

Federal Court



Cour fédérale

**Date: 20220517**

**Docket: IMM-4990-21**

**Citation: 2022 FC 730**

**Ottawa, Ontario, May 17, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**FAIZALMAHMED ISMAIL DESAI  
FATMABIBI FAIZALMAHMED DESAI  
SIDDIQAH FAIZALMAHMED DESAI  
FARIHA FAIZALMAHMED DESAI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Nature of the Matter**

[1] The Applicants are a husband (the PA) and wife and their two minor children. They are all citizens of India who fled to Canada fearing they would be persecuted on the basis of their religion as Muslims and the PA's political activity

[2] Both the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD) rejected their refugee claims.

[3] The RPD found the Applicants were credible but they had a viable internal flight alternative (IFA) in Hyderabad. The RAD upheld the decision of the RPD.

[4] For the reasons that follow, this application will be granted. The matter will be returned for redetermination by a different decision-maker.

## II. **Background Facts**

[5] In 2016, the PA was elected as the deputy Sarpanch of his small village in Gujarat.

[6] The risk stated by the PA was that in June 2019 he had been wrongly accused by powerful Hindu villagers of forcing a Hindu girl to run away and elope with a Muslim boy. On August 11, 2019, several Hindu villagers circled the PA's car and threatened to rape his wife and daughter.

[7] While the PA reported the matter to the police they took no action, saying the attackers were well-connected politically.

[8] On August 22, 2019, the Applicants fled to Canada using visas they had already obtained.

III. **The RPD decision**

[9] The PA indicated to the RPD that he desired to remain politically active and feared that he would be perceived as a high-profile supporter of interreligious marriage because the agents of persecution had powerful connections throughout India.

[10] The RPD assessed the risk in Hyderabad as follows:

[13] The only problem the claimants had in the past was the male claimant being suspected of being involved in a Muslim boy running off with a Hindu girl. Is there a serious possibility that, if the claimants relocated to Hyderabad, that (*sic*) another Muslim boy would run off with a Hindu girl and that the male claimant would be suspected of complicity in same? I do not so find. It is far too speculative, and sheer speculation is not a valid basis for a determination.

[11] The RPD concluded that the Applicants would be free from a serious possibility of persecution in Hyderabad.

IV. **Submissions to the RAD**

[12] The submissions to the RAD were drawn from the BOC and the findings made by the RPD.

[13] The submissions pointed out that the RPD accepted the appellants were generally credible. It accepted that there was corroborating evidence demonstrating the PA had been elected Sarpanch, and that the PA had been targeted by Hindu extremists, a result of a Muslim

boy running away with a Hindu girl. The RPD did not dispute that the appellants would be similarly targeted if they returned to Gujarat.

[14] The Applicants specifically stated that, among other reasons, the PA would be targeted wherever he chose to reside in India for two reasons. One was the basis of the perception that he had supported an inter-religious affair. The other was that even if the first did not occur, the PA was politically active and any future political activity would put him at risk at the hands of the same groups of people who would pursue him for the first reason.

[15] Detailed submissions to the RAD were that the RPD entirely ignored the important submission that the PA would be located and targeted anywhere because he was perceived to be a high-profile supporter of inter-religious marriage or of the Muslim cause, based on the fact that the people who targeted him had powerful connections throughout the country. In other words, he would face retribution in any IFA based on his previous activity and his desire to continue to be politically active.

#### V. **The RAD decision**

[16] The RAD upheld the conclusion by the RPD that the evidence did not establish the Applicants face a serious possibility of persecution in Hyderabad because the PA was wrongly accused of assisting an interfaith couple to elope in Gujarat state. The RAD also found there was no evidence of the motivation and means of the individuals to find the Applicants in Hyderabad.

[17] The problem with the RAD decision is found in paragraph 9:

[9] Counsel did not contest the RPD 's finding that it was speculative to argue that the Appellants would face the same problems in Hyderabad as they faced in Gujarat state on the basis that they are Muslim and Mr. Desai wishes to continue to be involved in politics there. Since the Appellants do not contest this finding, it is sufficient for me to state that I have reviewed all of the evidence relating to this finding and that I agree with it for the reasons given by the RPD at paragraph 13 of its decision. Specifically, I do not find that the evidence establishes that the Appellants would face a serious possibility of persecution or a likelihood of serious harm in Hyderabad because some (*sic*) Mr. Desai was wrongly accused of assisting an interfaith couple to elope in Gujarat state.

[18] The RAD adopted the very narrowly defined risk set out by the RPD: a Muslim boy runs off with a Hindu girl with the perceived assistance of the PA.

