Federal Court Cour fédérale

Date: 20240731

Docket: IMM-8536-23

Citation: 2024 FC 1223

Ottawa, Ontario, July 31, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

HARJINDER SINGH LALKA and RAJWINDER KAUR LALKA

Applicant

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], the Principal Applicant, Harjinder Singh Lalka [the "PA"] and his wife, Rajwinder Kaur Lalka, are seeking a Judicial Review of the rejection of his 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 PA is a citizen of India from Punjab, and worked as a taxi driver. He had a permit that allowed him to drive to multiple states in India. In June 2018, when driving two Sikh men to Delhi airport, he was stopped at a checkpoint on route. The two men left the taxi without returning, the police searched the vehicle and found suspicious materials in the bags left by the two passengers. The PA was taken to the station, detained for a few hours, and questioned about the two men. He knew little other than they were going to the United Kingdom. The police released him but then asked him to return to the police station a few days later to identify some suspects. The PA identified one of the men and told the police that he had pistol with him. A police officer got angry with him about not sharing the information about the pistol earlier. The PA and that police officer argued.

[3] The PA then received a few anonymous threatening phone calls, which warned him not to cooperate with police. In August 2018, the police stopped his taxi and accused him of transporting anti-national passengers and took him to the station for questioning. He denied any political involvement and released upon payment of bribe. After the PA learned that the police officer who had argued him about the pistol in 2018 was still angry with him for arguing with him, he and his wife decided to leave India.

[4] Both the RPD and the RAD found that the PA had a viable IFA in Delhi and he was therefore not a Convention Refugee or a person in need of protection. The PA agues that the RAD’s decision is unreasonable.

II. Decision

[5] I dismiss the PA's judicial review application because I find the decision made by the RAD to be reasonable.

III. 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*]).

IV. Analysis

A. *Legal Framework*

[7] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk – in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the IRPA – and to which it would not be unreasonable for them to relocate.

[8] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[9] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in light of the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] has held that it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at paragraph 8.

B. *1st Prong: Was the RAD's analysis in finding that the PA did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[10] The PA argues that the police had accused him of anti-national ties and it was therefore unreasonable for the RAD not see a nexus with a Convention ground, namely political opinion. While the RAD's reasons on this issue could be clearer, I understand the RAD's analysis of this issue was to find that IFA was dispositive of claims made under both the Convention and s. 97(1), and the evidence under both had to be established on a balance of probabilities. I agree with the RAD that the evidence must be established on the balance of probabilities. However, once the evidence is established, the decision-maker must decide weather the refugee claimant faces a serious possibility of persecution on a Convention ground in the IFA, or a personal risk of harm under s. 97(1) of IRPA, on a balance of probabilities.

[11] In this case, both the RPD and the RAD accepted the facts, as the PA had experienced. They provided a fulsome analysis of why the Applicants had not established, on a balance of probabilities, that the police has an ongoing interest in them, and would therefore not trace them in Delhi. They found that the police accusation of helping the anti-national militants did not extend beyond extortion or payment of bribe. I therefore disagree with the Applicants that the question of the standard of proof for the legal test on nexus is material.

[12] Counsel for the Applicants also argued that what the PA experienced at the hands of the police amounted to torture, and that it was unreasonable for the RAD to return to someone to a place where they can be tortured. This would be in violation of Canada's obligations under International law. While correct in principal, the RAD's reasons fully analyzed why the member

did not believe that the Applicants would face any potential problems in the IFA, including torture. The RAD correctly stated and applied the two-part test of the IFA, and found that there was insufficient evidence that the police was motivated to locate the Applicants in the IFA. The RAD's analysis pointed to all the relevant facts, including the fact that he was not a wanted criminal and that he was never charged with a crime. They released him on payment of a bribe. The RAD provided a rationale for why the police officer who argued with the PA may have held a grudge against him to act in his hometown, but that this was insufficient to show motivation to search for him outside of the state. The RAD provided a clear chain of reasoning that that the PA's opinion on the specific officer going after him to earn a medal or promotion to be speculative. The RAD explained that when the PA was not a wanted criminal and had no pending charges against him, it was unclear how arresting him would be ground for the officer's medal or promotion. It is clear that the RAD was responsive to the Applicants' material arguments. It is clear that the RAD's conclusion on the state not being interested in the Applicants was responsive to any fear of persecution and torture.

[13] I also find that the RAD analysis that the Applicants had not established the means of the police or the two anti-national passengers to locate them in the IFA to also be reasonable. The RAD stated that the Applicants lived in Delhi for the two months leading up to their departure from the country without being located by police. More importantly, the RAD relied on the insufficiency of evidence that the local police in the Applicants' village had any influence or power outside of their own state. Given that the PA's story was about the grudge of one officer, this is a particularly reasonable conclusion.

[14] The RAD engaged in a thorough analysis of the country documents and applied them to the context of the case and concluded that in the absence of official documents, such as a First Information Report or an arrest warrant, information about the Applicants would not be contained in national databases such as the CCTNS or the tenant verification system. On the tenant verification system, the RAD analysed the objective documents thoroughly to conclude that it was unlikely that it could be used to alert the local police of Applicants' whereabouts. This conclusion was reached with a clear chain of analysis.

[15] Finally, counsel for the Applicants relied on a number of cases to conclude that the Indian police persecutes pro-Khalistan activists throughout the country. However, the RAD had reasonably concluded that the local police had not perceived the PA to be anti-national or an activist because they had never charged or otherwise pursued him through legal channels.

[16] I find that the PA has based its arguments not on the facts of this case but on inferences not supported by evidence. In effect, the PA is arguing that it was unreasonable for the RAD not to have speculated or weighed the evidence differently. It was reasonable for the RAD to engage with the evidence and to apply it to the legal test. It is not for this Court to reweigh the evidence differently.

[17] I find the RAD's analysis of the first prong of the IFA test to be reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the PA, in his particular circumstances, to relocate to Delhi?*

[18] The RAD analysis on the second prong is thorough and deals with the particular circumstances of the Applicants, and turned their mind into the Applicant's concerns about their education, housing, employment, health care and Dalit caste. The RAD thoroughly assessed the country conditions in the context of the Applicants' circumstances and concluded they had not met the high threshold to establish that the IFA location was unreasonable.

[19] Upon review of the record, I am satisfied that the RAD's assessment of the second prong showed a clear chain or reasoning, applied the facts to the correct legal test, and was also reasonable.

V. Conclusion

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

[21] There is no question to be certified.

JUDGMENT IN IMM-8536-23

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

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APPEARANCES:

Me Stewart Istvanffy	FOR THE APPLICANTS
Me Éloïse Eysseric	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Légale Stewart Istvanffy Montréal, QC	FOR THE APPLICANTS
Department of Justice Canada Montréal, QC	FOR THE RESPONDENT