

Federal Court



Cour fédérale

Date: 20240515¹²

Docket: IMM-13030-22

Citation: 2024 FC 735

Ottawa, Ontario, May 15, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

**BALVIR KAUR
PARAMJIT SINGH
NAVREET REET KAUR
AKASHDEEP SINGH**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], Balvir Kaur, Paramjit Singh, Navreet Reet Kaur and Akashdeep Singh (together, the “Applicants”), are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”]. The Judicial Review is dismissed for the following reasons.

[2] The parties do not dispute the facts of this case. The Applicants are citizens of India with status analogous to permanent residence in the Philippines. Balvir Kaur (the “PA”) had alleged a land dispute with her brother, as a result of which, the brother unleashed the local Indian police against her.

[3] The PA then returned to the Philippines but was kidnapped. She was released on the payment of ransom. When the family tried to get help from the police, a friend by the name of Paul unleashed a Filipino criminal organization by the name of *Abu Sayyaf* against them.

[4] The RPD found the Applicants allegations to be credible but rejected their claim because it found that they were excluded under Article 1E of the *Convention Relating to the Status of Refugees* (the “Convention”). In addition to examining the claim against India, the RPD assessed whether the claimants faced a serious possibility of persecution on a Convention ground, or on a balance of probabilities, a personal risk of harm in the country of their permanent residence, the Philippines, and found that they did not. The RAD engaged in an independent assessment of the RPD’s decision and upheld it.

[5] The Applicants argue that the RAD’s decision is unreasonable because the member failed to provide adequate reasons and engage in an independent assessment of the case.

II. Standard of Review

[6] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 (CanLII), [2018] 3 FCR 75 [*Vavilov*]).

III. Analysis

A. *Legal Framework*

[7] According to section 98 of the IRPA, a person who is excluded under Article 1E of the Refugee Convention is neither a Convention refugee nor a person in need of protection. Section E of Article 1 of the Convention provides as follows:

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[8] For this ground of exclusion to apply, the person must have taken up residence in a country outside the country of his or her nationality and have been recognized as having the rights and obligations which are attached to the possession of nationality of that country (*Shamlou v Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.), at page 152.)

[9] The framework of analysis for Article 1E was set out in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 (CanLII), [2011] 4 FCR, at para 28:

[28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[10] In this case, The RAD also adopted the reasoning in a decision designated as a jurisprudential guide (RAD MB8-00025):

The Jurisprudential Guide confirms that allegations of risk in a country of residence are to be taken into consideration in the analysis of whether a refugee claimant is excluded from refugee protection under Article 1E (RAD decision at para 14).

B. *Was the RAD's decision reasonable?*

[11] The Applicants argue that the RAD provided inadequate reasons to conclude that the Applicants did not face a risk of harm in the Philippines. They argue that the RAD did not engage in an independent assessment of the case because the following four paragraphs conclude all of the RAD's assessment:

Appellants do not face a serious possibility of persecution or likely risk of harm in the Philippines

[42] The Principal Appellant was kidnapped by a member of Abu Sayyaf for ransom on December 2, 2016. She was released several days later upon payment of the ransom. The Appellants state they will be killed by Abu Sayyaf or by Paul who is associated with Abu Sayyaf.

[43] At the RPD Hearing, the Associate Appellant testified that when he learnt that his wife had been kidnapped, he reported it to the police. The police took his complaint and started a search. However, he paid the ransom, and the kidnapers released his wife.

[44] The RPD accepted their allegations of risk as credible. However, the RPD found that the Appellants do not face either a serious possibility of persecution or likely risk of harm in the Philippines. The RPD found that the risk no longer existed because Abu Sayyaf's size and power had decreased significantly since 2016 and no longer posed a risk to them. Regarding the risk from Paul the RPD found that there was no evidence that Paul remained interested in them or was affiliated with the militant group. The Appellants do not challenge these findings of the RPD.

[45] After conducting my own independent assessment of the evidence, I do not see any errors in the RPD's analysis. Therefore, I confirm the findings of the RPD that there was no longer a risk to the Appellants because Abu Sayyaf's size and power had decreased significantly since 2016, and there was no evidence that Paul remained interested in the Appellants or was still affiliated with Abu Sayyaf.

[12] The Applicants limit their argument to the short analysis by the RAD but do not point to any particular shortcomings. Nor do they point to any part of the RPD's decision the RAD should have reassessed differently. In short, they do not challenge the substance of the RAD's decision.

[13] I find that there is a clear chain of reasoning in the RAD's reasons. First, the RAD correctly identifies its role by applying the correctness test to the RPD reason in accordance with the guidance by the Federal Court of Appeal in *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 (CanLII), [2016] 4 FCR 157.

[14] The RAD's reasons demonstrate that the member reviewed the RPD record, including its reasons, and agreed with it. There was no reason for the member to repeat it.

[15] I find that the RAD applied the correct test in assessing the exclusion under article 1E of the Convention. The RAD member clearly turned her mind into the RAD's jurisprudential guide (RAD's decision, at para 14) and assessed the risk in the 1E country, the Philippines. (RAD's decision, at paras 42-45). The Applicants cannot fault the RAD for its efficiency when they fail to point to any shortcomings in the substance of its reasons. The Applicants also did not point to any shortcomings in the RPD reasons with which the RAD unreasonably agreed.

[16] I find that the Applicants are in effect asking this Court to reweigh the evidence, which is not this Court's role. (*Vavilov*, at para 125)

[17] The Applicants argued that the short analysis by the RAD is in clear contrast to the guidance of this Court in *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 [*Gomes*] where the judicial review was allowed when the RAD failed to conduct an independent analysis. However, In *Gomes*, nowhere in its decision had the RAD stated whether it actually agreed or disagreed with any of the findings of the RPD on any of the key issues raised by the applicant. It was in that context that the Court found that it was not sufficient for the RAD to explicitly express its own findings.

[18] *Gomes* also makes it clear that the RAD is not required to restart the analysis from scratch in order for it to show that it conducted an independent review of the matter and that the length of the decision is not itself indicative of any failure of the RAD. On the facts of *Gomes*, the RAD member had failed to conduct its own analysis of the evidence:

[35] It is certainly open to the RAD to adopt the RPD's lengthy and reasoned treatment of the record, so long as the RAD itself does examine the record. The approach followed by the RAD in this case does not imply that it failed to conduct its own analysis of the evidence.

[36] Here, I am not convinced that the presumption that the RAD considered all of the evidence and undertook its own independent analysis of the record is rebutted. I therefore do not agree with the applicant on this issue.

[19] By contrast, however briefly, the member here engaged with the RPD's reasons. As stated, at no time did the Applicants point to any particular shortcomings, or any important

evidence with which the RAD member should have explicitly engaged. Nor do they argue that agreeing with the RPD was unreasonable in the context of the record and the arguments raised.

[20] As found in *Gomes*, The RAD is not required to restart the analysis from scratch in order for it to show that it conducted an independent review of the matter. The length of the decision is not itself indicative of any failure of the RAD. I find that in this case, there is no reason to doubt the member's independent assessment of the facts and the application of the law with a clear chain of reasoning that makes the decision intelligible, transparent and justifiable. The RAD's reasons are therefore reasonable.

IV. Conclusion

[21] The Application for Judicial Review is therefore dismissed.

[22] There is no question to be certified.

JUDGMENT IN IMM-13030-22

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.
2. There is no question for certification.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13030-22

STYLE OF CAUSE: BALVIR KAUR ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MAY 8, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: MAY 15 2024

APPEARANCES:

Raj Sharma FOR THE APPLICANT

Meenu Ahluwalia FOR THE RESPONDENT

SOLICITORS OF RECORD:

SSH Law FOR THE APPLICANT
Calgary, AB

Department of Justice Canada FOR THE RESPONDENT
Calgary, AB