

Federal Court



Cour fédérale

**Date: 20230504**

**Docket: IMM-8690-21**

**Citation: 2023 FC 649**

**Toronto, Ontario, May 4, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**ASIM NAZIR, MEMUNA KAUSAR  
SYEDA ZOYA ASIM, ZAINAB ASIM SYEDA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Asim Nazir [“Principal Applicant” or “PA”], his spouse Ms. Memuna Kausar, and their two minor children [together, the “Applicants”] are citizens of Pakistan. They claim that they fear persecution by the PA’s uncle, the Sunni extremist groups Lashkar-e-Jhangvi [LeJ] and

Sipah-e-Sahaba Pakistan, and the police, because the PA converted from the Sunni to the Shia sect of Islam after marrying Ms. Kausar in 2008, who is Shia by birth.

[2] The PA began working in Kuwait in 2006 until the family left for Canada in April 2019. Throughout this time, the Applicants visited Pakistan regularly. In their Basis of Claim [BOC] form, the Applicants described several incidents of attacks on the PA by members of LeJ or the PA's uncle during the PA's and/or the Applicants' trips to Pakistan between September 2017 and March 2019. The Applicants further allege that when they reported the attacks, the police refused to take the complaints as the PA refused to pay a bribe. The Applicants claim that after the second complaint was refused, the police came to the Applicants' family home to look for the PA, on the basis that he filed a false application against his uncle.

[3] The Applicants last returned to Pakistan on March 23, 2019 and resided with Ms. Kausar's family in Multan for safety. While in Multan, someone banged on their door and opened fire in the air when the Applicants refused to open the door. They also claim that the PA's employment was terminated on April 11, 2019 after the employer found out about his Shia faith. On April 22, 2019, the Applicants travelled to the United States [US] on visitor visas. The Applicants arrived in Canada from the US on April 27, 2019 and made their refugee claim.

[4] The Refugee Protection Division [RPD] rejected their claim in February 2021 on credibility grounds. On appeal to the Refugee Appeal Division [RAD], the Applicants were invited to make submissions on the issue of a possible Internal Flight Alternative [IFA] in Hyderabad. In a decision dated November 3, 2021, the RAD rejected the Applicants' appeal of

the RPD decision upon finding a viable IFA in Hyderabad, and confirmed that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] [Decision].

[5] The Applicants seek judicial review of the Decision. Despite the able submissions by the Applicants' counsel, I find the Decision reasonable and I dismiss the application.

## II. Issues and Standard of Review

[6] The only issue on judicial review is whether the RAD's IFA analysis was reasonable.

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

[8] 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.

[9] For a decision to be unreasonable, the Applicants 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

[10] 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) at 711.

[11] The Applicants argue that the Decision is unreasonable because the RAD:

- a) mischaracterized their submissions on appeal regarding the motivation and means of the agents of persecution to locate them at the proposed IFA; and
- b) unreasonably assessed the evidence.

[12] I reject both arguments.

*The RAD did not mischaracterize the Applicants' submissions*

[13] In the Applicants' submissions to the RAD regarding the proposed IFA, they argued that Hyderabad is not viable because in order to rent accommodation, they are required to register their tenancy agreement with the local police station, which would reveal their identity to

potentially corrupt and connected police. The Applicants also submitted that mobile phone numbers are linked to Computerized National Identity Cards [CNICs], and such information is available to militant groups based on their connections with security services. The Applicants asserted that the agents of persecution are motivated to locate them due to the significance of the PA's conversion to the Shia faith.

[14] The RAD rejected the Applicants' submissions.

[15] Before this Court, the Applicants argue that the RAD mischaracterized their submissions regarding the police corruption in Pakistan when it found that the evidence did not establish that the police are pursuing the Applicants under the influence of the extremist groups. The Applicants contend that the question was not whether the police would actively pursue them in the IFA. Rather, the Applicants assert that their argument was that the police would share information with the agents of persecution, who could then use the information to locate the Applicants in the IFA.

[16] I am not persuaded by the Applicants' arguments. While the RAD did find at para 20 on a balance of probabilities "that the police are not actively pursuing the [Applicants]", in the same paragraph, the RAD also found that "the [PA's] uncle does not have sufficient influence over the police to compel them to seek the [Applicants] throughout Pakistan, including the IFA."

[17] More importantly, in the preceding paragraphs, the RAD explicitly acknowledged the Applicants' submissions:

The [Applicants] submit that an IFA in Hyderabad is not viable as their agents of persecution have the means to find them because: to rent accommodation, they will have to register their tenancy agreement with the local police station, revealing their identity, and the police are corrupt and connected with militant groups; and mobile phone numbers are linked to [CNICs] and information about mobile phones is open to corruption since militant groups are connected to security services [...]

[18] The RAD's summary, in my view, reasonably captured the essence of the Applicants' further submissions on the IFA.

[19] The RAD then went on to provide a more substantial analysis for finding that the agents of persecution lacked both the means and motivation to locate the Applicants in the IFA. Specifically, the RAD analyzed the Applicants' submissions regarding the influence of the agents of persecution on the police, noting the Applicants' testimony that he "fears the police because the extremist groups have members within the police who share information, and that his uncle has friends in the police." The RAD found however:

Although there is documented corruption within Pakistani police forces, who may have connections with extremist groups, the [Applicants] have not provided evidence to establish that the extremist groups have used these connections to pursue them through the police.

[20] These findings thus made clear that, contrary to the Applicants' assertion, the RAD did not mischaracterize the Applicants' submissions regarding the IFA. Rather, as the Respondent submits, the RAD expressly noted the Applicants' allegation that the extremist groups and uncle would influence the police to obtain their location, and rejected this submission based on insufficient evidence.

