

Federal Court



Cour fédérale

Date: 20230504

Docket: IMM-7198-22

Citation: 2023 FC 651

Toronto, Ontario, May 4, 2023

PRESENT: Madam Justice Go

BETWEEN:

RAJWINDER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rajwinder, is a citizen of India. He is a professional singer and a former screen actor.

[2] During the 2019 general election campaign period, the Applicant alleges that he campaigned on behalf of the local candidate of the Shiromani Akali Dal Badal Party [SAD] in

Ludhiana, the Applicant's home town. He alleges that the candidate of the National Congress Party [NCP] in his area, Mr. Singh, sent goons to bribe him to abandon the SAD and support the NCP. When he refused, the Applicant claims that he was threatened, beaten and falsely accused by Singh's goons as the perpetrator. He claims that he was subsequently arrested, detained, interrogated, and tortured by the police.

[3] Despite being Muslim by birth, the Applicant prefers to wear a turban. He claims that he was also accused by Mr. Singh's goons of disguising as a Sikh to conceal his Pakistani Muslim origin.

[4] After the Applicant was released from police detention, the elections took place and Mr. Singh became the Member of Parliament of his area. The Applicant claims that he received threats to his life.

[5] Leaving his wife and son behind, the Applicant came to Canada where his daughter and sister live, and made a refugee claim. The Applicant alleges that he fears persecution in India as a Muslim. He also fears persecution from members of the NCP because of his political opinion as a supporter of the SAD.

[6] The Refugee Protection Division [RPD] rejected his claim in March 2022 on the basis of a viable Internal Flight Alternative [IFA] in Mumbai or Kolkata. In a decision dated July 4, 2022, the Refugee Appeal Division [RAD] rejected the Applicant's appeal upon finding a viable IFA in Mumbai, and confirmed that he is neither a Convention refugee nor a person in need of

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] [Decision].

[7] The Applicant seeks judicial review of the Decision. For the reasons set out below, I dismiss the application.

II. Issues and Standard of Review

[8] The Applicant challenges the RAD's IFA analysis.

[9] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[10] 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[11] For a decision to be unreasonable, the Applicant must establish the Decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov* at para 100.

III. Analysis

[12] The two-pronged test for finding a viable IFA is well-established. The decision-maker must be satisfied on a balance of probabilities that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge in the city: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] at 711.

[13] The RAD applied the two-prong test from *Rasaratnam* to find that a viable IFA exists in Mumbai. The Applicant argues that the Decision is unreasonable because the RAD erred with respect to both prongs of the IFA analysis.

(1) First Prong

[14] The Applicant submitted several pieces of new evidence before the RAD including an undated photograph of the Applicant’s wife showing an injury to her right arm, allegedly resulting from an attack which occurred on March 15, 2022. The Applicant also submitted affidavits from the Applicant’s daughter and sister. The Applicant’s daughter states in her affidavit that her mother told her that she was attacked by unknown persons on March 15, 2022 and suffered an arm injury as a result. She states that the mother told her that the police

continued to raid their house and harass the mother. The Applicant's sister's affidavit also refers to the March 15, 2022 incident. Neither the Applicant's daughter nor sister was present when the alleged incident took place.

[15] Pursuant to subsection 110(4) of *IRPA*, the RAD admitted the undated photo. The RAD also admitted specific paragraphs of the daughter's and the sister's affidavits referring to the March 15, 2022 incident and the ongoing police raids. However, the RAD went on to find that the new evidence admitted was insufficient to demonstrate that Mr. Singh and his henchmen were looking for the Applicant on March 15, 2022 and attacked his wife and son. In particular, the RAD took issue with the fact that the two affidavits relied on hearsay, rather than first-hand evidence. The RAD also rejected the Applicant's submission that his agents of persecution have the means to locate him through police databases or other registration systems based on the objective documentary evidence. As such, the RAD found that the Applicant failed to establish that his agents of persecution have the motivation and means to locate him in Mumbai.

