

Federal Court



Cour fédérale

Date: 20241016

Docket: IMM-7400-23

Citation: 2024 FC 1637

Ottawa, Ontario, October 16, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

ANAND KUMAR PRAJAPAT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Anand Kumar Prajapat [Applicant], is a citizen of India who alleges a fear of persecution in his country of origin. He seeks judicial review of a decision dated May 25, 2023, where the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada rejected his refugee claim [Decision] on the grounds that he is not a refugee or 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]. The RAD confirmed the previous decision by the Refugee Protection Division [RPD] and found that the Applicant has a viable Internal Flight Alternative [IFA] in India.

[2] For the reasons that follow, this application for judicial review is dismissed. The Applicant has not met his onus of demonstrating that the Decision is unreasonable.

II. Background and Decision Under Review

[3] The Applicant is a citizen of India who alleges a fear of persecution from a moneylender, M.S., from Rajasthan. Although the Applicant repaid a loan from M.S. in 2018, he claims M.S. wanted additional money. The Applicant refused which led his persecutor to allegedly assault and threaten to kill him. The Applicant fled to Canada in December 2019 and applied for refugee protection.

[4] On November 14, 2022, the RPD rejected the Applicant's claim based on a viable IFA in two other Indian cities.

[5] On May 25, 2023, the RAD confirmed the RPD's decision on the basis that the evidence was insufficient to establish a serious possibility of persecution from the agent of harm in the IFA location. The RAD concluded that M.S. did not have the means to find the Applicant and there was insufficient evidence to demonstrate that he had the motivation to do so. The Applicant does not face a serious possibility of persecution or, on a balance of probabilities, a danger of

torture, or a risk to his life, or a risk of cruel and unusual treatment or punishment in one of the proposed IFAs.

III. Issues and Standard of Review

[6] The Applicant submits that the issue on judicial review is whether the RAD's Decision was unreasonable as it relates to the analysis of the IFA test.

[7] The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). I also agree that in this case, the standard of review on the merits of the Decision is reasonableness.

[8] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[9] The applicable test relating to an IFA bears repeating for ease of reference. A claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the IRPA in the proposed IFA location and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs need to be satisfied to conclude that a claimant has an IFA (*Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at paras 15-16, citing *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at pp. 597-598 [*Thirunavukkarasu*]).

[10] The threshold on the second prong of the IFA test is a high one. There must be “actual and concrete evidence” of conditions that would jeopardize the applicant’s life and safety in travelling or temporarily relocating to a safe area. Once the potential for an IFA is raised, the claimant bears the onus of establishing that it is not viable (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9 [*Olusola*], citing *Ranganathan v Canada (Minister of Citizenship and Immigration) (CA)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) at para 15 and *Thirunavukkarasu* at pp. 594-595).

[11] The onus is on the Applicant to demonstrate that the IFA is not reasonable. If a claimant has a viable IFA, this will negate a claim for refugee protection under either sections 96 or 97 (*Olusola* at para 7).

[12] The Applicant alleges that the RAD's reasoning did not meet the hallmarks of reasonableness as it erred in the analysis of the IFA test. The Applicant states that he did not need to prove he would be persecuted. The RAD reached an unreasonable conclusion that there was insufficient evidence to establish a serious possibility of persecution from the agent of harm in the IFA locations (citing *Chowdury v Canada (Citizenship and Immigration)*, 2008 FC 18 at para 30 [*Chowdury*]).

[13] The Applicant argues that the RAD did not consider the Applicant's evidence that M.S. had connections with the police and politicians that would allow him to locate the Applicant through different means such as the police database, tenant registration database and social media, among others. Additionally, the RAD erred in not considering the fact that he would have to hide his location from his relatives and friends (citing *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 at para 28). The Applicant's fear of persecution is more than a mere possibility.

[14] The Respondent argues that the Applicant's position is essentially a disagreement with the RAD's assessment of evidence. The Applicant is asking the Court to reweigh the evidence in order to reverse the RAD's decision. The RAD did not err in its analysis of the first prong of the test since it reasonably found that M.S. did not have the means and the motivation to locate the Applicant in his IFAs. The Respondent states that the Applicant's argument on his inability to relocate to the IFAs should also be rejected. The Respondent further outlined new arguments that the Applicant has introduced on judicial review: namely, allegations that M.S. and authorities can locate him through social media and that the RAD failed to consider that he would have to

hide from his agent of persecution. These arguments were not placed before the RAD for consideration and it is not appropriate for the Court to consider these issues on judicial review.

[15] With respect to this allegation, the Applicant identified a letter from his previous counsel dated October 28, 2022 and entitled “Additional Submissions Re Internal safe flight alternative” [RAD Submissions]. This letter was submitted to the RAD on appeal. The Applicant states that this letter clearly supports his submission to the RAD that he would have to go into hiding at all of the IFAs because he hid in another city before coming to Canada.

[16] I have reviewed the RAD Submissions and the four cases cited in these submissions. I also reviewed the appeal record, including the Applicant’s appeal memorandum to the RAD.

[17] I agree with the Respondent’s arguments. The arguments relating to the Applicant having to go into hiding, and other means of locating him such as social media were not before the RAD on appeal.

[18] The Applicant’s RAD Submissions are related to the ability for the agent of persecution to trace the Applicant using the tenant verification system, and that police and other persons can obtain information about his whereabouts using this system. The four cases cited also relate to the use of the tenant verification system and that the appellants in those cases were at risk in the respective IFAs (given their particular circumstances) because the system could be used to locate them.

[19] I agree with the Respondent that the RAD Submissions do not put forward the arguments that the Applicant now raises on judicial review. In order to follow the Applicant's arguments, the RAD (and the Court) would have been required to "read between the lines." There was also no argument advanced in the general appeal record about his having to go into hiding, or the issue of tracking through social media. I therefore cannot agree that the Applicant clearly articulated these issues before the RAD.

[20] The RAD cannot be faulted for not addressing an argument that was not placed before it (*Kukoyi v Canada (Citizenship and Immigration)*, 2023 FC 1250 at para 33 [*Kukoyi*]). The Court cannot accordingly consider the arguments about locating the Applicant through other means such as social media or his allegation that he would have to go into hiding on judicial review.

[21] The RAD's conclusions and analysis were responsive to the evidence and submissions that were placed before it. The RAD considered the means or M.S.'s influence over local police as well as the police's ability to trace the Applicant. The RAD also considered the National Documentation Package and found that there is little interstate police communication except for major offences. Given that there was no evidence that the Applicant would be in an integrated police system or centralized registration system, it was open to the RAD to conclude that the Applicant had not sufficiently addressed how he could be tracked to another IFA using these systems. The RAD also concluded a lack of details and context on what happened to the Applicant when he alleged that M.S. had tracked him in Indore. It was therefore open to the RAD to conclude that the Applicant had not demonstrated how M.S. would be able to track him to the other two IFAs.

[22] As such, given the record before it, the RAD's conclusion on the first prong of the IFA test is not unreasonable. I cannot find that the RAD did not apply the proper test that the Applicant described in *Chowdury* or misconstrued the Applicant's evidence.

[23] On the second prong of the IFA test, the Applicant argues that it would be objectively unreasonable for him to relocate to the IFAs because he does not have any support from the police that he would have to go into hiding and that he will not be able to support himself in the IFA due to a very low employment rate. The Applicant did not pursue the issue of employment at the hearing.

[24] The Applicant raised similar new arguments on judicial review that were not before the RAD to challenge the RAD's conclusions on the second prong of the IFA. I make the same finding that these arguments were not before the RAD. Therefore, I cannot consider them when reviewing the Decision on its merits (*Kukoyi* at para 33). In any event, the RAD's conclusion on the second prong of the IFA test is not unreasonable.

V. Conclusion

[25] The RAD's Decision is transparent, intelligible and justifiable in light of the legal and factual constraints that bear on it. As such, I cannot find that the Decision is unreasonable. The application for judicial review is dismissed.

[26] The parties do not propose any question for certification and I agree that in these circumstances, none arise.

JUDGMENT in IMM-7400-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7400-23

STYLE OF CAUSE: ANAND KUMAR PRAJAPAT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO (ONTARIO)

DATE OF HEARING: OCTOBER 7, 2024

JUDGMENT AND REASONS: NGO J.

DATED: OCTOBER 16, 2024

APPEARANCES:

Anna Davtyan FOR THE APPLICANT

Mariam Shanouda FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corporation FOR THE APPLICANT
Barristers and Solicitors
Toronto (Ontario)

Attorney General of Canada FOR THE RESPONDENT
Toronto (Ontario)