[21] The Respondent also notes, and I agree, that the RAD expressly found that the extremist groups were not motivated to find the Applicants through the tenant or cellphone registration systems, contrary to the Applicants' assertion that the RAD failed to address this issue.

[22] The Applicants maintain that they are not asking the Court to reweigh evidence, but rather are arguing that the RAD's analysis of the arguments and evidence they presented was unreasonable. The Applicants reiterate that the RAD repeatedly speaks about the extremist groups using the police to locate the Applicants when in fact the argument was that the extremist groups could obtain information from the police about the Applicants through corrupt and nefarious means.

[23] Whether or not the Applicants' allegation is that extremist groups are using the police to locate them, or obtaining information from the police through nefarious means, the Applicants are alleging a connection between the extremist groups and the police, either by influence or corruption. The RAD did acknowledge the Applicants' position, taking into account the potential access to the tenant registration system and police corruption in Pakistan, but ultimately rejected these arguments. I find that the RAD did not commit any reviewable error in doing so.

*RAD's assessment of the evidence was reasonable*

[24] Based on the new evidence accepted on appeal relating to an incident that took place at the Applicants' family home in Jhelum on March 20, 2021, during which the PA's father was physically attacked, the Applicants insist that their agents of persecution are evidently motivated to locate them. The Applicants also maintain that the objective evidence clearly indicates that

they can be located in the IFA through the tenant registration system based on the influence of extremist groups and the uncle's use of police corruption.

[25] Specifically, the Applicants take issue with the RAD's finding that the extremist groups in this case have not used connections with the police to pursue the Applicants. The Applicants argue that it was unreasonable for the RAD to expect the Applicants to provide evidence of their persecutors' connections to the police. The Applicants contend that the RAD unreasonably relied on this requirement to draw the conclusion that the extremist groups are not looking for them. The Applicants again highlight the objective country condition evidence indicating that information about individuals' whereabouts is not difficult to obtain where bribery is a common practice, and that extremist groups have ties to police and security agencies.

[26] Further, the Applicants take issue with the RAD's finding that the Applicants did not establish that the PA's uncle would have the means to engage in widespread bribery across Pakistan to pursue them. The Applicants disagree that "widespread bribery" is required in this case, based on the evidence that the tenant or cellphone registration systems are accessible by the police, who are commonly bribed. The Applicants opine that it would only take one or two police officers to provide information of their whereabouts to the agents of persecution.

[27] At the hearing, the Applicants further submitted that, given the RAD did not make its Decision based on credibility findings, and since it accepted the new evidence provided as credible, the RAD must have accepted the Applicants' allegations as credible. As such, the RAD's IFA findings were inconsistent with the Applicants' prior experiences.



[28] The Respondent asserted at the hearing that the RAD adopted the RPD's negative credibility findings. I disagree. The RAD's summary of the RPD's credibility findings should not be equated to the RAD's endorsement of such findings.

[29] However, I am also not persuaded that the RAD accepted all of the Applicants' evidence as credible. In any event, I find that the Decision did not simply turn on credibility findings. Rather, it was based on the RAD's assessment of the sufficiency of the evidence provided by the Applicants, with respect to the means and motivation of the agents of persecution to track them down in the proposed IFA.

[30] Viewed in that light, I find no reviewable errors arising from the RAD's IFA analysis.

[31] To start, with respect to the Applicants' contention that it was unreasonable for the RAD to expect them to provide evidence of their persecutors' connections to the police, I note that the RAD made the following observations before arriving at its finding:

- that the objective evidence indicates that the tenant registration systems is in place in several provinces of Pakistan, including Sindh, where Hyderabad is located;
- that the requirements of the system vary between provinces, and the police authorities usually only communicate with other police in high profile cases;
- that there is no evidence that the PA is a person of interest to the police or has a profile warranting the sharing of information about him between police authorities, or that he was charged with any crimes; and
- that the evidence demonstrates that the extremist groups have continued to seek the PA only at his family home.

[32] Given these observations, I find it was open to the RAD to conclude that the extremist groups lacked both the motivation and the means to locate the Applicants in the IFA.

[33] I acknowledge, as the Applicants submit, that the RAD did not take note of an alleged attack in Multan, when the Applicants were staying at Ms. Kausar's family home. However, as the Respondent submitted at the hearing, the RAD is not obligated to mention every piece of evidence. Further, I agree with the Respondent that the evidence submitted regarding this attack is not probative, as it was based on what the neighbours believed to be the identity of the alleged attackers.

[34] Similarly, the Respondent contends that the RAD reasonably found that the PA's uncle did not have the means to bribe police to find them in the IFA, as no evidence of such means was provided. I agree.

[35] While I note that the RAD did use the term "widespread bribery", this choice of term once again needs to be put in context, namely, the RAD's finding that the objective evidence does not establish that the uncle would be able *otherwise* to access information in the tenant registration system about the Applicants' location. Put differently, I understand the Decision as saying that if the uncle cannot rely on the tenant registration system to find the Applicants by bribing one or two officers, as the Applicants contend, then the only way he could locate the Applicants would be to bribe as many police as possible.

[36] In conclusion, I find the Applicants have not raised any reviewable errors committed by the RAD in arriving at the Decision.

IV. Conclusion

[37] The application for judicial review is dismissed.

[38] There is no question for certification.

**JUDGMENT in IMM-8690-21**

**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"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8690-21

**STYLE OF CAUSE:** ASIM NAZIR, MEMUNA KAUSAR, SYEDA ZOYA ASIM, ZAINAB ASIM SYEDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 24, 2023

**JUDGMENT AND REASONS:** GO J.

**DATED:** MAY 4, 2023

**APPEARANCES:**

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