[16] Before this Court, the Applicant challenges the RAD's finding that the agents of persecution do not have the motivation or the means to locate him in Mumbai, asserting that they have continued to go to his home in Ludhiana and could therefore ascertain his whereabouts. Since the Applicant was fingerprinted and photographed during his arrest, he testified at the RPD hearing that he could be tracked, as a police check would be conducted when he goes to rent accommodation. The Applicant also asserts that given the corruption with the police, they could be bribed by the agents of persecution to access the available systems to track him down.

[17] The Applicant also challenges the RAD's decision to place no weight on the evidence pertaining to the March 15, 2022 attack. Before this Court, he seeks to provide more details about the attack, and claims that his agents of persecution found out about the negative RPD decision through word of mouth due to the gossip culture in his community and his status as a small-scale actor. He asserts that if he returns to anywhere in India, this incident demonstrates that he will be unable to hide for long, and cites these factors as his biggest source of fear surrounding his agents of persecution's ability to locate him.

[18] I reject the Applicant's arguments.

[19] As a preliminary note, the new details that the Applicant seeks to rely on, including how the agents of persecution came to know of the negative RPD decision and how it led to the March 15, 2022 attack, were not before the RAD. As such, I will not consider them in my review of the Decision.

[20] Putting aside these new details, I find that much of the Applicant's arguments before this Court mirror his submissions before the RAD. As the Respondent submits, and I agree, the RAD reasonably assessed the new evidence pertaining to the March 15, 2022 attack, and reasonably placed no weight on it in light of the lack of a first-hand account describing the incident.

[21] Further, the RAD reviewed the objective country condition evidence and found that it did not indicate that the agents of persecution would be able to track the Applicant down through police databases or other systems, such as the Aadhar identity card or tenant registration systems.

The Applicant has not pointed to any reviewable errors with respect to these findings or any evidence to the contrary.

[22] The Applicant reiterates his submission to the RAD that Mumbai will only be safe for him if he completely isolates himself from every family member, friend, and neighbour. He relies on *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 [*Zamora*] for the proposition that not being able to share his whereabouts with his friends and family is tantamount to requiring him to go into hiding, which renders the IFA unsafe: at para 29.

[23] I agree with the Respondent that *Zamora* is distinguishable. In *Zamora*, there was corroborative evidence that the applicant tried relocating but was tracked down after her family was forced to disclose her new location: at para 29. Here, the Respondent asserts, and I agree, no corroborating evidence was provided to show that the agents of persecution would continue to look for him, or that his family would be forced to disclose his location, should he move to a different location.

[24] The Applicant also challenges the RAD's finding with respect to the issue of motivation on the ground that his conflict with Mr. Singh arose from his identity as a Muslim campaigning against Mr. Singh's Islamophobic interests. The Applicant asserts that this cause of conflict establishes a Convention nexus that, in the political opinion context, necessarily means that Mr. Singh and the other agents of persecution are still motivated to find him. The Applicant relies on various documents from the National Documentation Package [NDP] for India highlighting the use of corruption, extortion and violence by the NCP to influence elections and the widespread

issue of police corruption. The Applicant argues that his subjective fear is supported by the objective evidence.

[25] I am not persuaded by the Applicant's argument. The RAD acknowledged the Applicant's argument regarding the agents of persecution's motivation to locate him, based in part on the alleged assault on his wife and son. The RAD also noted the Applicant's claim that these individuals have "gone to other Muslim houses in his village" to look for him. Ultimately, for the reasons already discussed above, the RAD concluded there was insufficient credible and reliable evidence to establish that the agents of persecution were looking for the Applicant. I find nothing unreasonable in the RAD's findings.

(2) Second Prong

[26] With respect to the second prong of the IFA analysis, the RAD agreed with the Applicant that Kolkata is not a reasonable IFA in his circumstances, contrary to the RPD's conclusion. However, after assessing the Applicant's work experience and language abilities, Muslim religion, and the objective evidence overall and specific to Mumbai, the RAD did not find that it would be objectively unreasonable for the Applicant to relocate to Mumbai.

