Federal Court Cour fédérale

Date: 20241105

Docket: IMM-7765-23

Citation: 2024 FC 1762

Toronto, Ontario, November 5, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

TAJENDER TANWAR
DIMPLE KUMARI

Applicants

and

THE MINISTER OF CITIZENSHIP &
IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicants, Tajender Tanwar and his spouse Dimple Kumari, seek judicial review of a June 5, 2023 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) decision that they are neither Convention refugees nor persons in need of protection under sections 96 or 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, because they have viable internal flight alternatives (IFA) within India.

[2] The applicants, who are from different Hindu castes, married against their families' wishes and fear an honour killing. They say they moved to escape their families, but family members were able to locate and threaten them in other parts of the country. The applicants fled to Canada in 2018. In 2020, Ms. Kumari contacted a cousin in India to see if the situation had calmed down and was told that the family were still angry and would kill them. The applicants believe that if they return to India they will be harmed or killed for bringing shame and dishonour to their families.

[3] Refugee protection will not be conferred on a refugee claimant who has an IFA—a safe place to relocate within their country of origin. A refugee claimant has the burden of proving that a proposed IFA location is not viable.

[4] In this case, the applicants had the burden of proving that two proposed IFA cities were not viable, either because they would face a serious possibility of persecution there, or because the city conditions are such that it would be unreasonable for them to seek refuge there. The RAD found that the applicants would not face a serious possibility of persecution in the IFA cities because their families did not have the motivation or the means to locate them. Furthermore, the RAD found it would not be unreasonable, in all of the circumstances, for the applicants to relocate to either IFA city. Thus, both prongs of the test for deciding whether the applicants have a viable IFA within India were met.

[5] The sole issue on this application is whether the RAD's IFA determination was unreasonable, applying the principles for reasonableness review set out by the Supreme Court of

Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[6] The applicants submit it was unreasonable for the RAD to find they did not face a serious possibility of persecution in the IFA locations.

[7] First, the applicants contend the RAD erred in finding that members of the applicants' families would not be motivated to pursue them. They note that the RPD had accepted the families' motivation to pursue them, but the RAD disagreed on the basis that Ms. Kumari received no further contact from her family after her brother tried to find her in 2014, while she was attending nursing college, and the applicants were able to continue living in Mohali for two years after Mr. Tanwar's stepmother contacted him in March 2016. The applicants say Ms. Kumari gave evidence that her mother-in-law threatened her by telephone in 2017, and when she reached out to her cousin in 2020, she was told that the threats against her life were still ongoing. They argue that evidence of continued threats, including several years after contact, indicates a continuing motivation: *Monsalve v Canada (Minister of Citizenship and Immigration)*, 2022 FC 4 at para 17; *Basra v Canada (Minister of Citizenship and Immigration)*, 2023 FC 707 at para 21. The applicants submit the RAD also erred in finding Ms. Kumari's

evidence to be speculative. She knows her family best, and her description of her family's motives was a reasonable inference given the totality of the evidence. At the judicial review hearing, the applicants added that the police are also agents of persecution "by extension", the RAD did not find that the police lacked motivation, and this is important because the applicants are from a part of India where honour killings are common.

[8] Second, the applicants submit the RAD erred in finding that the families lack the means to pursue them and locate them in the proposed IFA locations. The applicants submit the RAD erred in finding that their families do not have influence over the police, and they point to Mr. Tanwar's evidence that his family helped a politician in his area and Ms. Kumari's evidence that her family can bribe the authorities to locate her. The applicants submit the RAD erred by finding that the families would not be able to leverage political or police connections to locate them using the tenant verification system. They refer to two prior decisions of the RAD, where the RAD had relied on country condition evidence indicating that someone who is determined to find a person of interest in another state of India will succeed and that bribery could motivate the police to find a person: *X (Re)*, 2014 CanLII 24206; *X (Re),* 2019 CanLII 129899. The applicants state the RAD did not find that the tenant verification system is useless, but only that it is flawed, and the RAD expects them to take a gamble with their safety and live in fear and hiding.

[9] I am not persuaded that the RAD erred in the assessment of the applicants' risk in the IFA cities. The RAD considered the objective country condition evidence and found that the tenant verification system is flawed and ineffectual, and police are unlikely to communicate with police agencies in other states to search for people who are not suspected of and wanted for

major crimes. I agree with the respondent that the circumstances of the prior RAD decisions are distinguishable. Those claimants had problems with the police, and there was evidence of actual arrests, threats, violence or bribery to support a serious possibility of persecution. In the applicants' case, the RAD found the evidence regarding the families' political and police connections to be vague and insufficient. I agree with the respondent that the RAD's findings were reasonably supported by the record, including the country condition evidence.

