

Federal Court



Cour fédérale

Date: 20231003

Docket: IMM-5750-21

Citation: 2023 FC 1324

Ottawa, Ontario, October 3, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MUHAMMAD SUBHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision made on July 27, 2021 by the Refugee Appeal Division (RAD) confirming the decision of the Refugee Protection Division (RPD) and dismissing the Applicant's appeal [the Decision].

II. **Background Facts**

[2] The Applicant is a citizen of Pakistan who sought refugee protection for fear of Sunni militant groups, Jesh-e-Muhammad (JM) and Sipah-e-Sahaba Pakistan (SSP), due to his activism as a Barelvi Muslim.

[3] The Applicant worked in the United Arab Emirates and visited Pakistan in March 2018. He alleged that during this visit, he learned of the suffering of impoverished Barelvi Muslims, and began to raise funds for and personally contribute to a charitable organization serving the Barelvi Muslim community in Lahore and surrounding areas.

[4] The Applicant claimed that JM and SSP became aware of his financial support of the charity and threatened him. Thereafter, he states that he was forced to flee Lahore and hide in two other locations in the province of Punjab, where he was found again by people who chanted SSP slogans.

[5] Upon return to the UAE, the Applicant alleged that his employment contract was terminated because of phone calls from these extremists to his employer. He then fled to the United States and eventually Canada, claiming refugee status on September 17, 2019.

III. **The RPD and RAD decisions**

[6] Based on the availability of an internal flight alternative (IFA) in Hyderabad or Islamabad, Pakistan, the RPD found that the Applicant was neither a Convention refugee nor a

person in need of protection. The Panel found insufficient credible evidence to demonstrate that JM or SSP would have the means or motivation to track the Applicant to Hyderabad or Islamabad.

[7] The only IFA argument presented by the Applicant to the RAD was that if he should return to Pakistan, he would have to live in hiding and cut off communication with his family and friends in order for the IFA locations to be reasonable.

[8] The RAD found the argument with respect to this point was unintelligible as, by referencing family members in Nigeria, it referred to facts different from those of the Applicant.

[9] The RAD noted the Applicant had testified that he, his sister, and his friends had not been contacted by JM or SSP since his departure from Pakistan in June 2019. He also ceased contact with the charitable organization, which was how JM and SSP received his name and location.

[10] The RAD found the evidence before the Board did not indicate the Applicant's entourage was in contact with JM or SSP and therefore concluded that he would not have to cut off communication with his family and friends or live in hiding in the IFA locations.

[11] The RAD found that even if the Applicant's argument referred to his particular situation, it contradicted his own testimony.

[12] The RAD confirmed the RPD decision that there was no evidence to support the Applicant's argument on the second prong of the IFA test that he would have to cut off communication with his family and friends or live in hiding in the IFA locations.

[13] The RAD specifically concluded, after considering the evidence, that it did not note any errors in the reasons of the RPD related to the IFA analysis.

[14] The RAD dismissed the appeal and confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

IV. Issues

[15] The Applicant submits the RAD's assessment of his personal evidence was unreasonable, incorrect and in breach of procedural fairness.

[16] He also submits that confirming the RPD's IFA finding was unreasonable, as was failing to consider the Applicant's claim under section 97 of the IRPA.

[17] The Respondent argues the Applicant's submissions to the RAD on appeal contradicted his testimony given at the RPD that his sister and family had not been contacted by anyone about his location since June 10, 2019.

[18] The Applicant also argued that neither the RPD nor the RAD considered his future activism and religious beliefs in Pakistan.

V. **Standard of Review**

[19] The Federal Court of Appeal has established that reasonableness is the standard of review to be applied by this Court to a decision of the RAD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30, 35 [*Huruglica*].

[20] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] the Supreme Court of Canada extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness, subject to certain exceptions that do not apply on these facts and, the burden is on the party challenging the decision to show it is unreasonable: *Vavilov* at para 23.

[21] Citing *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, it was also confirmed in *Vavilov* that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it. To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100.

