

Federal Court



Cour fédérale

Date: 20220304

Docket: IMM-2549-21

Citation: 2022 FC 306

Toronto, Ontario, March 4, 2022

PRESENT: Madam Justice Go

BETWEEN:

MUHAMMAD NAWAZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Muhammad Nawaz, a citizen of Pakistan and a Shia Muslim, brings an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered by the Refugee Appeal Division [RAD] on March 30, 2021 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD], which determined that the Applicant was neither a *Convention* refugee nor a person in need of

protection under sections 96 and 97 of the *IRPA*. While the Applicant was found to be credible, the existence of a viable internal flight alternative [IFA] in Pakistan was determinative of the claim.

[2] I find the Decision reasonable and I dismiss the application.

II. Background

A. *Factual Context*

[3] In May 2019, the Applicant traveled to Ferozkhal, in the Federally Administered Tribal Areas [FATA] of Pakistan, to attend his uncle's funeral. During the funeral rites, the Applicant stated, in front of about 70 people, that he supported the Army Rangers who made the country safe against the Taliban. Four men shouted that the Applicant ought to be killed because he was a Shia and a blasphemer. As a result, the Applicant's cousin removed him from the funeral and took him to Peshawar, in the province of Khyber Pakhtunkhwa [KP].

[4] A few days later, four men approached the Applicant's cousin, demanding to know the Applicant's whereabouts. The cousin answered that the Applicant was in Peshawar without specifying where within that city. In June 2019, while in Peshawar, the Applicant and his brother were shot at by four men on motorbikes. The Applicant was not injured, but his brother died. Both the RPD and the RAD accepted that the Tehrik-e-Taliban [TTP] was responsible for this attack.

[5] One week following this incident, the Applicant fled to Canada. In December 2019, he made a refugee claim.

B. *RPD Decision*

[6] While finding the Applicant to be credible, the RPD found that the Applicant had a viable IFA in Hyderabad. The RPD found that, on a balance of probabilities, the TTP would not find the Applicant in Hyderabad, due in part to Pakistan's large population and geography, noting that Hyderabad is 1,200 kilometres away from both Peshawar and the FATA where the alleged incidents occurred. The RPD also found that the Applicant had not established that the TTP would have the means to locate him in the proposed IFA location, based on documentary evidence indicating that there is a lack of cohesion among TTP groups, hindering their abilities.

[7] The RPD noted that internal relocation may not be viable where a claimant is subject to criminal prosecution under Pakistan's blasphemy laws. However, it found that the Applicant had not provided evidence that official blasphemy charges were laid against him. The RPD found that, on a balance of probabilities, the Applicant would not face a serious possibility of persecution or risk of harm in Hyderabad on the basis of the verbal blasphemy allegation made against him during his uncle's funeral.

[8] The RPD also concluded that the Applicant had not established that the TTP would have the motivation to pursue him if he were to relocate to Hyderabad. Lastly, the RPD found that it would not be unreasonable, in all of the circumstances, including those particular to the Applicant, to seek refuge in Hyderabad.

C. *Decision under Review*

[9] The RAD found that on a balance of probabilities, the TTP is not motivated to track down the Applicant, considering his profile. It also found that there was no evidence that the TTP continues to search for the Applicant, or is even aware that he had left Pakistan. The RAD found that there was no evidence that the TTP has disseminated the Applicant's identity through their network, or that individuals who attacked the Applicant have any influence in their organization. It also noted that there was no evidence that the Applicant has been formally accused of blasphemy.

[10] The RAD acknowledged that the TTP was present in Hyderabad, where they practice extortion, but found that there was no evidence that the Applicant would be extorted. The RAD concluded that the RPD was correct to find that the Applicant was safe from his agents of persecution in the proposed IFA.

[11] The RAD also concluded that the Applicant had not established a serious possibility of persecution in the proposed IFA on the basis of his Shia identity.

[12] The Applicant raised no argument regarding the reasonableness of the IFA on appeal to the RAD. The RAD found that it would not be unreasonable for the Applicant to relocate to Hyderabad.

