Federal Court  Cour fédérale

Date: 20211210

Docket: IMM-2249-21

Citation: 2021 FC 1396

Ottawa, Ontario, December 10, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MOHAMMAD SALMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mohammad Salman, is a 33-year-old citizen of Pakistan and a Muhajir – Muhajirs are Muslim immigrants and their descendants who migrated from various regions of India to the newly established state of Pakistan in 1947. Mr. Salman is seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated March 5, 2021, which confirmed the decision of the Refugee Protection Division [RPD] dated April 27, 2020, dismissing his claim for

refugee protection on the grounds that he had viable internal flight alternatives [IFAs] in both Islamabad and Hyderabad, Pakistan. Despite accepting that Muhajirs may be discriminated against in Pakistan, the RAD found that there is no evidence to establish that such discrimination rises to the level of persecution or that the Pakistani authorities systemically target Muhajirs.

[2] Although a citizen, Mr. Salman has never lived in Pakistan. In 1986, his grandfather, father and uncles fled Pakistan to Bahrain after the police arrested and assaulted them for their alleged involvement with the Muttahida Qaumi Movement. Mr. Salman was born in Bahrain and has lived there all is life. During his only visit to Pakistan about 13 years ago, from December 2008 to January 2009, Mr. Salman claims that the Karachi police detained, assaulted and subjected him to cruel and inhuman treatment; they accused him of being an Indian agent and a traitor because of his family background.

[3] In February 2014, Mr. Salman married Aiza Salman in Bahrain. Ms. Salman was born in New Delhi from a Hindu “Shastri” family and arrived in Bahrain in September 2007 at the age of 22 in order to work. After meeting Mr. Salman, Ms. Salman converted to Islam and the couple were married in accordance with Islamic traditions. Mr. and Ms. Salman now have three minor children, two of whom were born in Bahrain with Indian citizenship, and one of whom, the youngest, their 1-year-old, was born in Canada.

[4] Neither Mr. Salman’s family nor Ms. Salman’s family accepted their marriage, and after Ms. Salman lost her job in Bahrain in June 2019 and was forced, along with her two children at the time, to return to India to live with her mother and brother, her brother – a member of the

Rashtriya Swayamsevak Sangh – tried to force Ms. Salman to reconvert to Hinduism by threatening and assaulting her. Ms. Salman fled from India in September 2019, after learning about her brother's plan to force her to reconvert to Hinduism and divorce her husband, on pain of death. She made plans with Mr. Salman, who was still living in Bahrain, to meet in Abu Dhabi and to fly to the United States. They eventually arrived in Canada on September 19, 2019, and claimed refugee protection.

[5] The RPD concluded that Ms. Salman's story was credible but that she and her daughters, as Indian citizens, have viable IFAs in Chandigarh, Kochi or New Delhi, India. As for Mr. Salman, the RPD had credibility concerns relating to his purported fear of persecution, in particular his assertion that he was detained and threatened by Pakistani authorities in January 2009; in the end, the RPD concluded that Mr. Salman was in fact not detained or questioned by Pakistani authorities.

[6] In his submissions before the RPD, Mr. Salman referenced an archived Response to Information Request [RIR] dated July 5, 2012, on the state of Mohajirs in Pakistan in support of his claim that he would be persecuted by Pakistani authorities if he was to return to Pakistan. Regardless, the RPD determined that Mr. Salman "brought forth no evidence as to the alleged forward-looking risk that [he] may face at the hands of the Pakistani authorities due to him being a Mohajir." In any event, the RPD determined that Mr. Salman nonetheless had viable IFAs in Islamabad or Hyderabad, Pakistan. Applying the two-prong test for assessing an IFA, the RPD determined that no evidence was submitted establishing any forward-looking risk on the part of Mr. Salman on account of being a Muhajir. The RPD acknowledged that the documentary

evidence established that Muhajirs face discrimination in Pakistan, mostly in respect of government jobs, but not to the level of persecution. In addition, the RPD found that despite the generalized risk of violence in Pakistan, Mr. Salman would not face unreasonable conditions in Islamabad or Hyderabad.

