

Federal Court



Cour fédérale

Date: 20200417

Docket: IMM-3876-19

Citation: 2020 FC 531

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 17, 2020

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

SURINDER SINGH, BANSAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division (RAD) dated May 20, 2019. The RAD rejected the applicant's claim for refugee protection, thereby confirming the decision of the Refugee Protection Division [RPD] dated August 15,

2017, to the effect that the applicant was neither a Convention refugee under section 96 of the *IRPA* nor a person in need of protection under section 97. According to the RAD and the RPD, there was an internal flight alternative [IFA] in Delhi, Mumbai or Kolkata, India. For the reasons that follow, I am allowing the application for judicial review.

II. Relevant facts

[2] Mr. Bansal is a citizen of India from the Punjab region. He fears the police in his village and the brother of his ex-fiancée intend to murder him under the guise of an honour killing. He claims that he started dating his ex-fiancée on February 2, 2013. They wanted to get married, however, because they were not of the same caste their parents refused to permit their union. After meeting Mr. Bansal in the fall of 2013, his ex-fiancée's parents finally accepted him as a partner for their daughter. An engagement ceremony was held in February 2014. In March 2015, the ex-fiancée's brother returned from Dubai, where he had been working. He did not approve of the marriage. Mr. Bansal says that he was being threatened by the ex-fiancée's brother and that the brother and his friends attacked him, sending him to the hospital. He also claims that the brother was accusing him of kidnapping his ex-fiancée and of being a militant.

[3] Upon leaving the hospital, Mr. Bansal filed a complaint with the local police. The police encouraged the two families to settle their differences amicably. The families reached a settlement on March 23, 2015. Although Mr. Bansal never heard from his ex-fiancée after this date, her brother continued to threaten him. The police refused to help him. Mr. Bansal maintains that the police went to his home on April 30, 2015. He was arrested, falsely accused of associating with militants, and tortured. After his release, Mr. Bansal came to Canada on a

visitor's visa to see his sister. When his application to extend his visa in Canada and his application for a visa to travel to the United States were rejected, he claimed, on May 25, 2015, refugee protection in Canada.

[4] Mr. Bansal states that his parents have informed him since his departure from India that the police in his village are still looking for him. His father was reportedly arrested, interrogated and beaten. The police continue to harass his parents and demand bribes every three to four months, always falsely accusing Mr. Bansal of associating with militants. The brother of the ex-fiancée is also harassing and threatening his parents, even suggesting that Mr. Bansal kidnapped his sister (the ex-fiancée).

III. Decision on judicial review

[5] The RPD found Mr. Bansal to be credible, and his account of events to be truthful. It nevertheless concluded that his problems were localized to his village in Punjab, and that an IFA therefore existed in Delhi, Mumbai and Kolkata, India.

[6] The RAD dismissed the appeal. It noted that there is a two-prong test for determining whether there is an IFA. First, there must be no serious possibility that the individual will be persecuted in the part of the country identified as an IFA or that he or she will, on a balance of probabilities, be personally subjected to danger of torture or a risk to his or her life or a risk of cruel and unusual treatment or punishment in that part of the country. Second, the conditions must be such that it would not be objectively unreasonable in all the circumstances, including those particular to the individual, for the individual to seek refuge there (*Thirunavukkarasu v*

Canada (Minister of Employment and Immigration), [1994] 1 FC 589 (FCA); *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA)). Since I find that the RAD's decision was unreasonable with respect to the first prong of the test, it is not necessary for me to undertake an analysis of the second prong.

[7] With respect to the first prong and Mr. Bansal's fear of the police, the RAD concluded that the documentary evidence was divided and could be interpreted in two ways. On the one hand, some sources maintained that the police would only communicate and conduct interstate searches when serious crimes were involved. On the other hand, other sources stated that such searches may be motivated by simple financial reasons or personal vendettas. Therefore, according to the RAD, the only way to properly assess an IFA was to consider all the information from various sources in the research reports in the national documentation package and apply it to the individual's personal situation, having regard to the evidence. In this case, the RAD concluded that it appears that police forces in India are still not connected and that it is highly unlikely that they would communicate with each other to search for individuals who are not wanted on serious charges. Further, the RAD found that Mr. Bansal had not established that the police in his native village are sufficiently interested in him to search for him outside the village, or that the police in Delhi, Mumbai or Kolkata are in contact with the police in his village. Similarly, with respect to Mr. Bansal's fear of his ex-fiancée's brother, the RAD found that the applicant had not established that the brother is doing everything possible to locate Mr. Bansal in other parts of India. The RAD noted that the engagement had been publicly approved by the parents of Mr. Bansal's ex-fiancée, who had assured him that the brother was simply angry and would eventually get over it.

IV. Relevant provisions

[8] The relevant provisions of the *IRPA* are section 96 and subsection 97(1), which are reproduced in the appendix below.

V. Issue

[9] This case raises the following issue: Did the RAD reasonably conclude that there is an IFA in Delhi, Mumbai or Kolkata, India? This question is subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10; *Brahim v Canada (Citizenship and Immigration)*, 2019 FC 503 at para 13; *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at para 14). When a court reviews a decision on the standard of reasonableness, it “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov*, at para 15).

VI. Analysis

[10] I find that the RAD made three errors that undermine the reasonableness of its decision. First, the RAD concluded that interstate communications between police forces are limited to serious charges. While the RAD may be correct in this conclusion, it is wrong in stating that the charges against Mr. Bansal are not serious. The brother of the ex-fiancée, and/or someone else, were accusing Mr. Bansal of being a militant and of kidnapping someone (the ex-fiancée). The RAD found Mr. Bansal to be credible with regard to his accusations of torture at the hands of the

police and his claim that his ex-fiancée's brother had accused him of kidnapping and being a militant. It seems to me that these two charges (kidnapping and being a militant) are among the most serious. Second, the evidence shows that the brother of the ex-fiancée has contacts within police forces and used those contacts to persecute Mr. Bansal and his family. In light of the findings of the RAD as to Mr. Bansal's credibility, and his statements regarding threats to his parents, his own torture and the allegations against him, it is unreasonable not to conclude that the brother is using his contacts with the police to pressure them to locate Mr. Bansal. Finally, the RAD's conclusion that the brother would eventually accept the situation because the parents of Mr. Bansal's ex-fiancée had publicly approved of their union is mere speculation that runs counter to the facts. All of Mr. Bansal's accusations of persecution by the brother and the police came after the parents' approval of the union. These facts demonstrate the unreasonableness of the speculative conclusion that the brother would accept the situation.

VII. Conclusion

[11] While the burden remains on Mr. Bansal to show that the selected IFA is unreasonable in this case, the burden is on the RAD to provide a transparent, intelligible and reasonable analysis. In this case, I find that there is a discrepancy between the finding regarding Mr. Bansal's credibility and the treatment of the evidence, which led the RAD to conclude that there is an IFA. I allow the application for judicial review and order that the matter be referred back to the RAD for reconsideration. Neither party has proposed a question for consideration by the Federal Court of Appeal, and no question arises from the facts and case law.

JUDGEMENT in IMM-3876-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The matter must be reconsidered by a different member of the RAD.
3. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

APPENDIX

Immigration and Refugee Protection Act, SC 2001, c 27

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

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