III. Issues and Standard of Review

[13] The Applicant submits that the RAD erred in (1) finding the TTP did not have the ability to track the Applicant in the proposed IFA, (2) finding the TTP lacked motivation to pursue the Applicant and (3) failing to consider the state as an agent of persecution.

[14] Both parties submit that the standard of review is reasonableness: *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. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[15] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov*, at para 100.

IV. Analysis

A. *Did the RAD err in finding the TTP did not have the ability to track the Applicant to the proposed IFA?*

[16] The Applicant cites several errors with respect to the RAD's finding that the TTP did not have the ability to track the Applicant to the proposed IFA.

[17] First, the Applicant submits that the RAD erred by requiring the Applicant to provide evidence that his identity had been disseminated through TTP's network, or that the individuals who attacked him were influential leaders within the TTP. He contends that this evidence could only emanate from the TTP itself. I reject this argument. The Applicant carried the burden to establish, on a balance of probabilities, that he faces a serious risk of persecution or harm in the IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 163 NR 232 [*Thirunavukkarasu*]. The burden is thus on the Applicant to establish, on concrete evidence, that the proposed IFA is not viable, even though he is found to be credible: *Alvarez v Canada (Citizenship and Immigration)*, 2009 FC 1164. It was thus reasonable for the RAD to require the Applicant to provide evidence to demonstrate risks.

[18] The Applicant further submits that the fact that he was located and attacked in Peshawar shows that the agents of persecution, who are "based in Ferozkhal", "clearly had some level of influence within their network and allies...." I note that the RAD did consider the fact that the TTP was able to locate and attack the Applicant in Peshawar. The RAD however noted that

Peshawar is part of a TTP stronghold, making it easier for them to find the Applicant. The RAD's assessment is reasonably supported by the country condition evidence.

[19] Next, the Applicant submits that the RAD selectively relied on documentary evidence and failed to address contradictory evidence. The Applicant pleads that the RAD relied on evidence dating from 2017 and earlier when finding that the TTP is not a cohesive group and that their ability to plan and execute operations is decreasing, yet failed to consider contradictory evidence. Specifically, the Applicant argues that included in the evidence that the RAD failed to mention was a 2020 Response to Information Request [RIR], which indicated that “Noor Wali's appointment appears to have unified the TTP factions under his command”, that “recent terrorist attacks perpetrated by TTP in Pakistan are glaring evidence of its increased unity”, and that legitimate targets for attack include “communities of non-believers [...]who are observed to be working in collaboration with the Pakistani state, or are guilty of insulting Islam.”

[20] The Respondent, on the other hand, submits that contrary to the Applicant's assertion, the RAD did consider the 2020 RIR. It contends the RAD specifically noted some of the evidence found in the document.

[21] My review of the Decision shows that the RAD conducted an independent review of the documentary evidence contained in the National Documentation Package [NDP] and noted the following:

- The TTP is an umbrella with groups coming and leaving. Their preferred targets are security forces;

- Reports state that there has been a decline in the activities of the TTP attributed to increased military offences by the Pakistani state;
- Unlike the Lshkar-e-Jhangvi [LeJ], the TTP is not an anti-Shia organisation, though they may sometime align themselves with the LeJ;
- A report from 2019 states that each year the frequency of sectarian attacks has reduced since the launch of a military operation in 2014;
- The FATA and KP are the TTP’s strongholds, where the Applicant had his two encounters with the TTP. Hyderabad is not located in a Taliban stronghold and is geographically removed from both the FATA and KP;
- The TTP is a loose agglomerate of approximately 40 Islamists factions and tribal factions. In 2014 and 2017, the Pakistani state launched major offensives against the TTP, reducing their ability to plan and execute operations;
- In major cities, the TTP is present and extorts business owners, maintaining control over cities, particularly Karachi;
- Since 2014, the TTP is internally divided.

[22] While I note that the RAD did not refer to all the evidence specifically referenced by the Applicant that contradicts its finding that the TTP is fragmented, the Decision did reference Murti Noor Wali Mehsud as the current leader of the TTP. Further, I agree with the Respondent that the RAD did not have to refer to all the evidence, and my role is not to reweigh the evidence that was before the RAD.