[7] The RAD disagreed with the findings of the RPD as regards the claim of Ms. Salman and her daughters, and found them to be Convention refugees. The present application for judicial review therefore only involves Mr. Salman.

[8] As regards Mr. Salman, the RAD confirmed the decision of the RPD but also refused to accept new evidence in relation to Mr. Salman's claim, in particular a letter from Mr. Salman's friend dated October 21, 2020 – after the RPD decision – describing the treatment of Muhajirs in Pakistan. In addition, Mr. Salman tried to rely upon the RIR to demonstrate that Muhajirs are persecuted throughout Pakistan, however, the RAD refused to rely on the RIR as only partial excerpts from the report were produced by Mr. Salman and the excerpt before the RAD was not dated; the RIR was not part of the National Documentation Package available to the RAD member.

[9] As regards his *sur place* claim, the RAD found that Mr. Salman did not provide any evidence that he had been politically active in protesting against Pakistan while in Canada. In the end, the RAD agreed with the RPD that Mr. Salman had viable IFAs in Islamabad and Hyderabad.

[10] Mr. Salman further argued before the RAD that the RPD breached procedural fairness by not conducting an analysis under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. The RAD found that the issue of a viable IFA was determinative whether the claim falls to be determined either under section 96 or under section 97 of the Act and thus dismissed Mr. Salman's argument on procedural fairness.

[11] For the reasons that follow, I am dismissing Mr. Salman's application for judicial review. In short, I find that the RAD reasonably determined that Mr. Salman has viable IFAs in both Hyderabad and Islamabad. The RAD did not err in not admitting Mr. Salman's friend's letter as new evidence and by not considering the Immigration and Refugee Board report which Mr. Salman tried to submit; nor did the RAD fail to conduct, as argued by Mr. Salman, an analysis under section 97 of the Act or fail to assess Mr. Salman's *sur place* claim.

II. Issues and standard of review

[12] The parties agree that the standard of review in this case is reasonableness; I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). Under the reasonableness standard, the Court should intervene only if the decision under review does not bear "the hallmarks of reasonableness – justification, transparency and intelligibility" and if the decision is not justified "in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[13] The sole issue in this application for judicial review is whether the RAD's decision is reasonable.

III. Analysis

A. *The RAD reasonably refused to admit Mr. Salman's friend's letter as new evidence*

[14] Subsection 110(4) of the Act provides the criteria for new evidence to be admitted by the RAD:

Evidence that may be presented	**Éléments de preuve admissibles**
110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[15] Mr. Salman submits that the RAD failed to consider his friend's letter dated October 21, 2020, in which the friend corroborates Mr. Salman's story of being detained and assaulted by the Karachi police back in 2008/2009. The RAD refused to admit the letter because:

> [w]hile the statement itself is new (postdates rejection by the RPD), the information therein is not. MA states that Muhajirs are treated poorly in Pakistan. He refers to the burial of 25,000 Muhajirs in Margalla Hills while alive. There is no date for this incident. He refers to the Pukka Qila massacre in Hyderabad. This is not new evidence. The events postdate rejection by the RPD. The associate appellant refers to these incidents in his testimony.

[16] Mr. Salman argues that the RAD failed to analyze the letter and misconstrued the evidence. I disagree. The letter clearly did not contain any information that was not already

before the RPD either through other evidence or the testimony of Mr. Salman. As I stated in *Olori v Canada (Citizenship and Immigration)*, 2021 FC 1308, the reporting of facts that were known at the time of the RPD decision for the purpose of generating a new document, in this case the friend's letter, does not make the evidence new. Here, the information was not new, and I see nothing unreasonable in the RAD's determination on this issue.

