

Federal Court



Cour fédérale

Date: 20220712

Docket: IMM-7244-21

Citation: 2022 FC 1018

Montréal, Quebec, July 12, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

ASIF AMIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Asif Amin seeks judicial review of the decision the Refugee Appeal Division [RAD] rendered on September 20, 2021. The RAD dismissed Mr. Amin’s appeal, confirmed the Refugee Protection Division [RPD]’s decision that Mr. Amin is neither a Convention refugee, under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] nor a person in need of protection, under subsection 97(1) of the Act.

[2] For the reasons set out below, the application for judicial review [the Application] will be dismissed.

[3] Mr. Amin is a citizen of Pakistan. On September 17, 2019, holding an American Visitor's Visa, he left Pakistan for the United States, crossed by foot into Canada, without his passport, and claimed refugee status. He based his claim on fear that religious extremists from Sipah-e Sahaba Pakistan would kill him.

[4] On April 14, 2021, the RPD heard Mr. Amin's claim, where he testified, and on April 23, 2021, the RPD denied his claim. The RPD made two (2) determinative findings, one on credibility and the other on the existence of a viable Internal Flight Alternative [IFA] in Karachi or Islamabad.

[5] As its conclusion on credibility, at paragraph 21 of its decision, the RPD found that Mr. Amin had not established with credible evidence that there is a serious possibility of a well-founded fear of persecution pursuant to section 96, nor that on a balance of probabilities he would face a risk to his life pursuant to subsection 97(1) of the Act.

[6] Mr. Amin appealed the RPD decision before the RAD and raised issues in regards to credibility, his religion and IFA. Notably, in regards to his religion, which underpins his *sur place* claim, Mr. Amin challenged only the credibility of his conversion from Sunni to Shia Muslim.

[7] The RAD noted the RPD's credibility conclusion at paragraph 19 of the RAD's decision, and did not quash or infirm said conclusion. It noted that the only question that remained before the RAD was the issue of the IFA in Islamabad, rejected the appeal and confirmed the RPD's conclusion. Ultimately, the RAD unequivocally confirmed the RPD decision.

[8] Before the Court, Mr. Amin did not challenge or take issue with how the RAD addressed, or failed to address, the RPD's credibility finding. Before the Court, Mr. Amin submits that the RAD (1) erred in its assessment of his *sur-place* claim; (2) erred in assessing the issue of IFA; and (3) failed to provide justifiable reasons for a number of its findings.

[9] I agree with the Minister that, even if I had found a reviewable error in the RAD's decision on the grounds raised by the Applicant, in any event, I could not have quashed it and sent it back because the decision would still stand on the uncontested credibility finding. However, in any event, Mr. Amin has not met his burden to establish that the RAD's conclusions in regards to the IFA are reviewable on the grounds raised.

II. **Decision**

[10] I agree with the parties that the presumptive standard of review is reasonableness, and nothing refutes the presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[11] When the reasonableness standard of review is applied, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus

must be “on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision is “based on an internally coherent and rational chain of analysis and [...] is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

[12] In regards to his *sur place* claim, Mr. Amin takes issue with the RAD’s confirmation of the RPD’s conclusion as it pertains to how the agents of persecutions would learn of his conversion. It is useful to note that the RAD indicated that the Applicant had not challenged this conclusion in his appeal, and went on to confirm that it had examined the evidence on record and agreed with the RPD. Before the Court, Mr. Amin submits that once the RAD chose to examine a RPD conclusion, it triggered a duty for the RAD to conduct a full analysis of all the facts of this particular issue, despite the fact that these issues were not raised or argued by the Applicant as part of his appeal. I disagree. First, the case law recognized time and time again that an administrative decision-maker cannot be faulted for not analyzing an issue that was not raised before it. Second, concluding as the Applicant suggests would amount to shift the burden from the Applicant to the RAD. This argument cannot succeed.

[13] In regards to the IFA, Mr. Amin submits that the RAD ignored relevant evidence and applied the wrong legal test.

[14] On the first issue, the Applicant has clearly indicated, in his submissions before the RAD, that he feared from his persecutors once he would have *registered* in the suggested IFA. In this

regard, the RAD noted there was no evidence to support the allegation that the agents of prosecution would obtain personal tenant registration information following a collaboration with police. The RAD added that in any event, the Applicant did not have the profile of a person of interest and that on the contrary, the evidence indicates that, regarding the treatment of Shia Muslims in Islamabad, almost nothing happens because the police surveillance is excellent. This is supported by the record. Hence, given that the decision-maker has no obligation to refer to every piece of evidence they took into account, that they are presumed to have considered all of the evidence before reaching a decision (*Placide v Canada (Citizenship and Immigration)*, 2009 FC 1056 at para 44; *Anand v Canada (Citizenship and Immigration)*, 2007 FC 234 at para 21; *Florea v Canada (Minister of Employment and Immigration) (FCA)*, [1993] FCJ No 598; *Hassan v Canada (Minister of Employment and Immigration) (FCA)*, [1992] FCJ No 946), and that the RAD's conclusion is supported by evidence, I find no reviewable error in its conclusion.

[15] On the second issue, I am satisfied that the RAD cited the appropriate test and legal standard for the first prong of the IFA test at paragraph 21 of its decision. I am also satisfied that paragraph 17 of the decision refers to a factual finding and that, in any event, the Applicant has not establish that the RAD's reasons, taken as a whole, demonstrate that he was put to an unduly onerous burden.

[16] Finally, and contrary to Mr. Amin's arguments, I am satisfied that the RAD provided reasons which meet the requisite degree of justification, intelligibility and transparency as required by the Supreme Court in *Vavilov*. The RAD proved to be responsive to the arguments raised by the Applicant.

[17] The RAD's decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker, per the teachings of *Vavilov*. For these reasons, the Application will be dismissed.

JUDGMENT in IMM-7244-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No costs are awarded.
3. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7244-21

STYLE OF CAUSE: ASIF AMIN V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY ZOOM VIDEO CONFERENCE

DATE OF HEARING: JULY 7, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: JULY 12, 2022

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