[23] The Applicant submits that this Court dealt with a similar issue recently in *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*]. In *Ali*, Justice Russell found that the RAD’s conclusion that the TTP would not have the operational capacity or geographic reach to find or pursue the Applicants in Hyderabad because it does not operate as a unified, integrated organization, fails to take into account more recent evidence that conflicts with such a conclusion: at para 56. The Applicant submits that as in *Ali*, the RAD in the present case ignored

recent evidence of the TTP's unification. The Applicant cites several other cases in support of his arguments.

[24] In my view, the cases cited by the Applicant can be distinguished on facts. Here, I refer only to *Ali*, as it also concerned the TTP. In *Ali*, there was evidence that the Taliban knew the applicants had moved to Canada and were threatened with death if they returned to Pakistan. They were identified by the Taliban as “enemies of Islam who have assisted a foreign power”: at para 55. In reaching a conclusion that the RAD had erred by failing to consider the evidence, the Court noted that “the RAD's mistakes about the Applicants' profile cannot be separated from the issue of the TTP's motivation to pursue the Applicants. They are not ordinary people who have not been targeted and who are unlikely to be targeted”: at para 58.

[25] With respect, these considerations are not present in this case. The Applicant went to his uncle's funeral in May 2019. The TTP approached his cousin a few days later. The Applicant's brother was killed in June 2019, and he left for Canada the following week. Based on the Applicant's own evidence, nothing happened between June 2019 and the time of his RAD hearing in January 2021. There was no evidence that the Applicant's family – or his cousin for that matter – was approached by the TTP, and no evidence that the Applicant himself has received further threats from the TTP, either in Pakistan or in Canada. Given these facts, and the RAD's assessment of the country condition evidence, I find the RAD did not err in concluding that, on a balance of probabilities, the Applicant has not established that the TTP would have the means to locate him in Hyderabad.

B. *Did the RAD err in finding the TTP lacked motivation to pursue the Applicant in the IFA?*

[26] The Applicant pleads that the RAD unreasonably found the TTP did not have the motivation to pursue the Applicant in Hyderabad. He submits that while the RAD found that the TTP's preferred targets are "symbols of the state", it failed to consider that the Applicant had been targeted because he spoke in support of the state, which makes him a preferred target for the TTP. More broadly, the Applicant pleads that it was unreasonable for the RAD to accept that members of the TTP travelled to Peshawar to locate and attack the Applicant, but to find that the agents of persecution lacked the motivation to pursue him to Hyderabad.

[27] The Applicant further submits that it was unreasonable for the RAD to rely on the fact that there had been no incidents since the June 2019 incident, and that the TTP had not contacted his family, to establish that the TTP lacked the motivation to pursue him in the IFA location. He pleads that it is unreasonable for a decision-maker to find that an applicant's family would necessarily be approached by his or her agents of harm: *Reyad Gad v Canada (Citizenship and Immigration)*, 2011 FC 303 at para 11. He also contends that the RAD's assertion that the TTP was unaware that the Applicant had left Pakistan was speculative.

[28] The Applicant, in my view, misapprehends the test for IFA, which puts the burden on him – not the RAD – to present sufficient evidence to satisfy the RAD that he would be at risk in the proposed IFA: *Thirunavukkarasu*. The RAD, in this case, considered the lack of attempts of the TTP to search for the Applicant, in conjunction with the rest of the evidence before it prior to concluding that the TTP lacked motivation to pursue the Application in the proposed IFA. The

RAD's findings are reasonably supported by the evidence before it, and it is not the Court's role to reweigh the evidence.

[29] The Applicant pleads that the RAD's finding that the TTP only targets security forces and journalists is unreasonable. He submits that this finding is contradicted by evidence indicating "legitimate targets for attacks" include "communities of non-believers who are observed to be working in collaboration with the state, or are guilty of insulting Islam."

[30] In contrast, the Respondent submits that it was reasonable for the RAD to consider the profile of the Applicant's agents of persecution. It contends the reason the RAD noted that there was no evidence that the men who attacked the Applicant in Peshawar were influential is due to the fact that the TTP is a fragmented group and that the proposed IFA is not in a TTP stronghold.