B. *The RAD did not err by not considering the RIR*

[17] The RAD noted that Mr. Salman relied on an undated extract of the RIR – referred to as the "report" by the RAD – regarding the situation and treatment of Muhajirs. In its decision, the RAD stated:

> . . . This report is not in March 2020 or the January 2021 NDP; it is not part of the February 2020 NDP that was before the RPD at the time of decision. The appellants did not provide the report to RPD or to the RAD. Therefore, I am unable to assess the totality of the report. This report states that Muhajirs may be discriminated against but that there is no persecution. I cannot rely on this report as it is not before me in its entirety.

[18] Mr. Salman submits that the problem started at the RPD hearing. As Mr. Salman's counsel did not have a copy of the RIR with him, the RPD member undertook at the conclusion of the hearing to track it down himself, stating that he should have access to it. As mentioned earlier, it seems the "report" was part of an archived response to information request, which Mr. Salman explained before me was removed from the National Documentation Package for Pakistan prior to the RPD hearing. The RPD eventually considered the RIR and concluded that Mr. Salman nonetheless did not bring forth any evidence of a forward-looking risk. The RPD addressed the RIR as it related to Muhajirs in Islamabad, Lahor and Faisalabad, and concluded

that although there is acknowledged discrimination, such discrimination does not rise to the level of persecution.

[19] The RAD refused to rely on the report because, first, it did not have the entire report before it, and second, the RAD did not know when the report was actually published. Mr. Salman did not submit a complete copy of the report to the RAD.

[20] Mr. Salman now submits that the RAD unjustly failed to consider the RIR, which corroborated Mr. Salman's fear of systematic discrimination in Pakistan, including Hyderabad and Islamabad. Mr. Salman argues that the RAD did not provide sufficient reasons for disregarding the report.

[21] I disagree. Clearly, the RAD reviewed what was available extracts of the RIR as it accepted what was being reported, that is, that Muhajirs were being discriminated against in Pakistan, however, did not find evidence that the level of discrimination rises to the level of persecution. In any event, Mr. Salman provided what seems to be a complete copy of the RIR as part of his record before the Court, however, I have not been shown any part of the RIR that would contradict any of the findings or determinations of the RAD.

C. *The RAD did not fail to conduct a subsection 97(1) analysis*

[22] Mr. Salman is claiming refugee protection pursuant to section 96 and subsection 97(1) of the Act. He submits that the RAD failed to consider his claim under subsection 97(1) of the Act because the test under that subsection does not require a determination of subjective fear of

persecution, but rather a determination that Mr. Salman, if removed, would be subjected to a danger of torture, or to a risk to life or to a risk of cruel and unusual treatment or punishment under certain conditions.

[23] Mr. Salman argues that the elements required to establish a claim under subsection 97(1) differ from those required under section 96 of the Act. I agree and accept the proposition in *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 [*Bouaouni*], that "[a]lthough the evidentiary basis may well be the same for both claims, it is essential that both claims be considered as separate" (*Bouaouni* at para 41; *Shah v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1121 at para 16 [*Shah*]). However, neither *Shah* nor *Bouaouni* concern a situation where an applicant was found to have a viable IFA.

[24] Here, the existence of an IFA is dispositive of the present application (*Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at paras 13, 37-61 [*Solis Mendoza*]). As stated by Mr. Justice Phelan in *Balakumar v Canada (Citizenship and Immigration)*, 2008 FC 20 at paragraph 14 [*Balakumar*]:

> A finding of a valid IFA would generally be sufficient to dispose of a s. 97 claim. However, as I held in *Gnanasekaram v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 297, the Board errs when it makes no analysis of risk (in that case, as here, the risk in Colombo) where the evidence of danger is advanced and not addressed.

[25] Unlike the situation in *Balakumar*, a risk analysis was undertaken in the case of Mr. Salman. Consequently, the finding of a viable IFA disposes of his section 97 claim.