[10] The applicants also argue that the RAD expected them to gamble with their safety or hide in order to be safe. However, the onus was on the applicants to establish that they would be at risk in the IFA locations. The RAD concluded, reasonably in my view, that the applicants had not met their onus to establish risk under the first prong of the IFA test, because they did not demonstrate that the agents of harm have the means or motivation to pursue them.

[11] The argument that the police are also agents of persecution was raised for the first time at the hearing before this Court. The applicants did not make the argument to the RAD or in their memorandum of argument filed in this proceeding, and I decline to consider it.

[12] The applicants also submit the RAD erred on the second prong of the IFA test, as it was unreasonable for the RAD to expect them to seek refuge in the IFA cities in view of the many hardships they would face upon relocation. They submit the RAD reached this conclusion in a speculative manner. They say the RAD acknowledged the wide range of hardships they alleged they would face upon relocation, including the non-portability of entitlements, preferential norms in educational institutions, domicile requirements for state government jobs, the prevalence of

the caste system, traditional values, the diversity of language and culture, exploitation and political exclusion, lack of education, limited access to financial services and resources, and the predominance of agriculture and semi-feudal land relations in India. In answer to these hardships, the applicants contend the RAD merely acknowledged that there are "limitations to relocation in some circumstances" and did not explain why it would be reasonable for the applicants to relocate to the IFAs in light of the enumerated hardships and their particular circumstances. The applicants say the RAD emphasized factors that are independent of context, such as language and employment, and ignored their point that their risk extends throughout India.

[13] In my view, the applicants misinterpret the RAD's reasons on the second prong of the IFA test, which must be understood in the context of the applicants' submissions. In their memorandum of argument to the RAD, the applicants quoted the following extract from one of the documents in the national documentation package for India:

> According to the World Bank, factors that may limit interstate relocation include non-portability of entitlements, preferential norms in educational institutions, and domicile requirements for state government jobs. Other factors, some historical, that limit mobility/interstate migration include: the prevalence of the caste system; traditional values; the diversity of language and culture; exploitation and political exclusion; lack of education; limited access to financial services and resources; and predominance of agriculture and semi-feudal land relations in India.

[14] The applicants did not explain how all these factors applied to them or even allege that they did. Rather, the applicants' arguments focused on the risks that they would face because family members would track them down in the IFA locations. Their memorandum of argument included statements such as, "[i]n normal circumstances [the applicants] would have liked to live

there but in their circumstance, there is a high probability that a past friend, relative or family member or a neighbour may visit or move to these cities," and "[t]he question is not about the hardship associated with relocation, [it's] their life which is at risk…".

[15] In response to the applicants' submissions on the second prong of the IFA test, the RAD noted that certain of their arguments were more suited to the first prong, and that it had considered those arguments in the analysis under the first prong. The RAD's reasons did not acknowledge that the applicants would face the wide range of hardships noted above; rather, the RAD acknowledged that there are limits to relocation in some circumstances. The RAD went on to state that it would be objectively reasonable for the applicants to relocate, in view of the circumstances that were particular to them. The RAD concluded:

> While the Appellants may experience hardships relocating, this does not render an IFA unreasonable. I find this is no different than the situation in which they find themselves in Canada, where they have had to earn money, adjust to a new culture, and live without family support. I accept that there would be some hardships involved in settling into a new city, but I find that these hardships do not render a relocation unreasonable in these circumstances, including the Appellants' profile as an intercaste couple with Canadian-born children.

[16] As the respondent correctly notes, claimants who have a safe haven in their own country are expected to avail themselves of it unless they can show it is objectively unreasonable for them to do so: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15. The fact that a refugee claimant might be physically, economically and emotionally better off in Canada is not a factor to consider in assessing the reasonableness of the internal flight alternative: *Ibid* at para 16.

[17] I agree with the respondent that the RAD considered the applicants' concerns with both IFA cities, and reasonably found they did not rise to a level that would make travelling or relocating to either city objectively unreasonable.

[18] In conclusion, the applicants have not established that the RAD's decision was unreasonable. Accordingly, this application for judicial review must be dismissed.

[19] No party proposed a question for certification. I find there is no question to certify.

JUDGMENT IN IMM-7765-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7765-23
STYLE OF CAUSE:	TAJENDER TANWAR, DIMPLE KUMARI v THE MINISTER OF CITIZENSHIP & IMMIGRATION CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 31, 2024
JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	NOVEMBER 5, 2024

APPEARANCES:

Rajender Singh	FOR THE APPLICANTS
Antonietta F. Raviele	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RST Professional Corporation Barristers and Solicitors Mississauga, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT