

Federal Court



Cour fédérale

Date: 20230202

Docket: IMM-1416-21

Citation: 2023 FC 152

Ottawa, Ontario, February 2, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**SHOAIB AHMED, BUSHRA SHOIB,
ABUL HASAN, ASHA SHOAIB, SAKHA
SHOAIB AHMED**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants bring this application seeking to set aside a decision made by the Refugee Appeal Division (RPD) on February 15, 2021 [Decision] that upheld the Refugee Protection Division (RPD) decision that had rejected their refugee claims.

[2] The Applicants are a family of five, consisting of Shoaib Ahmed, the Principal Applicant (PA), his spouse, and their three minor children. They are all citizens of Pakistan.

[3] The Applicants sought refugee protection based on the PA's fear of his own family, which arose after he converted from the Ahamadi sect of Islam to Sunni Islam in 1996. He was disowned by his family, mistreated and thrown out of his family home.

[4] The Applicants fled to Canada on October 28, 2018. They claimed refugee protection based on persecution from the PA's family because of his conversion to Sunni Islam.

[5] For the reasons that follow, this application is dismissed. The RAD reasonably found the Applicants had a viable Internal Flight Alternative.

II. **Background**

[6] The PA attempted to reconnect with his family in 2009, but was faced with threats. The Associate Applicant and the Minor Applicants were assaulted by the PA's nephew when they attended a wedding sometime in late 2016, early 2017. They also claimed that their property in Karachi was occupied by members of the Muttahida Qaumi Movement (MQM) and that the threats continued even after the PA abandoned this property.

[7] The PA relocated from Islamabad to Karachi and started a new life, eventually marrying his wife and starting a family. The Applicants moved to the Kingdom of Saudi Arabia where they resided until the implementation of Saudization policies left the PA without employment.

[8] The Applicants allege that ongoing threats from the PA's family intensified when a police officer attempted to bribe the PA for state protection.

III. **The Decision**

[9] The RAD indicated they had listened to the audio recording of the RPD hearing and reviewed the evidence. It was found that the RPD had no meaningful advantage over the RAD in assessing the evidence.

[10] The Applicants did not submit any new evidence on appeal therefore the matter proceeded without a hearing.

[11] The RAD found the determinative issue was the availability of an IFA. Based on the totality of evidence, the RAD concluded the Applicants had not discharged their burden to establish that relocation to Lahore, Faisalabad or Dera Ghazi Khan would be unreasonable or unduly harsh, in light of their personal circumstances.

[12] The RAD dismissed the appeal and confirmed the decision of the RPD, finding that the Applicants were neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the *IRPA*.

IV. **Issues**

[13] Although the Applicant raised several issues with the Decision, I find the determinative issue is whether the IFA finding was reasonable.

V. **Standard of Review**

[14] The Supreme Court of Canada established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which are present on these facts: *Vavilov* at para 23.

[15] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. The starting point is the reasons provided by the decision maker, which must be read holistically and contextually and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103.

[16] Overall, 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 paragraphs 15 and 85.

VI. Analysis

[17] The Applicants seem to misunderstand the nature of an IFA. The availability of three IFA locations in Pakistan was identified as the determinative issue by the RPD and the RAD.

[18] The Applicants mischaracterize the RAD's treatment of the Karachi property as a negative credibility finding. The RAD stated at the outset of the Decision that the RPD did not dispose of the claim based on credibility concerns.

[19] The RAD assessed the allegation that individuals of the MQM were illegally residing in the Karachi property and seeking donations. The RAD agreed that safety is paramount and property should not supersede those interests.

[20] Specifically, the RAD found the RPD correctly concluded that certain evidence did not point to a forward-looking risk if the Applicants simply gave up their property in Karachi to free themselves of the problems and threats from the tenants and/or MQM. The RAD found, on a balance of probabilities, that this would prevent future issues with the MQM.

[21] I find the RAD reasonably justified their finding that the source of the threats from MQM was the Karachi property, and concluded that reasonable steps could be taken to ensure the safety of the Applicants. It has been held that claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options: *Sanchez v*

Canada (Minister of Citizenship and Immigration), 2007 FCA 99 at para 16; leave to appeal to the Supreme Court of Canada dismissed on February 27, 2007 by No. 32028.

[22] I have explained above why I do not agree with the Applicants that the RAD erred in assessing the forward-looking risk in this matter. As there is a viable IFA, it negates the claim for refugee protection regardless of the merits of the claim: *Olusola v Canada (Minister of Citizenship and Immigration)*, 2020 FC 799 at para 7.

VII. **Conclusion**

[23] For the reasons set out above, this application is dismissed.

[24] Neither party posed a question for certification nor does one exist on these facts.

JUDGMENT in IMM-1416-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1416-21

STYLE OF CAUSE: SHOAIB AHMED, BUSHRA SHOIAB, ABUL HASAN, ASHA SHOAIB, SAKHA SHOAIB AHMED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 23, 2022

JUDGMENT AND REASONS ELLIOTT J.

DATED: FEBRUARY 2, 2023

APPEARANCES:

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