D. *The RAD did not fail to assess Mr. Salman's sur place claim*

[26] Mr. Salman submits that the RAD failed to assess his *sur place* claim. I disagree. The RAD found that "[t]here is no evidence that [Mr. Salman] has been politically active. There is no evidence other than his statements that he will protest. He is not an activist, a journalist, or a blogger. His argument that he will continue to protest is without merit". Mr. Salman failed to point to any evidence that the RAD failed to consider in its assessment of his *sur place* claim. I see nothing unreasonable in the RAD's findings on this issue.

E. *The RAD reasonably found that Mr. Salman has viable IFAs in Hyderabad and Islamabad*

[27] I had occasion to summarize the test for an IFA in *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paragraph 15 [*Feboke*]:

> [15] The decisions in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, have established a two-prong test to be applied in determining whether there is an IFA: (i) there must be no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that the claimant has an IFA. This two-prong test ensures that Canada complies with international norms regarding IFAs (UNHCR Guidelines at paras 7, 24–30).

[28] Mr. Salman submits that the RAD's decision that he has viable IFAs in Islamabad and Hyderabad is unreasonable. He argues that the RAD failed in its assessment of the two-prong test established by this Court in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA); he argues that the RAD failed to accept that the state authorities are the agents of persecution who are targeting him for being a Muhajir.

[29] I disagree. First of all, the onus was on Mr. Salman to negate one of the two-prongs of the IFA test (*Feboke* at para 15; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA); *Solis Mendoza* at para 26; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 13).

[30] In my view, the RAD reasonably applied the two-prong test. I do not agree with Mr. Salman that the RAD failed to accept that the state authorities are the agents of persecution. What we have here is a situation of insufficiency of evidence. The RAD acknowledged that there "is evidence of ethno-political violence in Karachi between Muhajirs and Pashtuns, which has a long history" and that in "the 1990s, the Rangers and police (mostly Punjabi) arrested and harassed young Muhajir men under the guise of security operations". However, the RAD determined that there was "no evidence to establish that the level of discrimination rises to the level of persecution" or to establish that "Muhajir men are systematically targeted by the Rangers or the police, that they are unable to attend school or university, that they are unable to secure employment". It also found there to be "no evidence that [Mr. Salman] is being sought at present by the Pakistani authorities".

[31] As I stated in *Sani v Canada (Citizenship and Immigration)*, 2021 FC 1337, it is not for the RAD to point to every piece of evidence that it took into account in coming to its decision, and the RAD is deemed to have considered all the evidence before it. As recently stated by Madam Justice McVeigh in *Kheimehsari v Canada (Citizenship and Immigration)*, 2021 FC 1149 at paragraph 14:

> [14] I begin my analysis on this point by noting the RAD is presumed to have reviewed the entirety of the evidence before it, whether or not it specifically indicates having done so in its reasons. The onus rests with the party asserting that they failed to do so to prove it (*Jorfi v Canada (MCI)*, 2014 FC 365 at para 31). The Applicant is arguing that the RAD's failure to make specific reference to the bank records went to the root of their findings and rendered the decision unreasonable. The onus is on the Applicant to prove this.

[32] Mr. Salman pointed to six documents which he had submitted to the RAD and which purportedly address persecution being suffered by Muhajirs in Pakistan. However, the documents seem to either address the plight of those involved in the Muttahida Qaumi Movement – of which Mr. Salman indicated he was not a member – or problems in cities other than the proposed IFAs.

[33] In the end, the RAD concluded that Mr. Salman's assertions that the discrimination rises to the level of persecution are unfounded. He has not established any failure on the part of the RAD to take relevant evidence into account in coming to its conclusions, and I have not been persuaded that the RAD's findings are unreasonable.

IV. Conclusion

[34] I would dismiss the application for judicial review. There is no question to certify.

JUDGMENT in IMM-2249-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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