Federal Court Cour fédérale

Date: 20221129

Docket: IMM-574-22

Citation: 2022 FC 1640

Ottawa, Ontario, November 29, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

MUHAMMAD ARSHAD HUSSAIN HUMAYUN
AND SAMINA ARSHAD

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an Application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [*IRPA*] of a decision [Decision] of the Refugee Appeal Division [RAD] dated December 21, 2021, in which the RAD dismissed the Applicants' appeal

and found the Applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of *IRPA*.

II. Facts

[2] The following evidence was not doubted by the RAD.

[3] The Applicants are citizens of Pakistan. They married in November 1999. The Principal Applicant [MA] was of Sunni faith, whereas his wife, the other Applicant [FA], is of Shia faith. In August 2019, the MA converted to the Shia faith. According to the Applicants, the Sunni extremists did not take issue with this interfaith marriage because it was a Shia woman marrying a Sunni man, and not vice versa.

[4] The MA converted to the Shia faith in 2019. Shortly after his conversion, extremist Sunnis asked as to if he converted to the Shia faith, which he did not deny.

[5] Anticipating possible problems following the conversion In August 2019, the Applicants applied for US visitor visas.

[6] By the end of September 2019, the news of his conversion reached the ears of the Sipah-I-Sahaba Pakistan [SSP], an anti-Shia violent militant organization of extremist Sunnis.

[7] On his way back from work one day, he was accosted and stopped by four armed men.

[8] They threatened him at gunpoint and hit him in the face.

[9] They directed him to revert to the Sunni faith, or he and his wife would be killed because he was a traitor to the Sunni faith and a Kafir (an infidel/non-believer).

[10] Frightened by this incident, the MA reported this incident to local police, who mocked him for changing his faith, and told him he brought it on himself. The police ultimately registered his complaint, but did not identify his attacker at least in their report.

[11] The Applicants left home and went into hiding for several weeks at a friend's house elsewhere. This friend advised them to consider leaving Pakistan.

[12] Soon after relocating to his friend's house, the MA received a phone call from someone claiming to be from the SSP.

[13] The caller told him the SSP had learned of his complaint to the police and that the Applicants had relocated. The caller told him he and his wife were put on a list of people the SSP wanted to kill, and that the SSP would make examples out of them.

[14] The Applicants were granted US visitor visas and fled to the United States soon after. They stayed with a friend for a couple of days, and then traveled to Canada, where the wife's brother lives. They arrived in Canada in late 2019, where they made their refugee claim.

III. Decision under review

[15] The Applicants did not provide new evidence in front of the RAD, therefore the panel relied on the RPD record and the National Documentation Package for Pakistan.

[16] With regards to the main points raised in the appeal, the RAD found that there was not a serious possibility of persecution for the Applicants in the Internal Flight Alternative [IFA] nor was it unreasonable for them to relocate there.

[17] To determine whether a viable IFA exists, the panel correctly considered the two-prong test from *Thirunavukkarasu v Canada (Minister of Employment and Immigration),* 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*]. The RAD found there is no serious possibility of persecution for the Applicants in the proposed IFA location nor do they face a risk to their life or a risk of cruel and unusual treatment or punishment. The RAD was also satisfied that it would not be unreasonable for the Applicants to relocate to the IFA location.

[18] For the first part of the test, the RAD reviewed the country condition documents looking for instances of Shia individuals being targeted in the IFA. The panel found no specific information available regarding incidents of violence in the IFA or targeted Shia attacks by extremist groups. On this basis the RAD found that the risk for Shia in the IFA did not rise to the level of a serious possibility.

[19] The RAD then reviewed whether there is "more than a mere possibility of persecution in the IFA" and whether the agent of persecution, the SSP, possesses the motivation and the means to locate the Applicants in the IFA.

[20] The RAD seems to accept as is the case that the SSP has targeted groups of Shia professionals, officials and pilgrims, and traditionally targets social gatherings, crowded Shia areas and shrines.

[21] The RAD noted five incidents of violence in 2019 against Shias, but none of those were reported in the IFA. The RAD also noted the UNHCR report relied on by the Applicants does not provide information regarding targeted attacks against Shia in the IFA.

[22] Critically, and central to its conclusion, the RAD held the Applicants did not submit evidence that the SSP is sufficiently connected in a way that would help locate the Applicants in the IFA, even if the police system throughout the country is corrupt. The RAD did not accept there was any added risk because they made a police report, or that they are at risk because the SSP is seeking revenge for doing so. The RAD recognized the corruption in Pakistan but did not accept that the SSP is able to obtain information about the Applicants' whereabouts in Pakistan should they return.

[23] The RAD noted the SSP continue to look for the Applicants at their family home, but did not accept the SSP are looking for them outside of their hometown or that they are using the police to do so, either through the tenant registration system or their mobile phone information.

[24] For the second part of the test, the RAD considered the Applicants' ability to travel safely to the IFA and to stay there without facing undue hardship.

[25] The RAD considered that the principal Applicant is educated and had a good employment history while living in Pakistan and thus would be more likely than not to find work in the IFA and to provide sufficient support for his family. Both Applicants speak Urdu, the official language of Pakistan. They can practice their religion in the IFA, where there is the presence of a small Shia community. The RAD noted that the objective country condition evidence does not indicate evidence of systemic discrimination against Shia Muslims seeking employment in the public service or private sector.

[26] Finally, the RAD found that the Applicants have not shown how the MA's conversion history would cause the couple any added risk in Hyderabad.

[27] The RAD thus concluded that the proposed IFA location would be reasonable for the Applicants.

IV. Issues

[28] The RAD and the RPD did not dispute the evidence of the Applicants. The only issue is whether the RAD acted unreasonably in determining the Applicants have a viable IFA.

V. Standard of Review

[29] The parties agree the standard of review applicable is one of reasonableness.

[30] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or

> significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[31] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
>
> [Emphasis added]

[32] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has

> fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
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> [Emphasis added]

VI. Analysis

[33] The parties agree that to determine whether the Applicants have a viable IFA, the RAD correctly considered the two-prong test outlined in *Thirunavukkarasu*: (1) whether there is a serious possibility of the Applicant being persecuted in the IFA, and (2) whether it is reasonable for the Applicant to relocate and seek refuge there.

[34] The Applicants submit the RAD was correct in identifying the test for determining whether a viable IFA exists, but the panel erred in its analysis of the first prong of the test and has ignored or misconstrued the evidence before it.

[35] The Applicants submit the RAD was unreasonable in its analysis and requirement of finding specific incidents of attacks against Shia the IFA. Documentation put before the panel indicated that anti-Shia violence is rife across the country, even if there are hotspots (NDP for Pakistan, Item 1.8, UNHCR, page 66).

[36] The UNHCR – a most credible assessor of refugee risk - concludes that a viable IFA *is generally not available* [Emphasis added] to individuals at risk of being targeted by certain armed militant groups:

> "Given the wide geographic reach of some armed militant groups (as evidenced by high profile attacks, particularly in urban centres) a viable IFA/IRA will generally not be available to individuals at risk of being targeted by such groups."
>
> [Emphasis added]

[37] Critically, that statement is followed by a footnote (444) that specifically identifies the SSP as one such armed militant group.

[38] With respect, I am not satisfied the RAD's findings reasonably took this stark analysis and conclusion by the UNHCR into consideration, nor am I able to see how the UNHCR's conclusion squares with the RAD's assessment. In this connection, I agree with the Applicants who submit the question before the RAD was not whether Shia *generally* are attacked in the IFA, but whether it was more than a mere possibility *these specific individual* Applicants could be found and attacked by the SSP in the IFA. In my view that question was not adequately assessed in light of the critical finding by the UNHCR that viable IFA will generally not be available to individuals – such as the Applicants - at risk of being targeted by the SSP.

[39] Nor in my view did the RAD reasonably consider the fact these Applicants are precisely those identified by the UNHRC as at risk – the MA had been threatened, attacked, and the subject of specific death threats. His written and oral testimony was not doubted. Further, the MA gave unchallenged evidence the SSP were still looking for the Applicants.

[40] On this basis I am not persuaded the RAD's risk assessment of the Applicants' situation in the IFA is reasonable. In my respectful view, the RAD fundamentally failed to take account of the uncontested country condition and both oral and written evidence before it, contrary to the instructions of the Supreme Court in *Vavilov* quoted at paras 30 to 32 above.

[41] In addition and with respect, since the RAD found no issue with the evidence the SSP is looking for them at the family home, since the SSP told them they were put on a list of people they wanted to kill, and since the SSP told them they would make examples of them, the RAD's finding that the SSP is unlikely to seek the Applicants outside their hometown is unreasonable considering there is no evidence that the SSP has lost interest in the Applicants and would not harm them should opportunity arise.

[42] The Applicants also submit, and I agree following *Ali v Canada*, 2010 FC 93, that the RAD by finding the Applicants may move to the IFA, effectively required the Applicants to live in hiding, unable to disclose to their family and friends where they live. As this Court found in *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586:

> [26] The Board found that the Applicant had an IFA in other large cities in Mexico, specifically, Guadalajara, West of Mexico City, North East of Mexico City and Monterrey, provided she took reasonable precautions and not reveal her new address to relatives and friends.
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> [27] In determining the existence of an IFA, the Federal Court of Appeal stated in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (QL), at para. 12 that:
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>> …Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one that takes into account the particular situation of the

> claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so. [My emphasis.]

[28] The Court further held that an IFA cannot be speculative or theoretical but rather it must be a realistic and attainable option; "…The claimant cannot be required to encounter greater physical danger or to undergo undue hardship in travelling there or in staying there." (*Thirunavukkarasu*, above, at para. 14). The Court stated that individuals should not be forced to hide out in isolated areas of the country, but "… neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there…" (*Thirunavukkarasu*, above, at para. 14).

[29] The Applicant's evidence is that she did relocate to Queretaro in 2004, but was tracked down by her common-law spouse, a trained police interrogator, who assaulted the Applicant's mother, and forced her to disclose the Applicant's new location. The Board did not expressly address these circumstances in considering the IFA in its reasons. But the Board did qualify its finding by stating that an IFA existed for the Applicant in Mexico, provided she took reasonable precautions and not reveal her new location to relatives and friends. Not to be able to share your whereabouts with family or friends is tantamount to requiring the Applicant to go into hiding. It is also an implicit recognition that even in these large cities, the Applicant is not beyond her common-law spouse's reach. In these particular circumstances, this cannot constitute an IFA for the Applicant. The Board's finding of an IFA does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law in the circumstances. As a result, the decision with respect to an IFA is unreasonable and must be set aside.

[Emphasis added]

[43] In this connection, as noted already, the evidence was that the SSP was looking for the Applicants at the family home. Since word got to the SSP about the MA's conversion, and his whereabouts, I am not satisfied the risk of their being discovered if returned to Pakistan, even to an IFA, was reasonably assessed. This would put the lives of family members in danger if in a situation where they have to deny knowing the location of the Applicants, or deliberately mislead about it should they be asked directly by the SSP or others. This would not constitute an IFA under the second part of the test.

[44] There are other issues raised in this case but since judicial review is granted they are not considered.

VII. Conclusion

[45] In my view, for the reasons above, the decision reached by the RAD was unreasonable. Therefore the Application will be granted.

VIII. Certified Question

[46] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-574-22

THIS COURT'S JUDGMENT is that the application is granted, the Decision is set aside, the matter is remanded for reconsideration by a differently constituted decision maker, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-574-22
STYLE OF CAUSE:	MUHAMMAD ARSHAD HUSSAIN HUMAYUN AND SAMINA ARSHAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 24, 2022
JUDGMENT AND REASONS:	BROWN J.
DATED:	NOVEMBER 29, 2022

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