

Federal Court



Cour fédérale

Date: 20240605

Docket: IMM-1790-23

Citation: 2024 FC 847

[ENGLISH TRANSLATION]

Québec, Quebec, June 5, 2024

PRESENT: Mr. Justice Lafrenière

BETWEEN:

MUKESH KUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mukesh Kumar, is a citizen of India. He is seeking judicial review of a decision rendered on January 12, 2023, by the Refugee Appeal Division [RAD] confirming the determination of the Refugee Protection Division [RPD] that he is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration*

and Refugee Protection Act, SC 2001, c 27 [IRPA], because internal flight alternatives [IFAs] are available in other cities in India.

[2] The facts of the case are as follows. The applicant was allegedly arrested by the police in November 2017 after talking to a man he met while walking in his neighbourhood in Jaipur. Unbeknownst to the applicant, the man was suspected by the police of being a Sikh militant. The applicant was allegedly questioned by the police, assaulted and imprisoned for two days, and accused of treason. He was released after his father paid a bribe, and no charges were laid against him. However, the applicant was taken back to the police station twice for further questioning and then released. Fearing for his safety, the applicant applied for a Canadian visa so that he could leave India. On arrival in Canada on May 6, 2018, the applicant claimed refugee protection on the basis that he feared the police would falsely imprison him and kill him if he were to return to India.

[3] It is agreed that the onus was on the applicant to demonstrate, on a balance of probabilities, that the IFAs identified by the RPD were not viable because (1) there was a possibility of persecution or being subjected to a serious risk or threat; and (2) having regard to all the circumstances, including his particular circumstances, the situation in the proposed IFAs was such that it would be unreasonable for him to seek refuge there.

[4] Like the RPD, the RAD determined in the first prong of the IFA test that the applicant had failed to establish that the police would have the means and motivation to locate him in the IFAs identified. In the second prong, the RAD confirmed the RPD's analysis that it was

reasonable for the applicant to relocate to one of the proposed IFAs. The applicant does not dispute the second conclusion.

[5] The applicant challenges only the RAD's reasoning in the first prong of the IFA test and its treatment of the evidence. He criticizes the RAD for endorsing or confirming what he considers to be the RPD's errors in assessing the evidence.

[6] Strangely, the applicant submits that the letters of support presented at the hearing confirm that the police are still actively looking for him. However, the RAD found that the RPD had erred in its conclusion that little weight was to be given to the letters submitted by the applicant. The RAD instead placed great weight on the applicant's evidence regarding recent police visits to his family home in Jaipur and acknowledged that the police were still looking for him. However, the determinative issue before the RAD was the IFA, not whether the applicant would be subjected to a serious risk or threat if he were to return to Jaipur. The panel considered the evidence at length and concluded that the applicant had a viable IFA.

[7] The applicant claims that the RAD erred in determining that the agent of persecution, which had been identified as the state, did not have the motivation or ability to find him elsewhere in India. He submits that the absence of a formal charge against him [TRANSLATION] "does not reasonably support the conclusion that the motivation to [find him would be lessened], and the fact that the police released him does not mean that they are not motivated to find him". However, the evidence provided by the applicant shows that the police pursue only those

convicted of a crime who have escaped from prison. The police also hunt down individuals formally accused of terrorist activities. The applicant's situation does not match these profiles.

[8] The applicant asserts that the tenant registration system is in force in India and that formal charges do not have to be laid for the applicant to be traced through this system. The applicant states that it was objectively unreasonable to expect him to provide evidence that he was not in the police database known as the Crime and Criminal Tracking Network & System [CCTNS].

[9] The applicant fails to mention that these arguments were raised before the RPD and that the RPD rejected them in their entirety, with detailed reasons. The RAD agreed with the RPD's analysis that India does not have a national police force, that the ability to monitor and pursue suspects is limited, that police communication between states is limited, that the CCTNS, used to monitor suspects, is not operational nationwide, and that information on persons of interest is stored in classified databases that are not shared with other states.

[10] Therefore, it was reasonable for the RAD to conclude that the applicant did not have the profile of an individual who would be pursued by the police in the proposed IFAs.

[11] The RAD's decision is well written and supported by the evidence that was before it. A reviewing court must refrain from reweighing and reassessing the evidence that was before the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125).

[12] In short, I see no reason to set aside the RAD's decision, as it bears the hallmarks of reasonableness—intelligibility, transparency and justification.

[13] For the reasons above, the application for judicial review is dismissed.

[14] There are no questions of general importance to be certified.

JUDGMENT in IMM-1790-23

THIS COURT'S JUDGMENT is as follows:

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

“Roger R. Lafrenière”

Judge

Certified translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1790-23

STYLE OF CAUSE: MUKESH KUMAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 7, 2024

JUDGMENT AND REASONS: LAFRENIÈRE J

DATED: JUNE 5, 2024

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