

Federal Court



Cour fédérale

Date: 20211115

Docket: IMM-1967-18

Citation: 2021 FC 1234

Ottawa, Ontario, November 15, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

**RAKESH KUMAR SOOD
NARENDER SOOD**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision made by the Refugee Protection Division (“RPD”), in which it was determined that the Applicants, Rakesh Kumar Sood and Narender Sood, were not Convention Refugees or persons in need of protection because they have a viable internal flight alternative (“IFA”) in New Delhi.

II. Background

[2] The Applicants (Mr. Rakesh Kumar Sood and Ms. Narender Sood) are citizens of India. They state that they are from different castes, with Mr. Sood coming from the Sood caste (a “forward” caste) and Ms. Sood coming from the Chhimba caste (an “Other Backward Class” or “OBC”). They were married in March of 2002, and have a daughter and a son. They allege that they face harassment and violence to both themselves and their children because of their inter-caste marriage.

[3] After marriage, they moved in with Mr. Sood’s parents. In July 2009, Ms. Sood alleges she was attacked after speaking at a rally regarding the mistreatment of women. In August 2009, Mr. Sood alleges that men who called his wife a lower caste attacked him. In March 2010, the Applicants divorced, after they state that Mr. Sood’s mother blamed Ms. Sood for the attack on Mr. Sood, threw her out of the house, and pressured him to divorce her. After this divorce, Mr. Sood alleges that Ms. Sood’s family harassed and threatened him. In October 2012, Ms. Sood spoke at another rally, after which she alleges she was arrested and sexually assaulted in police custody, and was accused of becoming a Dalit (lowest caste but not that she belongs to) leader and inciting them against police. She further states that the police “looked for her” in November 2012, and during this same month, Mr. Sood states that he was kidnapped and assaulted by assailants who referred to him as “ruining the lower caste girl’s life.”

[4] Mr. Sood states that he faced harassment at the hands of the Indian Congress Party due to his political beliefs and previous work for two other political parties. He alleges that the Indian

Congress Party used their influence on the police to punish him, leading to false allegations of bribery, beatings at the hands of the police, a break-in at his parents' home, and illegal squatting at his father's properties.

[5] The Applicants say that they separately left India and travelled to the United States. Mr. Sood left India for the United States on November 16, 2012, and Ms. Sood left India for the United States on December 20, 2012. They left their children in India with Ms. Sood's parents. Mr. Sood did enter into a "marriage of convenience" to attempt to sponsor their children, though he did not ultimately go through with their plan. The Applicants made separate claims for asylum in the United States. Ms. Sood's claim was refused and she did not attend her hearing, scheduled for April 2017. Mr. Sood did not have a hearing for his claim. Later that year, the Applicants travelled to Canada, separately seeking refugee protection, though the claims were later joined.

[6] The determinative issue for the RPD was that the Applicants had a viable IFA in New Delhi. The panel assumed the credibility of the Applicants' allegations for the purposes of the IFA analysis, and proposed New Delhi, Mumbai, Kolkata, and Bangalore as IFAs. The RPD found that New Delhi was a viable IFA.

III. Issue

[7] The issue in this case is whether the RPD's conclusion that the Applicants had a viable IFA in New Delhi was reasonable.

IV. Standard of Review

[8] The standard of review is reasonableness. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], at paragraph 23, “where a court reviews the merits of an administrative decision ... the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.” As such, the standard of review in this case is that of reasonableness.

[9] A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting “an internally coherent and rational chain of analysis” when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov*, at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

[10] The test for the existence of a viable IFA is well-settled, and was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]. The two-pronged test, in which both prongs must be satisfied, is as follows:

- i. “... the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.”

- ii. Moreover, conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

A. *Prong 1: Serious Possibility of Persecution*

[11] The first prong asks whether there is a serious possibility of persecution in New Delhi. On this prong, the Applicants submit that the RPD's finding that: 1) the agents of harm would be unable or unwilling to locate them in New Delhi; and 2) they do not have a risk profile such that they would face a serious possibility of persecution on that basis, were unreasonable.