[27] The Applicant takes issue with the RAD's finding that, since there are four million Muslims living in Mumbai, "there is a reasonable chance that there is an entertainment industry for the Punjab and Muslim community in Mumbai." The Applicant asserts that this finding was speculative, and submits that there is no Punjabi cinema industry in Mumbai. The Applicant highlights that though there may be Muslims and Punjabis working in the entertainment sector in

Mumbai, they would nonetheless speak Hindi, English, or Marathi, the regional language – languages that he does not speak.

[28] The Applicant also argues that it was unreasonable for the RAD to find that the difficulties he would face in seeking employment in Mumbai would not be unreasonable. The Applicant seeks to use online job search results as proof that the only employment he could obtain with his language barriers and lack of education or experience would pay below minimum wages, and that in a city with a 55% poverty rate, he would be forced into extreme poverty.

[29] Finally, the Applicant argues that the RAD did not adequately address his identity as a Muslim and how that would impact his relocation to Mumbai. He asserts that it was unreasonable for the RAD to expect him to provide “actual or concrete evidence that he has faced discrimination in the past that amounts to persecution on the basis of his religion.” He suggests that such persecution is evident from the NDP evidence, which states that Muslims face significant challenges relocating anywhere in India due to discrimination and have been the victim of violence and attacks.

[30] The Applicant relies on *Fi v Canada (Citizenship and Immigration)*, 2006 FC 1125 for the proposition that persecution under section 96 of *IRPA* “can be established by examining the treatment of similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future”: at para 14, as affirmed in *Cao v Canada (Citizenship and Immigration)*, 2019 FC 231 at para 26.

[31] I note, first of all, that the Applicant appears to be trying to submit new evidence on judicial review, including his online job search, which I will disregard. While his submissions to the RAD did indicate that that due to his language barriers and lack of education, the only employment he could obtain would result in a life well below the poverty line, no objective evidence of this was provided.

[32] More to the point, I find the Applicant's submissions lack merit. I start by noting that the threshold necessary to demonstrate that a proposed IFA is unreasonable is high. As noted in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA)

[*Ranganathan*]:

[15]...It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions... This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[33] In the Decision, the RAD considered the Applicant's work experience and language abilities and acknowledged he would face challenges in his chosen field of entertainment as someone who only speaks Punjab. However, the RAD found that such challenges did not amount to unreasonableness for the purposes of the IFA analysis. The RAD's reasoning is consistent with the legal constraint imposed by *Ranganathan*.

[34] As for the RAD's conclusion that there was no concrete evidence that the Applicant faced discrimination in the past amounting to persecution based on his Muslim religion, I am of the view that the Applicant has taken that finding out of context.

[35] The RAD acknowledged that discrimination against Muslims exists as a result of Hindi nationalism but found, based on the large Muslim population in Mumbai, insufficient evidence to establish discrimination that would make the Applicant's relocation to Mumbai unreasonable. In so finding, I agree with the Respondent that the RAD did consider the Applicant's identity as a Muslim.

[36] I further note that the RAD's conclusion was based on its review of the objective documentation submitted by the Applicant along with the NDP for India. The RAD acknowledged the discrimination against Muslims and the "high levels of tension among the different religious groups as well as sectarian violence and a recent surge in anti-Muslim communal violence." The RAD then went on to note that "there are more than 200 million Muslims in India – the vast majority are able to go about their day, to go school, work, and live without coming into violence."

[37] It was only after reviewing the objective evidence that the RAD commented on the Applicant's lack of actual or concrete evidence to support that he has faced discrimination amounting to persecution on the basis of his religion. Taking into account both the objective evidence and the lack of evidence offered by the Applicant, I see no reviewable error for the RAD to conclude that being Muslim on its own is insufficient to make the Applicant's relocation to Mumbai, where there is a large Muslim community, unreasonable.

[38] In conclusion, I find the Applicant fails to demonstrate that the RAD's findings and analysis with respect to the IFA was unreasonable.

IV. Conclusion

[39] The application for judicial review is dismissed.

[40] There is no question for certification.

JUDGMENT in IMM-7198-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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