#### VI. **Issue and Standard of Review**

[19] The Applicants raise a single issue: Did the RAD err by misconstruing the nature of the risk the Applicants faced, thereby misconstruing the fundamental basis of the PA's claim?

[20] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada extensively reviewed the law of judicial review of administrative decisions. It confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain limited exceptions which do not apply on these facts: *Vavilov* at paragraph 23.

[21] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality,

rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review: *Vavilov* at para 13.

[22] 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. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

## VII. Analysis

[23] When the RAD adopted paragraph 13 of the RPD decision it repeated an error made by the RPD.

[24] Paragraph 13 of the RPD decision has previously been set out but, for simplicity, I will repeat it here, together with paragraph 12:

[12] The male claimant testified that, if returned to India, he would wish to continue his political activity, and this would raise his profile such that he would encounter the same problems as he had in the past.

[13] The only problem the claimants had in the past was the male claimant being suspected of being involved in a Muslim boy running off with a Hindu girl. Is there a serious possibility that, if the claimants relocated to Hyderabad, that another Muslim boy would run off with a Hindu girl and that the male claimant would be suspected of complicity in same? I do not so find. It is far too speculative, and sheer speculation is not a valid basis for a determination.

[25] The reference in paragraph 12 to the “same problems” is made clear in paragraph 13 as being “a Muslim boy running off with a Hindu girl”.

[26] The fear expressed to the RPD and the RAD by the PA though was actually multi-part: a Muslim, who was politically active, as well as being a person perceived to have assisted an inter-faith marriage and someone who would be targeted by right wing fundamentalist Hindu groups and their supporters or sympathizers as a high profile supporter of the Muslim cause.

[27] When assessing a person’s risk on being returned to their country of origin it is important to consider the profile of the person at risk. By adopting paragraph 13 of the RPD decision, the RAD accepted, without analysis the very narrow risk profile articulated by the RPD rather than the broader risk profile actually submitted, and documented, by the PA to both the RPD and the RAD.

[28] The Respondent counters that, when reviewing a decision, it is important not to review phrases in isolation or look at a decision under a microscope to try to find an error.

[29] I agree. However, it is not necessary to isolate phrases or use a microscopic analysis to see that the RPD’s statement of the PA’s profile is a very specific and narrow description of the multi-part risk actually put forward by the PA.

[30] Read holistically, in the context of the IFA analysis and in light of the appeal record, it is unclear precisely what the RAD affirms and denies in the RPD’s reasons.

[31] The RAD concluded there is no evidence to establish a serious possibility of persecution in Hyderabad because the PA was wrongly accused of assisting an interfaith couple to elope in Gujarat, “for the reasons set out in paragraph 13 of the RPD Decision”. However, paragraph 13 makes an entirely different point. The RPD found it was speculative that another interreligious marriage, of the same nature as that in Gujarat and carrying the same consequences of false accusations and attacks, would occur in Hyderabad.

[32] This very narrow finding, which neither party contests, cannot then be used to justify a bald conclusion that it is speculative that the Applicants would face retribution from Hindu fundamentalist groups and their sympathizers on the basis of the Gujarat incident.

[33] The RAD’s failure to consider the claim as it was put forward by the Applicants resulted in a misconception of the facts relied upon in the assessment of the likelihood of persecution in the IFA. Misconstruing the facts and evidence that constitute the basis of a refugee claim is an unreasonable and reviewable error: *Champagne v Canada (Citizenship and Immigration)*, 2009 FC 1204 at paras 57-58.

[34] A decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, such that the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126. The Applicants’ claim for refugee protection was based on the PA’s profile as “a politically active Muslim, facing a serious risk of being targeted by Hindu extremists based on his beliefs, religion, political activities and activism”. Here, in



narrowing the Applicants' basis of claim as was done by the RPD, the RAD failed to take the evidentiary record and general factual matrix into account. In my view, this renders the decision unreasonable.

VIII. **Conclusion**

[35] For all the foregoing reasons, this application is granted.

[36] The decision is set aside and the matter will be returned to the Refugee Appeal Division for redetermination by a different member.

**JUDGMENT in IMM-4990-21**

**THIS COURT'S JUDGMENT is that:**

1. This application is granted
2. The decision is set aside and the matter will be returned to the Refugee Appeal Division for redetermination by a different member

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4990-21

**STYLE OF CAUSE:** FAIZALMAHMED ISMAIL DESAI, FATMABIBI  
FAIZALMAHMED DESAI, SIDDQAH  
FAIZALMAHMED DESAI, FARIHA  
FAIZALMAHMED DESAI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** MAY 4, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** MAY 17, 2022

**APPEARANCES:**

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