

Federal Court



Cour fédérale

**Date: 20230830**

**Docket: IMM-1429-22**

**Citation: 2023 FC 1174**

**Toronto, Ontario, August 30, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**KASHIF RAZA MIAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Kashif Raza Mian [Applicant] is a citizen of Pakistan and was a business owner in Lahore. The Applicant was born Sunni and converted to the Shia sect of Islam in 2016. After his conversion, the Applicant sold property at a reduced price for a Shia community centre, and participated in Shia event planning and observances.

[2] In August 2018, the Applicant was robbed by members of the Lashkar-e-Jhangvi (LeJ) [LeJ]. He reported this incident to the police. Later, he was informed that the LeJ was aware of his conversion and threatened to kill him. After going into hiding in Gujrat, the Applicant claimed that the police helped the LeJ locate him there. The Applicant came to Canada in October 2018 and made a refugee claim, alleging fear of persecution at the hands of the LeJ.

[3] The Refugee Protection Division [RPD] rejected the Applicant's claim on the basis of a viable Internal Flight Alternative [IFA] in Hyderabad. In a decision dated February 3, 2022, the Refugee Appeal Division [RAD] upheld the RPD's IFA finding and confirmed that the Applicant 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 [Decision].

[4] The Applicant seeks judicial review of the Decision. I dismiss the application as I find the Applicant fails to demonstrate any reviewable errors in the Decision.

## II. Issues and Standard of Review

[5] The Applicant submits that the RAD erred in its IFA analysis by misconstruing or ignoring evidence with respect to (1) a prior RAD case submitted on appeal; and (2) the first prong of the IFA analysis generally.

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

[7] 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.

[8] 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

[9] The Applicant did not address all of his arguments at the hearing but continued to rely on his written submission. As such, I will deal with all of the Applicant’s key arguments.

#### A. *The RAD did not err by declining to follow a past RAD decision*

[10] On appeal to the RAD, the Applicant submitted a past RAD decision which he argued allowed the appeal of a similarly situated person: *X (Re)*, 2020 CanLII 93765 [*X (Re)*]. Though not bound by the previous RAD decision, the RAD considered *X (Re)* but decided not to follow it.

[11] Before this Court, the Applicant argues that the RAD unreasonably disregarded the significance of *X (Re)* by comparing the role played by the appellants in that case to that of the Applicant. The Applicant asserts that the underlying circumstances were similar, involving prominent businessmen who held significant positions in the Shia community, and emphasizes that the appellant in *X (Re)* similarly donated land for a Shia place of worship.

[12] I find the Applicant's arguments lack merit.

[13] The RAD considered *X (Re)* and noted that the decision relied on a National Documentation Package [NDP] for Pakistan dated March 29, 2019, which was not identical to the more recent NDPs that the RAD found appropriate to consider for the case at bar.

[14] The RAD further acknowledged that an individual may not have a viable IFA in Pakistan if they fear an organization like the LeJ, but found that the circumstances and profile of the appellants in *X (Re)* differed significantly from those of the Applicant. For example, the RAD noted that the claimants in *X (Re)* encountered problems with the LeJ for several years and over generations, had a formal fatwa issued against them, donated as opposed to sold property, and that it was unclear from the reasons what role the claimant played in their local Shia community.

[15] Thus contrary to the Applicant's assertion, the RAD did consider *X (Re)* but ultimately found it to be distinguishable. The RAD's reasons for not following *X (Re)* were intelligible and were reasonably based on the evidence before it.

B. *The RAD's IFA analysis was reasonable*

[16] 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; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at 597.

[17] With respect to the first prong, the RAD found that the agent of persecution has the means, but not the motivation to pursue the Applicant such that there is a serious possibility of persecution in Hyderabad. For the second prong of the IFA analysis, which the Applicant does not contest before this Court, the RAD found that the IFA is reasonable in all of the circumstances.

[18] The Applicant challenges the RAD's analysis of the first prong of the test, noting that he need only impugn one of the prongs as both prongs must be satisfied to find a viable IFA: *Ajoke Ogundairo et al v Canada (Citizenship and Immigration)*, 2017 FC 612 at para 19. Citing *Nimako v Canada (Citizenship and Immigration)*, 2013 FC 540 at para 7 and *Ocampo v Canada (Citizenship and Immigration)*, 2021 FC 1058 at para 24, the Applicant submits that under the first prong, a relevant consideration is whether the agent of persecution has both the "means and motivation" to locate the Applicant.

[19] The Applicant directs this Court to *Ramirez v Canada (Citizenship and Immigration)*, 2018 FC 967 [*Ramirez*] for the approach in assessing the first prong of the IFA test when dealing with agents of persecution who are organizations and highlights the Court's finding at para 14:

[14] I agree with the Applicants that there is ample evidence in the record of the collusion of police and criminal organizations, including Los Zetas, and of the strength of Los Zetas. While Los Zetas may be weakened from prior years, it cannot be said to be a weak organization that would be unable to track down and engaged with the Applicants if it wished to do so.

[20] I find *Ramirez* not to be on point, as I note, the above quoted passage goes more to the finding of 'means' for an agent of persecution who is an organization. Here, the RAD agreed that the LeJ has the means to locate the Applicant.

[21] The Applicant also relies on *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1157, for the proposition that the RAD's findings with respect to the IFA must be reconciled with the claimant's evidence where such evidence is accepted as credible: at paras 76-77.

[22] Specifically, the Applicant takes issue with the RAD's characterization of his profile when assessing the LeJ's interest in pursuing him. The Applicant repeats his argument that the RAD failed to take into account his profile as a prominent businessman practicing the Shia religion, and his display of blasphemous behaviour by reducing the price of property he owned for the building of a Shia community centre. The Applicant asserts that these characteristics led him to be considered a high-profile individual in his community and put him at a heightened risk of facing a serious possibility of persecution in Hyderabad. The Applicant further submits that

the RAD's unreasonable assessment of his profile led the RAD to discount the possibility of the LeJ using the tenant registration system to track him.

[23] I disagree.

[24] As the Respondent submits, the RAD acknowledged the Applicant's position with respect to his profile as a businessman and recent convert, but found insufficient evidence to establish that this profile would motivate the LeJ to use their resources to target him in the IFA. The Respondent argues, and I agree, that the Applicant has not pointed to evidence impugning the RAD's conclusion that the risk the Applicant faced is limited to his local area in Lahore.

[25] The Applicant also takes issue with the RAD's assessment of the objective evidence. Based on the NDP dated February 23, 2022, the Applicant submits that the LeJ are present throughout Pakistan and have a presence in the Sindh province, despite Hyderabad not being a stronghold of the LeJ. The Applicant also points out the LeJ's links with other terrorist groups in the area of Hyderabad and highlights the LeJ's description as "one of the world's most secretive organizations." Further, the Applicant quotes from a source indicating that there is "increased criminality" in Hyderabad. The Applicant cites from an article dated August 13, 2021 from the NDP announcing that the Tehreek-e-Taliban Pakistan [TTP] merged with a former al-Qaeda-affiliated jihadist group, which joined the other jihadist groups that form part of the TTP including a faction of the LeJ.

[26] The Respondent submits that the NDP evidence cited by the Applicant is of limited use. For example, the Respondent notes that the Applicant's profile is not that of a "high-level politician", which was cited in the NDP as a target of the LeJ. Further, the Respondent submits that the reference to the security situation in Hyderabad is not probative to the issue of LeJ's motivation to target him. Accordingly, the Respondent argues that the documentary evidence cited has no bearing on the Applicant's claim and does not displace the RAD's conclusions.

[27] In my view, the Applicant simply fails to demonstrate how and where the RAD's assessment fell short. Merely quoting from the NDP, without explaining its relevance to the case at hand, is insufficient to render the Decision unreasonable.

[28] With respect to the RAD's finding that the LeJ have not made further threats to the Applicant or his family since his departure from Pakistan, the Applicant argues that this finding was unreasonable as he was merely unaware of any threats.

[29] I reject this argument. As the RAD noted, the evidence suggests that the Applicant's wife and children along with his parents and brother all continue to reside at the Applicant's former home in Lahore. The RAD found that the Applicant has not shown that the LeJ are interested in pursuing his family and that more likely than not, the LeJ are not currently pursuing revenge for the sale of the land. The RAD's finding in this respect was thus based on insufficient evidence of subsequent targeting and threats against his family, which is a relevant factor for IFA consideration: *Gutierrez Torres v Canada (Citizenship and Immigration)*, 2013 FC 165 at para 30.



[30] The Applicant further takes issue with the RAD's treatment of the Applicant's submission about his Shia friend who was murdered in 2020 as a local matter. The Applicant asserts that his friend was in the same position as the Applicant, as a businessman involved in the Shia community, and that the matter should be viewed nationally because it is of importance to the Shia community at large.

[31] The RAD did consider the Applicant's submission but found no evidence that his friend's murder was connected to the Applicant except that they worked at the same local Shia community centre. The RAD also noted that the murder was a local incident. In light of the evidence, or the lack thereof, the RAD's finding was reasonable.

*C. The Applicant's Additional Arguments at the Hearing*

[32] At the hearing, the Applicant further submitted that the RAD did not come to grips with the LeJ being a "secretive" organization with ties to other terrorist organizations, and would therefore have the motivation to track down the Applicant. I reject this argument as it is without merit. Being a "secretive" organization does not make it more or less likely for the LeJ to target the Applicant, who bears the onus of demonstrating a forward-looking risk in the proposed IFA.

[33] The Applicant also attempted to take apart other aspects of the Decision by suggesting that the RAD was "splitting hair" when it found the Applicant has not advanced that he fears persecution generally because of his faith; instead, he fears persecution because he was targeted by a terrorist organization because of his faith. I note however, the RAD's finding was based on

the Applicant's own narrative. I also agree with the Respondent that the Court should assess the Decision in light of the Applicant's submissions to the RAD: *Vavilov* at para 96.

[34] In this case, the RAD clearly and thoroughly considered all of the Applicant's submissions.

[35] Finally, the Applicant submitted that the RAD's finding was ambivalent when it agreed that the objective evidence is mixed on the means of the LeJ to locate the Applicant, and when it noted the LeJ not being dominant in an area does not mean they do not have the ability to track and target a person in an area. None of these arguments in my view assist the Applicant as they all go to the issue of "means", when the determinative issue for the RAD was the LeJ's lack of motivation to target the Applicant.

#### IV. Conclusion

[36] The application for judicial review is dismissed.

[37] There is no question for certification.

**JUDGMENT in IMM-1429-22**

**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"

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Judge

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

**DOCKET:** IMM-1429-22

**STYLE OF CAUSE:** KASHIF RAZA MIAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 21, 2023

**JUDGMENT AND REASONS:** GO J.

**DATED:** AUGUST 30, 2023

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