[31] I find it reasonable for the RAD to determine that the Applicant does not "fit" into the categories of preferred targets for the TTP based on the country condition evidence. I also find it reasonable for the RAD to conclude just because the Applicant was located and attacked by the TTP in one of their strongholds does not mean that the TTP will be motivated to track him down in Hyderabad, which is geographically removed and is not part of a TTP stronghold, especially since there is no evidence that the TTP has pursued the Applicant for the last 1.5 years or is still pursuing the Applicant.

[32] The Applicant further submits that the RAD's finding that the TTP does not target the Shia is contradicted by evidence in the NDP, citing a January 2017 document, which states that

the TTP is amongst the groups that are responsible for most of the attacks against Shia in Pakistan and that there has been an increase in sectarian violence since 2012. He also points to a February 2019 report, which states that “Shia continue to face a threat from anti-Shia militant groups, including LeJ [...] and factions of the TTP.”

[33] My review of the Decision shows that the RAD was aware that violence against the Shia exists in Pakistan, and its reasons show that this issue was considered. The RAD was also aware that the TTP sometimes align with the LeJ, an anti-Shia organization.

[34] While the Applicant points to evidence that the TTP are responsible for attacks against the Shia and that sectarian violence is increasing, I agree with the Respondent that it does not make it unreasonable for the RAD to rely on the evidence indicating that there was a decreasing number of sectarian violence incidents from 2013 to 2018. I also note that the Applicant has relied on evidence dated in 2017 to support his claim that “sectarian violence targeting Shi’ite groups had increased since 2012”, whereas the RAD reasonably relied on more recent evidence, a report dated 2019, to assert that sectarian violence has decreased since 2014.

[35] At the end of the day, the Applicant’s arguments amount to disagreements with the RAD’s weighing of the evidence. Disagreements with a decision-maker’s assessment and weighing of the evidence that was before him do not give rise to a reviewable error: *Mohamud v Canada (Citizenship and Immigration)*, 2021 FC 1140 at para 22.

[36] The Applicant argues that the RAD failed to consider that in order to live safely anywhere in Pakistan, he would have to hide his whereabouts from his family. I find the argument lacks merit in view of the absence of evidence that the TTP has targeted his family – who has been living in the same location – to pursue the Applicant. Additionally, this argument is raised for the first time on judicial review.

C. *Did the RAD unreasonably fail to consider the state as an agent of persecution?*

[37] The Applicant submits that the RAD failed to consider the state as an agent of persecution. He notes that one of his principal allegations was that he was accused of blasphemy, but that the RAD failed to address the risk associated with this accusation. The Applicant argues if the RAD has concerns about his lack of documentary evidence to establish that a blasphemy case had already been launched against him, the RAD was required to consider whether this evidence would have reasonably been expected to be available, given that the RAD found him to be credible: *Senadheerage v. Canada (Citizenship and Immigration)*, 2020 FC 968, [2020] 4 FCR 617 [*Senadheerage*] at para 28.

[38] I reject the Applicant's submission. Albeit briefly, the RAD did consider this issue in the Decision. Its conclusion that there is no evidence that the Applicant has been formally accused of blasphemy, no police report has been issued against him, and no court proceedings initiated is reasonably supported by the totality of the evidence before it. *Senadheerage* can be distinguished, as the RAD in that case unreasonably sought corroboration because of its flawed implausibility findings without any explicit reasons. That is not the case here.

[39] The Applicant pleads that even if police reports accusing him of blasphemy had been filed, or formal blasphemy charges had been brought against him, it would be nearly impossible for him to know or to obtain evidence of such reports/charges given these are not public documents and are not easily obtainable. The Applicant pleads that even if there are currently no police reports of formal charges against him, the RAD ought to have also considered the forward-looking risk from the state should the agents of persecution launch charges against him in the future.

[40] Even if I am to accept the difficulties for the Applicant to obtain physical proof of a police report, it does not render the RAD's conclusion unreasonable in light of the complete absence of evidence that any charges have been laid since the Applicant left Pakistan in 2019.

V. Conclusion

[41] The application for judicial review is dismissed.

[42] There is no question for certification.

JUDGMENT in IMM-2549-21

THIS COURT'S JUDGMENT is that:

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

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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