs. The RAD acknowledged the Applicant would probably face unfair obstacles in obtaining employment and housing because of her gender. However, the RAD concluded these obstacles were likely surmountable considering the other aspects of her profile, such as her youth, English fluency and lack of dependents. The RAD placed greater weight on the risk of gender-based violence than the RPD but concluded these dangers were not more severe in the proposed IFAs than in Punjab.

IV. Procedural history

[11] In February 2022, an Order stayed the Applicant's scheduled removal from Canada pending disposition of the leave application. In granting the stay motion, the motions judge ordered that the procedure be expedited and that, if leave were granted, the Application be heard promptly.

[12] Leave was granted on March 9, 2022 and the hearing scheduled for May 3, 2022. By letter dated March 22, 2022, but not received by the Registry until April 29, 2022, the Applicant's counsel sought an adjournment of the scheduled hearing, citing religious reasons and

the unavailability of alternative counsel. The Respondent did not oppose the adjournment but noted the Court's prior order and requested the matter be heard prior to the end of May 2022.

[13] The adjournment was granted and the Application was rescheduled to be heard on May 11, 2022.

[14] On May 11, 2022, the Applicant sought a further adjournment based on a potential change of counsel, which was opposed by the Respondent. By Order dated May 12, 2022, the hearing date was rescheduled to May 27, 2022, the hearing date and time being peremptory to the Applicant. The Order also imposed a timeline for the filing of any notice of change of solicitor or any motion seeking an extension of time to file additional submissions.

[15] A notice of change of solicitor was filed on May 13, 2022.

[16] On May 26, 2022, Applicant's new counsel of record advised the Court that he would only be available to attend the hearing on May 27, 2022 for approximately 10 minutes due to a conflict with a small claims hearing in another court. In a written response to counsel for the Applicant's May 27, 2022 letter, counsel for the Respondent opposed any further adjournment. The Respondent noted the prior adjournments, counsel's last minute notice of a conflict, counsel's knowledge that the hearing date was peremptory to the Applicant at the time the notice of change of solicitor was filed, the Court's prior admonition to the Applicant regarding procedure, counsel's responsibility to manage his litigation commitments and the Applicant's

countless opportunities to secure legal representation. The Respondent submitted that, in the event the Applicant did not appear as scheduled, the Application should be dismissed.

[17] The hearing commenced as scheduled on May 27, 2022. Counsel for the Applicant appeared but reiterated he would only be able to remain for a short time and again requested that the matter be adjourned. The Respondent remained opposed to a further adjournment.

[18] Scheduling conflicts do occur, and the Court may, in appropriate circumstances, exercise its discretion to accommodate such conflicts. However, I declined to do so in this instance. The Court is responsible for its effective functioning and the management of its own proceedings (*Dugré v Canada (Attorney General)* 2021 FCA 8 at para 20). The Court has a strong interest in matters proceeding as scheduled (*UHA Research Society v Canada (Attorney General)* 2014 FCA 134 at para 14).

[19] The Applicant and her counsel were well aware of the preemptory nature of the hearing yet waited until the last moment to identify the scheduling conflict. This, despite having served and filed a notice of change of solicitor on May 13, 2022 and communicating with the Registry on May 17, 2022. Nor did Applicant's counsel provide any substantive explanation for how the conflict arose or why the Court was not advised earlier.

[20] After commencement of the hearing, Applicant's counsel was advised that the hearing would not be adjourned, and that should Applicant's counsel decide not to advance oral arguments during the scheduled hearing, the matter would be determined based on written

representations. Having been so advised, counsel for the Applicant chose not to make submissions.

[21] These reasons and judgment are therefore based on the written Memoranda of Argument filed by the parties.

V. Issues and standard of review

[22] In arguing the RAD's decision is unreasonable, the Applicant's written submissions raise three issues:

- A. Did the RAD err in assessing credibility, the RPD having found the Applicant to be credible?
- B. Did the RAD misconstrue the evidence and unreasonably fail to accept new evidence?
- C. Did the RAD err in concluding the Applicant had an IFA in India?

[23] The RAD's decision is reviewable on the standard of reasonableness. In conducting a reasonableness review, a reviewing court asks whether the decision bears the hallmarks of reasonableness: intelligibility, justification and transparency (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]). A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law (*Vavilov* at para 85).

VI. Analysis

A. *The RAD did not err by assessing the Applicant's credibility*

[24] The Applicant submits it was an error for the RAD to assess her credibility after the RPD had already determined she was credible. The Applicant submits this resulted in a microscopic examination of perceived inconsistencies in her testimony. I find little merit in this argument for the simple reason that the RAD did not assess or call into question the Applicant's credibility.

[25] The RAD's credibility assessment of the Applicant was favourable. In fact, the RAD held the RPD erred in its single negative credibility finding.

[26] The basis for the negative decision before both the RAD and the RPD was not credibility but rather sufficiency of evidence. The RAD determined the evidence failed to demonstrate the Applicant faced a serious possibility of persecution; the evidence failed to establish the Applicant's father had either the means or motivation to pursue the Applicant in the IFA.

B. *The RAD did not misconstrue or ignore evidence or err by failing to admit new evidence*

[27] The Applicant submits the RAD ignored her testimony about her father's influence within the Indian government. She had testified consistently at the RPD about her father's connections and influence and provided photographs of her father with influential officials. In the face of this evidence, the Applicant submits the RAD's conclusion that her father lacked influence beyond Punjab was perverse, capricious and speculative. According to the Applicant, it

was unreasonable for the RAD, having found her father had some influence in Punjab, to not extrapolate and find his influence extended beyond the state. The Applicant further submits the RAD erred by not accepting the friend's affidavit as new evidence. The affidavit sought to explain why the friend, who was the source of the information that the Applicant's father was aware of her pregnancy, did not testify or provide evidence by way of affidavit to the RPD.

[28] The RAD acknowledged and summarized the Applicant's testimony relating to her father's influence in Punjab politics and addressed the photographs provided of her father in the presence of various high- and mid-level Punjab officials. However, the RAD also noted the Applicant's inability to describe her father's occupation and the organization he works for or to explain the evidence that indicated he is "a working-class man short of money." The RAD also found that any attempt by the father to pursue the Applicant would have the effect of attracting the dishonour and disrepute that she claims would motivate him to harm her.

[29] The RAD's findings are consistent with the evidence. The arguments advanced amount to a request that the Court reconsider and reweigh evidence that was before the RAD. This is not the role of the Court on judicial review. The RAD's finding that the father's influence did not extend beyond Punjab was reasonable.

[30] I turn now to the RAD's refusal to admit the new affidavit evidence. The RAD identified the three limited circumstances in which the RAD can accept new evidence (subsection 110(4) IRPA) and explained why the affidavit failed to satisfy any of those circumstances. In engaging in this analysis, the RAD conceded the new affidavit had been affirmed after the RPD decision

had been rendered but also accurately noted that the information itself was not new. The Applicant was aware of the information and its importance to her claim prior to the RPD decision being rendered. The RAD reasonably found the friend's affidavit did not meet the statutory definition of new evidence.

[31] It is worth noting that the RAD also found the evidence was of no assistance in deciding the appeal. This is because the RAD, like the RPD, undertook its IFA analysis having adopted the assumption that the Applicant's father knew or would learn about the Applicant's pregnancy, the very fact that the Applicant sought to establish.

C. *The RAD's IFA analysis was reasonable*

[32] The Applicant submits the RAD engaged in unreasonable speculation and ignored her evidence in concluding her father lacked the motivation or means to pursue her outside of Punjab.

[33] She argues the RAD also erred in its consideration of the second prong of the IFA test. She submits that as a young single woman who had a child out of wedlock, and who has a limited education and is unable to speak Goa or Kerala, it would be unreasonable for her to relocate to the proposed IFAs. She argues the RAD speculated when it found she would only face minor gender discrimination and it unreasonably discounted the severity of gender-based violence in India.

[34] As I note above, the RAD's findings as they relate to the father's means and motivation to locate the Applicant in the IFAs were not unreasonable. The RAD considered the Applicant's claims in this regard and concluded her father is unlikely to inform others about her pregnancy and risk damage to his reputation for the purpose of locating and harming her. The RAD relied on the Applicant's evidence relating to her father's finances to conclude he is unlikely to have the financial resources to find her in either of the proposed IFAs. The RAD did not reject the Applicant's evidence but rather concluded the evidence did not support the Applicant's view that her father would have the motivation and means of locating her in the IFA. Again, the Applicant takes issue with the weight given to the evidence by the RAD, but this does not constitute a reviewable error. The RAD's finding that there was not a serious possibility of the Applicant being persecuted in the proposed IFAs was reasonable.

[35] The RAD also engaged in an extensive consideration of the Applicant's personal circumstances in considering whether the proposed IFAs were reasonable. The RAD correctly noted that there is a high threshold for determining an IFA to be unreasonable. The RAD acknowledged, based on the documentary evidence, that the Applicant was likely to encounter gender-based obstacles but found the obstacles were likely surmountable given the Applicant's age, education, fluency in English, capability in Hindi and the fact that she has no dependents. The RAD also recognized that gender-based violence is widespread in India. However, the RAD found the evidence did not suggest gender-based violence was a more prevalent or widespread concern in the IFAs than in the Applicant's home province of Punjab and concluded this evidence was insufficient to satisfy the high threshold needed to conclude IFAs in Goa or Kerala

would be unreasonable. Again, the RAD's analysis addressed the evidence and explained the conclusions reached.

VII. Conclusion

[36] The RAD's determination that the Applicant has viable IFAs in India is a determination that was consistent with the evidence and reasonably available to the RAD. While the Applicant takes issue with the weight given to the evidence, she has not demonstrated any error that would warrant the Court's intervention.

[37] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-5357-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5357-21

STYLE OF CAUSE: HARSIMRAN KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 27, 2022

JUDGMENT AND REASONS: GLEESON J.

DATED: NOVEMBER 16, 2022

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