[12] On this first point, the Applicants argue the RPD unreasonably disregarded evidence running contrary to its conclusion. Specifically, in relying on a jurisprudential guide and response to information request, the RPD disregarded two more recent objective country reports on the improved infrastructure for inter-provincial police information sharing in India, as well as another response to information request. The Applicants submit that this information was contradictory to the RPD's finding that the police in New Delhi would be unable to access information about the Applicants' prior interactions with authorities, and thus, the RPD erred in failing to consider this contradictory evidence. The Applicants further submit that the RPD unreasonably disregarded evidence that police came to Ms. Sood's mother's house looking for her, demonstrating their willingness to find her. The Applicants' submission is that the RPD relied on the speculative notion that no information would appear in the record, as no formal charges were laid so they had no criminal record. The Applicants assert that this is not true, as they only stated that they did not know of any formal charges or criminal records arising from

their interactions. Thus, it was speculative for the RPD to infer that there was no such record, only that it was unknown.

[13] On the second point, the Applicants submit that the RPD's conclusion that the Applicants do not have a risk profile leading that leads to a serious possibility of persecution was unreasonable. Specifically, they argue the two tenets of this conclusion – that: 1) Ms. Sood does not have a significant political profile that would attract the attention of the New Delhi police; and; 2) that the attacks faced by Dalits (lowest caste) are not widespread or systemic – are unreasonable.

[14] Regarding their political profile, the Applicants argue that this conclusion was speculative or based on a misapprehension of evidence. They submit that a significant political profile is not required for lower castes to be persecuted. They cite *Muresan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 819 [*Muresan*], for the proposition that when the RPD fails to cite evidence for its view that Applicants would not be at risk of persecution in an IFA, that decision is unreasonable. Regarding the abuse faced by lower castes in India, the RPD stated that it is not “systematic and in every part of India.” The Applicants assert that the RPD's cited source contradicts this by saying that it is systematic, and that the RPD unreasonably concluded that “especially in rural areas” means that the abuse does not occur elsewhere in India. They further submit that such a conclusion – that they are not likely to face persecution in New Delhi – cannot be drawn from the information the RPD is using, as it relates to India as a whole rather than a specific region.

[15] Further on the issue of facing the serious possibility of persecution, the Applicants submit that the conclusion that Ms. Sood will not face a serious possibility of persecution in New Delhi based on her lower caste (Other Backward Caste) ignores evidence. They cite dozens of pieces of evidence in the Application Record regarding conditions in New Delhi, attempting to establish that the RPD's failure to deal specifically with these pieces of evidence renders their decision unreasonable.

[16] Even further, the Applicants argue that the RPD's finding that they would not face a serious possibility of persecution as an inter-caste couple is unreasonable because it misapprehends and ignores the evidence. In weighing the evidence, the RPD concluded that such persecution is less likely in New Delhi, but the Applicants assert that this is unreasonable since IFA determination is not an exercise in relativity; given that persecution does occur in New Delhi, they argue this conclusion was unreasonable. They submit that this relied on some of the evidence rather than the evidence in its entirety, and as such was unreasonable by virtue of being selective.

[17] I do not agree with the Applicants' arguments.

[18] It is settled law that the applicant bears the onus to establish that the IFA is not viable, and in doing so, they are to adduce evidence thereof (*Thirunavukkarasu* at para 5). The Applicants' failure to demonstrate that the Punjab police possess information on her is a relevant consideration in examining whether their ability to transmit this information renders the IFA in

New Delhi to be unsafe. Given the uncertainty, this lack of information is not determinative, but it is impactful.

[19] The RPD, in concluding that the police stations were sufficiently disconnected as to not pose a risk of communication between Punjab police and New Delhi police on this point, weighed the significant amount of evidence before them. The Applicants disagree with the weighing of this evidence by the RPD, but this is not the role of the Court on judicial review (*Vavilov* at para 125).

[20] The RPD used several pieces of evidence to find there was little to no communication between police in different provinces. It was reasonable for the RPD to determine that because neither Applicant has a record or formal charges, and that there is no information to be relayed between police that would allow them to be found in the IFA. There was some evidence concerning sharing of evidence between police in different cities, but the Officer chose to rely on the fact that the Applicants would not even have a profile given a lack of criminal records. Thus, even if there was sharing of information, the police in the IFA would likely not have been alerted as to the Applicants' presence. I do not fault the Officer in relying on the information that there was no such sharing, and that even if there was, the Applicants' lack of criminal records would shield them from being identified.

