Federal Court  Cour fédérale

Date: 20221207

Docket: IMM-373-22

Citation: 2022 FC 1689

Toronto, Ontario, December 7, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

DHARAMPAL SINGH SAMMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a December 14, 2021 decision [Decision] of the Refugee Appeal Division [RAD], confirming a decision by the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue was the availability of internal flight alternatives [IFAs].

[2] As set out further below, I find that the Decision was reasonable and that the application should be dismissed.

I. Background

[3] The Applicant is a 49-year-old citizen of India from Patiala, Punjab. In December 2014, the police allegedly raided the Applicant's business and arrested some of his workers, including his cousin, on suspicions of being Kashmiri militants. The Applicant claims that after the incident, he was harassed by police at his home and at his work.

[4] In March 2015, the Applicant's cousin went into hiding. The police alleged that he joined the militants and harassed the Applicant to deliver his cousin to them. The Applicant consulted with a lawyer about taking legal action. The police found out and in June 2015, allegedly raided the Applicant's house and arrested him. The Applicant claims he was tortured, interrogated about his cousin, and accused of working for the militants. He was subsequently released, but was ordered to provide information regarding his cousin and to report to the police each month thereafter.

[5] The Applicant fled to New Delhi to hide in the home of a relative. After he failed to report to the police in August 2015, the Applicant claims the police visited his family home, attacked members of his family and subsequently raided the home of his relative in New Delhi.

[6] The Applicant came to Canada in October 2015 and applied for refugee status three years later.

[7] On April 29, 2021, the RPD refused the Applicant's claim. The RPD determined that the Applicant had viable IFAs in Mumbai and Faridabad. The RPD found that the Punjabi police did not have the means or motivation to follow the Applicant to the IFAs and relocating to the IFAs would not be unreasonable or unduly harsh.

[8] On December 14, 2021, the RAD refused the Applicant's appeal of the RPD Decision. The RAD agreed with the RPD that the Applicant had available IFAs. The RAD determined that the Applicant did not have the profile of someone who the police would be motivated to pursue in the proposed IFAs as he was not charged with any crime, was released from detention, and did not follow through with filing a complaint against the police.

[9] The RAD considered the evidence within the National Documentation Package [NDP], particularly with respect to tenant registration and police databases such as India's Crime and Criminal Tracking Network and System [CCTNS]. It found that the objective evidence indicated that there was little connectivity or communication between police forces in India and that there would be extremely limited means for the Punjab police to track the Applicant in the IFAs. As the Applicant was not charged with any crime and was able to leave the country without incident, the RAD found there would be no record of his illegal detention in the CCTNS.

II. Preliminary Matter – Style of Cause

[10] As a preliminary matter, I note that the style of cause for this proceeding has been amended to reflect the correct Respondent – The Minister of Citizenship and Immigration.

III. Issues and Standard of Review

[11] The Applicant raises the following issues:

A. Did the RAD err by failing to conduct an independent analysis of state protection?

B. Did the RAD fail to account for evidence regarding the Applicant's risk in the proposed IFAs?

[12] The parties agree that the standard of review of the substance of the Decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the situations that would rebut the presumption of reasonableness review for administrative decisions is present: *Vavilov* at paras 16-17.

[13] In conducting reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

IV. Analysis

A. *Did the RAD err by failing to conduct an independent analysis of state protection?*

[14] The Applicant argues that the RAD erred by failing to conduct its own independent analysis of state protection prior to concluding that there were viable IFA options. He asserts that as the agents of persecution were the police, such analysis was necessary to determine

whether the incidents involving the Applicant were isolated incidents or part of a broader systemic state protection problem.

[15] The Respondent argues that the IFA finding was reasonable and determinative. A separate analysis of state protection was not necessary, as it was inherent in the IFA determination that the Applicant could reside safely in a part of India without the need for state protection. I agree.

[16] As noted by the RAD with reference to the Court's decision in *Henao v Canada (Citizenship and Immigration)*, 2020 FC 84 at paragraph 11:

> It is settled law that the concept of an IFA is an inherent part of the Convention refugee definition because a claimant must be a refugee from a country, not from a particular region of a country. The existence of an IFA is fatal to any refugee claim as recently confirmed in a 2020 decision of the Federal Court:
>
> > The concept of an IFA is an inherent part of the definition of Convention refugee: see *Valasquez v Canada (Citizenship and Immigration)*, 2010 FC 1201 at para 15. If it is objectively reasonable for a claimant to live elsewhere in their country of nationality without fear of persecution, the claimant is not a Convention refugee, even if they have a well-founded fear of persecution in another part of the country.
> >
> > [Footnotes excluded]

[17] The RAD conducted an analysis of the Applicant's risk from his agents of persecution, but found that the Punjab police would not have the capacity or the motivation to find the Applicant in the proposed IFAs and that there was little connectivity between police forces in India. The RAD found that the Applicant did not have a profile that would render him subject to a serious possibility of persecution or danger, or to risk on a "more likely than not" standard.

[18] The Applicant refers to the statement in *Zhuravlvev v Canada (Citizenship and Immigration)*, [2000] 4 FC 3 [*Zhuravlvev*] at paragraph 19 that "[w]here the state is shown to be the agent of persecution, one need not inquire into the extent or effectiveness of state protection; it is, by definition, absent." However, this statement must be considered along with the further statement made in *Zhuravlvev* at paragraph 32 that "one must consider the issue of internal flight alternative in relation to state inability or refusal to provide protection. A reasonable response to local failure to provide protection is internal migration to an area where state protection is available".

[19] In this case, the Applicant asserts fear of persecution from the Punjab police. The allegation before the RPD did not extend more broadly to assertions of corruption within the police in India more generally.

[20] As noted by the Respondent, the Applicant did not argue for a separate state protection analysis before the RAD even though the identification of an IFA was raised by the RPD.

[21] The RAD is to review decisions of the RPD on a correctness standard: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 78. This does not mean that RAD appeals constitute *de novo* hearings. The RAD cannot be faulted on judicial review for not having considered or addressed arguments not raised before it (*Cruz v Canada (Citizenship and Immigration)*, 2020 FC 22 at paras 30-32) and such an argument should not be entertained for the first time before this Court.

[22] In my view, the first argument made does not raise a reviewable error.

B. *Did the RAD fail to account for evidence regarding the Applicant's risk in the proposed IFAs?*

[23] The Applicant argues that the RAD failed to grapple with conflicting evidence from the NDP and to explain why it preferred the excerpts from the NDP it cited in the Decision over this conflicting evidence.

[24] The Respondent asserts, and I agree, that the RAD's reasons must be read in context. The RAD identified key facts that influenced its consideration of the evidence from the NDP; namely, that the Applicant was never convicted of a crime, was readily released from detention on a bribe, and would not be considered a person of high interest by the Punjab police. Thus, although the NDP refers to the use of the CCTNS network to track and locate persons of interest, it also notes that there is little inter-state police communication except for cases of major crimes like smuggling, terrorism and high profile organized crime. The RAD accordingly found that the Applicant did not have a profile that would be included in the CCTNS, or that would motivate the police to find the Applicant.

[25] The Applicant argues that the RAD made evidentiary findings that were not supported by the record. The Applicant asserts that the testimony given did not support a finding that there was no arrest or detention.

[26] While I agree that the Applicant did not affirmatively state that he was not arrested as he was taken from his home, he did affirmatively agree that he was not charged with a crime and

that an arrest warrant was not issued. Based on this evidence, in my view, it was open to the RAD to conclude that the Applicant would not be considered a high profile individual and would be unlikely to be identified in the CCTNS.

[27] Similarly, it was reasonable, in my view, for the RAD to note that the Applicant would have been required to provide information and undergo an immigration check by the Indian immigration authorities prior to exiting the country. If his name was on a police list as a criminal or militant of interest, he would have been stopped at that time.

[28] In my view, the Applicant's argument amounts to a request to have the Court reweigh the evidence, which cannot ground a reviewable error.

V. Conclusion

[29] For the foregoing reasons, the application is dismissed.

[30] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-373-22

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to correctly identify the Respondent as The Minister of Citizenship and Immigration.

2. The application for judicial review is dismissed.

3. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-373-22
STYLE OF CAUSE:	DHARAMPAL SINGH SAMMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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