[22] 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 paras 15 and 85.

VI. Analysis

[23] In finding the Applicant is not a Convention refugee nor a person in need of protection, both the RPD and RAD identified the availability of an IFA to be the determinative issue.

A. *Internal Flight Alternative test*

[24] In determining whether there is an IFA, the RPD and the RAD must apply a two-prong test.

[25] First, the tribunal must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the proposed IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [*Rasaratnam*], at para 13.

[26] Second, the tribunal must also be satisfied that, in all the circumstances, including the Applicant's particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicant to seek refuge there: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) [*Ranganathan*] at para 15.

[27] An applicant must meet a very high threshold to prove the unreasonableness of an IFA. To do so requires actual and concrete evidence proving that there are conditions that would

jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area:
Ranganathan at para 15.

[28] The Respondent notes that a Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the IFA test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim: *Olusola v Canada (Minister of Citizenship and Immigration)*, 2020 FC 799 at para 7 [*Olusola*].

[29] Therefore, the Applicant's argument that the RAD failed to assess evidence of a forward-looking risk and state protection are not issues before this Court on judicial review.

[30] The Applicant's submissions on his appeal before the RAD contradicted the testimony he gave at his refugee hearing: that his sister and family had not been contacted by anyone about his location since June 10, 2019. During his testimony, the Applicant stated that he spoke to his sister once a month. When asked directly if his sister or his friends had been contacted by JM or SSP, the Applicant replied in the negative.

[31] A Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim: *Olusola* at para 7. As such, the Applicant's

argument that the RAD failed to assess evidence of forward-looking risk and state protection are not issues before this Court on this judicial review.

[32] A serious possibility of persecution can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA: (*Saliu v Canada (Minister of Citizenship and Immigration)*, 2021 FC 167 at para 46 citing *Feboke v Canada (Minister of Citizenship and Immigration)*, 2020 FC 155 at para 43.

[33] The availability of an IFA in Hyderabad or Islamabad, Pakistan, was the determinative issue before the RPD.

[34] On this point, the RAD conducted, at paragraph 7 of its Decision, an independent review of the following findings of the RPD, which I have somewhat abbreviated:

[35] The Applicant was only located by JM and SSP in the two locales to which he fled because the person running the charitable organization had revealed the information to them under threat.

[36] JM is not with a well-connected network throughout Pakistan, as its base is predominantly in India and Kashmir.

[37] There is insufficient objective evidence to establish that SSP operates a well-connected network throughout Pakistan.

[38] There is insufficient evidence to establish that either JM or SSP would be motivated to track the Applicant to the IFA locations because neither he nor his entourage had been contacted by JM or SSP since he left Pakistan in June 2019.

[39] The Applicant could reasonably locate to the IFA locations because he is university educated, has successfully relocated to two other countries prior to going to Canada and is a member of the majority religious group in the IFA locations.

[40] The Applicant's submissions before the RAD were scant and incorrectly referenced Nigeria as the Applicant's country of citizenship. The Applicant failed to identify an error with the RPD's IFA analysis and only repeated the allegation, with no supporting evidence, that the Applicant will have to live in hiding in the proposed locations.

[41] The RAD confirmed the findings, noting that the Applicant testified that he, his sister, and his friends have not been contacted by JM or SSP since his departure from Pakistan and that he had ceased contact with the charitable organization in question. Therefore, contrary to the Applicant's submissions, the RAD found there is no evidence that he will have to cut off communication with his family and friends or live in hiding in the IFA locations.

VII. **Conclusion**

[42] Given the foregoing reasons, I am satisfied the Decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrained the decision maker: *Vavilov* at paras 15 and 85.

[43] For all the foregoing reasons and, based on the record and submissions before me, I find the Decision is reasonable.

[44] This application is dismissed.

[45] No serious question of general importance was posed for certification and I am satisfied that none exists on these facts.

JUDGMENT in IMM-5750-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5750-21

STYLE OF CAUSE: MUHAMMAD SUBHAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

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