[21] Reasonableness review tasks a reviewing court with discerning whether the decision is justified, transparent, and intelligible, as well as whether it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at para 86). In

this case, the RPD weighed the evidence before them – of whether there was any police information about the female applicant to be conveyed, as well as the ability of the police departments in India to convey it – and determined that it did not create a serious possibility of persecution in New Delhi. I find this conclusion to be reasonable.

[22] In reaching their conclusion, the RPD concluded that the risk profile of the Applicants is not such that they would face a serious possibility of persecution on that basis. The Applicants disagree with the RPD's consideration of Ms. Sood's "political profile," as well as their consideration of her caste status.

[23] Among other factors set out in their lengthy consideration of the Applicants' risk profile, the RPD held that Ms. Sood did not have a strong political profile or profile as a lower caste rights defender which would attract adverse attention. The Applicants submit that this was an error, as a significant political profile is not required for lower castes to be persecuted, citing several pieces of slightly related evidence. Ms. Sood pointed to a variety of information related to the Dalit caste. The Dalit caste which though similar, the treatment differs from the treatment of her caste. The Officer discusses the situation facing individuals of her caste in great detail. Her political profile is relatively small, and is unlikely to put her in serious risk, even as a member of a low caste. I disagree with the Applicants that the RPD's consideration of political profile means they did not consider other factors. The RPD's conclusion is not based solely on the Ms. Sood's lack of political profile, and they are clearly aware that another risk factor is her low caste. Political profile is just one of the factors the RPD considered, and I do not agree with the

Applicants that the RPD's consideration of, nor conclusion on, it is unreasonable. As such, the case of *Muresan* is not persuasive.

[24] Turning to the next factor, the RPD considers the risks associated with Ms. Sood's lower caste. They acknowledge at length that there are crimes and other un-pleasantries committed against lower caste individuals throughout India. The Applicants cite evidence on the persecution of lower caste individuals throughout India, and assert that the RPD's failure to consider this contradictory evidence renders their decision unreasonable.

[25] The Respondent submits that the conclusion on this point was reasonable. I agree with the Respondent. The RPD's consideration demonstrated that they were aware that lower caste individuals, such as Ms. Sood, face mistreatment in India throughout the country. The RPD noted that it was widespread, but "not systemic." Regardless, their note that it is widespread, coupled with their awareness of the mistreatment of lower caste individuals throughout India, is sufficient to demonstrate they are alive to this issue. It is true, and not in dispute by any of the parties, that lower caste individuals face mistreatment throughout India. The voluminous examples cited by the Applicants establish nothing more than this basic – and unfortunate – concept. Contrary to the Applicants' assertion, the RPD acknowledged this and considered it in reaching their conclusion. However, as noted earlier, the RPD must consider the personal circumstances of the applicant, and not just general evidence concerning other persons who live in the IFA. The RPD does this in great detail, considering Ms. Sood's education (2 degrees and a diploma) and relative ease finding a job, and noting that she reported some issues due to her caste on the job. They also noted that she specifically would be less recognizable as low caste

because she took her husband's name. In sum, it is my view that the RPD did not fail to consider evidence of her possible persecution due to her caste, but rather weighed this general evidence and her specific circumstances, and reasonably came to their conclusion.

[26] The RPD concluded that the Applicants, as a couple, would not face a serious possibility of persecution as an inter-caste couple. The Applicants assert this was unreasonable, as they submit that the RPD's analysis was an unreasonable exercise in relativity and misapprehended the evidence before them.

[27] I find that the RPD considered the fact that inter-caste couples face persecution throughout India generally. Similar to my previous analysis, the RPD was of the view that in the Applicants' personal circumstances, moving to the specific IFA of New Delhi, they had failed to establish they faced the possibility of persecution. This does not mean they were not aware of the persecution of inter-caste couples generally – they clearly and explicitly were. However, again as mentioned earlier, it must be established that these specific Applicants face a serious possibility of persecution in this specific IFA. The RPD weighed the evidence before them – this couple's circumstances, the relatively less mistreatment in urban cities versus rural locales and cultural factors. As well as the fact that many inter-caste couples are eventually accepted and concluded that the Applicants had failed to establish their risk profile was such that they had a serious possibility of persecution in New Delhi. Contrary to the Applicants' submissions while the Applicants are correct that the IFA analysis is not an "exercise in relativity," it is, in a sense, an exercise in probability. The test is not, as the Applicants assert, whether there is a mere possibility of persecution in a proposed IFA. The word "mere" would indicate that the threshold

