

Federal Court



Cour fédérale

Date: 20230830

Docket: IMM-7206-22

Citation: 2023 FC 1176

Ottawa, Ontario, August 30, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

RAJINDER KAUR AULAKH

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is seeking judicial review of the dismissal of her refugee claim. I am dismissing her application because I am of the view that the Refugee Appeal Division [RAD] reasonably concluded that the Applicant had an internal flight alternative [IFA] in her country of origin.

II. Background

[2] The Applicant is an Indian citizen. She fears harm from an individual and his associates because she reported their drug-trafficking activities to the police and also advocated against drug use. The basic elements of her claim were accepted as credible by both the Refugee Protection Division [RPD] and the RAD and are not in dispute.

[3] The Applicant was employed as a nurse in a hospital in the state of Punjab. In that capacity, she treated substance-abuse patients, referred patients to drug-treatment centers, and participated in seminars on the harmful effects of drug use.

[4] In June 2018, the Applicant witnessed two individuals trafficking drugs to students at a school nearby her workplace. She called the police, leading to the arrest of the two individuals. However, the individuals were subsequently released.

[5] Shortly thereafter, the Applicant began to receive anonymous phone-threats. She requested police assistance, but the police were unable to trace the calls.

[6] On January 11, 2019, the Applicant was the victim of an attempted kidnapping. She called the police, but they did not respond to the incident.

[7] The Applicant initially moved to Ludhiana, Punjab, and on April 19, 2019, she travelled to Canada and claimed refugee protection several months later.

[8] On December 29, 2021 the RPD heard the Applicant's claim, and rejected it on February 2, 2022; although it found the Applicant's allegations credible, it also found that she had an IFA in the cities of Bengaluru and Kolkata.

[9] That decision was upheld by the RAD on July 8, 2022.

III. Decision Under Review

[10] The RAD agreed with the RPD as to the credibility of the Applicant's allegations [para 24]. However, based on its independent review and analysis of the record, the RAD found that the RPD correctly determined that she has an IFA in India.

[11] The RAD described and applied the two-pronged test for determining if a viable IFA exists. It found that 1) the Applicant has not established, with sufficient credible evidence, that she faces a serious possibility of persecution or likely risk of harm in the IFA locations, and 2) it is objectively reasonable in all the circumstances, including those specific to her, to relocate.

[12] Under the first prong, the RAD concluded that the RPD correctly found the Punjab Police and the individual she fears to not have either the means or motivation to pursue her to either IFA location. The Applicant had argued that the individual she fears has some influence over the police and/or has bribed the police.

[13] The Applicant had submitted that a risk of persecution and harm exists throughout India for her, because her assailants and the police could track her at the IFA locations using police databases.

[14] The RAD summarizes country-condition evidence regarding policing in India, and concludes that information inter-state police communication is available, but is in practice limited to cases involving major crimes or organized crime. As the Applicant has not been arrested or charged with any offence, and in the absence of evidence that her name was recorded in any police system, the RAD concludes the agents of harm do not have the means to track her across states.

[15] The RAD next addresses the Applicant's arguments that she may be tracked by the Aadhaar card or the tenant verification system. It again considers country-condition evidence to conclude that the Punjab Police or police at the IFA locations do not have access to this information. While noting that tenant verification is mandatory at the proposed IFA locations, the RAD concludes that this process will not lead the police at the IFA locations to communicate information to the Punjab Police.

[16] Finally, the RAD considered the risk of locating the Applicant by threatening her family for her whereabouts. It concluded that evidence of pressure or threats against the family to disclose her whereabouts was unclear and that this risk was hence unestablished.

[17] Next, the RAD considered the motivation of the Punjab police and her assailant to pursue her to the IFA locations. The RAD accepted that affidavits indicate that unknown men and the police made enquiries about the Applicant's whereabouts, but emphasized that these enquiries were limited to her village of Jhingran.

[18] Turning to the second prong, the RAD finds the RPD correctly concluded that it is objectively reasonable for the Applicant to re-locate to the proposed IFA locations.

[19] The RAD acknowledges that as a single woman relocating, the Applicant will face a number of challenges at the IFA locations.

[20] The RAD concludes that the Applicant has viable IFAs in Bengaluru and Kolkata, and confirms the decision of the RPD.

IV. Issues and Standard of Review

[21] The sole issue is that of the IFA, which attracts a standard of review of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 16).

V. Analysis

[22] The Applicant submits the RAD committed a reviewable error in its assessment of the "motivation" and "means" factors under the first prong of its IFA analysis by engaging in a microscopic analysis of the evidence and applying the law in a capricious manner. The

Applicant's submissions are almost exclusively focused on the RAD's conclusions regarding pressure or threats against the Applicant's family members; the RAD's conclusions on four other main points are not challenged.

[23] Regarding the means factor, the Applicant argues that the RAD's determination that the police do not have the means to locate the Applicant, despite accepted as credible information that her family has been approached by the police to solicit the Applicant's whereabouts, is a reviewable error. The Applicant argues per *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 50, that expecting the Applicant to hide their location from their family is tantamount to going into hiding, and thus cannot be used to obviate risk under the first prong.

[24] Second, regarding motivation, the Applicant submits that the RAD erred in its determination that the police do not have the motivation to locate the Applicant at the IFA. She argues that the RAD relied too heavily on the fact that the Applicant lived in Ludhiana for two months without being contacted to determine that the police did not have the motivation to locate her.

[25] Respectfully, I am of the view that the Applicant has not met her burden of demonstrating that the RAD's decision is unreasonable.

[26] The *Ali* decision on which the Applicant focused their submissions is distinguishable from the present case. It involved a refugee claimant's family members subjected to repeated death threats by armed individuals claiming to be members of a terrorist group (the Pakistani

Taliban). The present case involves alleged enquiries by police and unknown men as to the Applicant's whereabouts. Justice Martine St-Louis' finding that the holding in *Ali* is fact-specific and cannot be generalized to every IFA situation hence applies here (*Kodom v Canada (Citizenship and Immigration)*, 2023 FC 305 at para 13, see also *Shakil Ali v Canada (Citizenship and Immigration)*, 2023 FC 156 at para 12).

[27] Furthermore, the RAD's reasons note that the evidence regarding any pressure or threats in the context of these enquiries is "unclear", and indicate that they were not raised in the Applicant's written submissions to the RPD. Additionally, as noted by the Respondent, there is no evidence of these enquiries extending outside of the Applicant's home village to Ludhiana, where she lived for two months prior to coming to Canada. In short, the enquiries are distinguishable from those in *Ali*, and do not support a finding that the agent of harm or police had the motivation or ability to locate the Applicant outside of her home village.

[28] In light of the above, the Applicant has not established that the RAD's decision is unreasonable.

VI. Conclusion

[29] For the above reasons, this Application is dismissed. The parties have not proposed any question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-7206-22

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7206-22

STYLE OF CAUSE: RAJINDER KAUR AULAKH v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 21, 2023

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: AUGUST 30, 2023

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