is low. It is not. Rather, we examine whether there is a serious possibility of persecution in the IFA. In this case, the Applicants would have preferred the RPD decide otherwise. However, I find their arguments amount to a disagreement with the weight afforded to evidence by the RPD, and reviewing this is not the role of this court on judicial review (*Vavilov* at para 125). The RPD's conclusion was reasonable.

B. *Prong 2: Not Unreasonable*

[28] On the second prong of the test, the Applicants argue that the RPD erred for two reasons in concluding that it was reasonable for the Applicants to seek refuge in New Delhi.

[29] First, the Applicants argued that the RPD erred in finding that Ms. Sood did not face any significant barriers to work in New Delhi. The submission was that the RPD ignored several pieces of evidence indicating the difficulty a lower caste person like Ms. Sood would have difficulty finding a job, and the failure to engage with this evidence leads to the conclusion that it was ignored, and renders the decision unreasonable.

[30] Secondly, the Applicants argued that the RPD's conclusion that the Applicants would not face obstacles to finding housing in New Delhi was unreasonable because it ignored contradictory evidence. Specifically, they point to the evidence of police inter-state communication which may impact the ability to obtain a police clearance certificate, and the RPD's failure to consider some relevant evidence suggesting difficulties encountered by inter-caste migrants in New Delhi. They submit that the RPD's failure to engage with this evidence means it was ignored, and the decision is thus unreasonable.

[31] On the question of his barriers to work, the Applicants cite several pieces of evidence which they purport run contrary to the RPD's conclusion. His specific argument is that since these pieces of evidence, in the Applicants' submission, are contradictory, the RPD's failure to mention them renders the decision unreasonable.

[32] I disagree with the Applicants. Again, these pieces of evidence establish the relative difficulty of low caste individuals in finding employment. The RPD does not disagree with this idea. However, this evidence does not, as it is required to, demonstrate that Ms. Sood in particular will encounter such difficulty in New Delhi. This is particularly important given the high bar of this prong of the analysis. The RPD considers this, in tandem with her history of being able to find employment, her high level of education, and concludes that she has not demonstrated an inability to find employment in New Delhi. I consider this conclusion to be reasonable. The RPD has not ignored evidence, but have rather considered the general evidence cited by the Applicants in combination with the specific circumstances of Ms. Sood as argued by her counsel and reached a conclusion based on those. While the Applicants may wish for the RPD to have concluded, or weighed the evidence, in another way, questioning this is not the role of judicial review (*Vavilov* at para 125).

[33] Similarly, on the question of barriers to housing, the Applicants submit that the RPD erred by not concluding that the Applicants, as an inter-caste couple, would encounter difficulty in finding housing. Specifically, they submit several pieces of information on the difficulties encountered by such couples in New Delhi. Again, this evidence relates to the general difficulty faced by such couples, which is accepted by the RPD. The RPD's conclusion on this point was

based on the lack of evidence that the Applicants' own personal circumstances would create such a problem. The RPD considered their personal circumstances, including alleged difficulties with the police, and determined that any difficulties they would encounter in finding housing in New Delhi would not meet this second prong. As noted, establishing this second prong is a high bar, and as such, I find the RPD's conclusion on this point "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at para 86). Similar to several of the Applicants' other arguments, this point equates to an argument that the RPD ignored evidence, when that evidence is in actuality general evidence of country conditions which the RPD considered and weighed against the Applicants' personal circumstances. As such, challenging it equates to a request for reweighing of evidence, which is not the role of this court on judicial review (*Vavilov* at para 125). This conclusion by the RPD was reasonable.

[34] No question was presented for certification and none arose from the argument.

JUDGMENT IN IMM-1967-18

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. No question for certification.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Samuel E. Plett FOR THE APPLICANTS

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

DESLOGES LAW GROUP FOR THE APPLICANTS
PROFESSIONAL CORPORATION
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario