

Federal Court



Cour fédérale

Date: 20220718

Docket: IMM-6137-21

Citation: 2022 FC 1059

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 18, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

RAMESH KUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ramesh Kumar, is a citizen of India seeking judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision rendered by the Refugee Appeal Division [RAD] on August 28, 2021, confirming a decision of the Refugee Protection Division [RPD] dated March 12, 2021. The issue before the RPD and the

RAD was whether an internal flight alternative [IFA] was available in Mumbai. Having conducted the two-pronged test for establishing the existence of an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*]), the RAD concluded that there was a viable IFA in Mumbai.

[2] I am not persuaded that the RAD's decision is unreasonable; therefore, for the reasons that follow, I am of the view that the application for judicial review should be dismissed.

II. Background

[3] Mr. Kumar was born and raised in a village in Haryana, a state in northern India, where he worked on the family farm. His wife and two young children aged 7 and 4 are still in India. Mr. Kumar's brother became friends with a man who had ties to a criminal group whose leader was wanted by the police. The police were unable to find the leader of the criminal group and began targeting Mr. Kumar's brother and his friend. The police arrested, detained and tortured his brother twice, in July and December 2016, and falsely accused him of being involved in the criminal group. With the help of influential people, his family was able to bribe the police to release him.

[4] After killing the leader of the criminal group, the police began to search again for Mr. Kumar's brother, who had gone into hiding in another city. On April 9, 2017, the police raided the Kumars' family residence and, not finding his brother, arrested Mr. Kumar. At the police station, officers took his fingerprints, photographed him and had him sign a blank piece of paper. The police tortured Mr. Kumar to extract a confession about his involvement in the

criminal group and to obtain information about his brother. Mr. Kumar's father bribed the police to release him; however, they continued to harass him because they were still unable to find his brother. After he attempted to file a complaint against the police in August 2017, Mr. Kumar endured even more harassment and threats from them.

[5] On December 12, 2017, the police again raided the family home, seeking to arrest Mr. Kumar on the basis of information it had allegedly received that confirmed his involvement in the criminal group. Mr. Kumar was not there, but the police were able to arrest him by ordering his father to bring him to the police station. Mr. Kumar was again tortured while in detention, and then on December 14, 2017, after his family had paid a bribe to the police, he was released on condition that he report monthly to the police with information on the criminal group. Mr. Kumar moved to New Delhi and, with the help of an officer, applied for a visa for Canada. Mr. Kumar left India for Canada on May 11, 2018.

[6] The RPD concluded that, despite some evidence raising doubts about his alleged attempt to file a complaint against the police, Mr. Kumar's allegations were essentially credible. However, the RPD concluded that Mr. Kumar's allegations that he feared being killed by the people who had lent him money to finance his departure from India, whom he had not repaid, were not credible. The RPD acknowledged that Mr. Kumar feared returning to India because he would be falsely accused of links to a criminal group, because he was allegedly suspected of planning the murder of political leaders after arriving in Canada, and because the Indian authorities would treat him in a manner that would be sufficiently severe to be regarded as persecution.

[7] However, the RPD concluded that a viable IFA was available in Mumbai. Mr. Kumar failed to establish, on a balance of probabilities, that the Indian authorities would be able to locate him in Mumbai because he also failed to establish, on a balance of probabilities, that the arrests were lawful arrests and that his name would therefore appear in a database of criminals and persons of interest; moreover, he failed to establish, on a balance of probabilities, that the Haryana police were actively searching for him, that the Haryana police would be notified of his arrival at the airport, that the Haryana police would be able to find him through a database or surveillance system set up by the Indian authorities, such as Aadhaar, and that the intrusive surveillance set up by the Indian authorities in response to the COVID-19 pandemic would enable the Haryana police officers to locate Mr. Kumar by obtaining information on the whereabouts of his family members. Moreover, Mr. Kumar failed to establish that, on a balance of probabilities, it would be objectively unreasonable for him to relocate to Mumbai because he failed to invoke any serious fears other than his fear of being found by the Haryana police, and he failed to establish the existence of conditions that would jeopardize his life and safety.

[8] Before the RAD, Mr. Kumar submitted that the RPD had failed to analyze state protection, but given that the issue was whether a viable IFA was available in Mumbai, the RAD rejected Mr. Kumar's argument. The RAD confirmed the RPD's decision and determined that Mr. Kumar had a viable IFA in Mumbai. The RAD concluded that the RPD had not erred in concluding that Mr. Kumar had failed to establish that he would face a serious possibility of persecution in Mumbai or that, on a balance of probabilities, he would be personally subjected to a risk there. The RAD rejected Mr. Kumar's argument that, since the RPD had found him to be credible with respect to his allegations of mistreatment at the hands of the Haryana police, the

RPD should also have concluded that his allegation that the Haryana police would be able to find him in Mumbai was credible. Although the RAD acknowledged Mr. Kumar's fear that the Haryana police might find him in Mumbai, it concluded that he had failed to show that this fear in the proposed IFA was objectively well founded. The RAD also concluded that Mr. Kumar had failed to demonstrate that his arrests were lawful arrests, that his name was in police databases or other government databases, and that the police were interested in him for a reason other than extorting money from his family. Regarding the second prong of the test, the RAD agreed with the RPD that Mr. Kumar had failed to demonstrate that it would be unreasonable for him to relocate to Mumbai, given his profile (a Hindi-speaking, college-educated Hindu man in his thirties) and the recent objective documentary evidence on security conditions in Mumbai.

III. Issues and standard of review

[9] This application for judicial review raises only one issue: was the RAD's decision reasonable?

[10] The RAD's decision is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The role of the Court is therefore to determine whether the decision as a whole is reasonable, that is, whether it is based on “an internally coherent and rational chain of analysis” and whether the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 85–86).

IV. Analysis

A. *The RAD did not err in its analysis of the first prong of the IFA test*

[11] Before me, Mr. Kumar limited his submissions to the first prong of the IFA test.

[12] For the first prong of the test, the claimant must demonstrate that there is a serious possibility of persecution in the proposed IFA (*Rasaratnam* at 710; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*]). Mr. Kumar stated that the RAD drew erroneous conclusions in its analysis of the evidence, failed to provide adequate reasons for its conclusions, and failed to consider evidence that he would face a forward-looking risk of persecution by the Haryana police if he were to return to India.

[13] Mr. Kumar submits that, since the RPD found him to be credible, there was no reason for the RAD to doubt his allegations regarding the risk of persecution by the Haryana police, given that they had already persecuted him. However, the issue before the RAD was not whether Mr. Kumar was credible but whether a viable IFA was available in Mumbai. The RAD may both acknowledge a claimant's fear of agents of persecution and find that an IFA is available (*Akinfolajimi v Canada (Citizenship and Immigration)*, 2018 FC 722 at para 24). The concept of an IFA is inherent in the definition of a Convention refugee:

The definition of "Convention refugee" requires that claimants have a well-founded fear of persecution which renders them unable or unwilling to return to their home country. If claimants are able to seek safe refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country.

[*Thirunavukkarasu* at 593.]

[14] In fact, Mr. Kumar made the same argument before the RAD, which disagreed. It noted that, although it acknowledged Mr. Kumar's fear that the Haryana police might find him in Mumbai, he had to establish that this fear in the proposed IFA was objectively well founded. Mr. Kumar was required to demonstrate that, on a balance of probabilities, he would face a serious possibility of persecution in Mumbai, by establishing that the Haryana police had the means and motivation to find him there. The RAD found that Mr. Kumar had failed to discharge this burden. Mr. Kumar submits that his past persecution at the hands of the Haryana police was sufficient for the RAD to conclude that he would face a forward-looking risk, and that the RAD gave no weight to the "relevant" evidence he produced. However, Mr. Kumar does not specify what evidence the RAD failed to analyze.

[15] Mr. Kumar submits that there is a good chance that the Haryana police would be able to locate him through the Crime and Criminal Tracking Network and Systems [CCTNS], a police database that contains information on crimes and criminals. He argues that the RAD failed to consider key evidence from the National Documentation Package [NDP] that contradicted its conclusion that Mr. Kumar's name would not have been entered into the CCTNS system and that it was therefore unlikely that the local police in Haryana would be able to locate him. Mr. Kumar referred to passages from the NDP on the development of the CCTNS, the extent to which it is being used in India and the procedure all police stations follow to enter their daily reports. However, I see nothing in the passages from the NDP that contradicts the RAD's conclusions. Mr. Kumar states that the RAD failed to mention in its decision that his fingerprints and photograph were taken at the police station, which could suggest that his information was

entered into the CCTNS, although he did acknowledge that no police report was drawn up against him when he was arrested; he was simply released after paying a bribe.

[16] Apart from the fact that this argument was not made to the RAD—and I cannot fault the RAD for failing to consider an issue that was not before it—the RAD noted that Mr. Kumar did not challenge the RPD’s conclusion that the Haryana police used a pretext, namely that Mr. Kumar wanted to assassinate leaders of the Bharatiya Janata political party, to extract bribes from his family members, and the RAD agreed with the RPD’s conclusion. Moreover, Mr. Kumar failed to demonstrate that his arrests were lawful arrests.

[17] The documentary evidence indicates that the police must complete a report for a person to be registered in the CCTNS, suggesting that the charges against the person must have some degree of legitimacy. In this case, the RAD notes that Mr. Kumar stated that, to his knowledge, no police report had been drawn up against him, and his arrests were unlawful. The RAD concluded that Mr. Kumar had simply been subjected to extortion by the local police in Haryana, who wanted bribes in exchange for his release. Since he failed to establish that the police were interested in him for a reason other than extortion, the RAD concluded that Mr. Kumar had failed to establish that there would be a record of him in the police databases and, “[a]s the appellant has not established that there is any record of him in the police databases, he has failed to show that he could be located in Mumbai through the tenant verification system or when he presents an identity document in order to work”.

[18] I am not persuaded that this conclusion is unreasonable.

B. *The RAD did not err in its analysis of the second prong of the IFA test*

[19] Regarding the second prong of the test, it must not be unreasonable, in all the circumstances, including the applicant's personal circumstances, for the applicant to relocate to the IFA (*Rasaratnam* at 709–11). For an IFA to be unreasonable, there must be conditions that would jeopardize the claimant's life and safety (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) at para 15). This is a flexible test that takes into account the particular situation of the claimant and the country involved, as well as an objective test where the onus of proof rests on the claimant (*Thirunavukkarasu* at 597).

[20] Mr. Kumar submits that the RAD failed to take into account the security situation in Mumbai, the undue hardship to which he would be exposed (such as the loss of his employment, status and aspirations, as well as a reduced quality of life, the absence of his loved ones, and thwarted desires and expectations), the particular pressures, for example psychological, that refugee protection claimants may face, or the consequences of the COVID-19 pandemic on economic conditions in India. I disagree. Mr. Kumar does not refer to any documentary evidence showing the mistreatment of refugee protection claimants returning to India or describing the impact of the pandemic. Moreover, contrary to Mr. Kumar's assertions, the RAD considered the security situation in Mumbai on the basis of the documentary evidence, and it noted that Mr. Kumar had failed to indicate the documentary evidence on which he was relying to conclude that there was "extreme violence" in Mumbai:

With regard to the security situation in Mumbai, the appellant does not indicate what documentary evidence he is relying on to support the existence of extreme violence in Mumbai. The RAD considered the recent documentary evidence concerning the security situation in Mumbai. According to this evidence, the risk

of being a victim of crime in Mumbai is moderate. It reports that being involved in a traffic accident remains more probable than being a victim of a crime. Although this evidence assesses the risk primarily for American nationals, the RAD is of the opinion that this risk assessment can also apply to Indian citizens. Violent crimes are more frequent in underprivileged neighbourhoods where there are slums and overpopulated apartment buildings. Considering that the appellant has not established that he would be unable to work or find housing in Mumbai, the RAD is of the opinion that he has not established that he would be at risk of having to live in such neighbourhoods. Moreover, the threat of terrorism primarily affects foreign targets such as embassies.

[21] The RAD also considered the hardship to which he would be exposed given his profile:

With respect to his ability to find work and housing and to practise his religion, the RAD considered the fact that the appellant speaks Hindi, one of India's two official languages. Hindi is one of the languages spoken in Mumbai. The appellant practises Hinduism, the religion practised by 79.8% of Indians and 65.99% of Mumbai residents. The RAD also considered the fact that the appellant is a 34-year-old man who has gone to college. Considering the appellant's profile, and in the absence of evidence to the contrary, the RAD is of the opinion that the appellant has failed to establish that he could not work, find housing or practise his religion in Mumbai.

[22] Mr. Kumar has failed to persuade me that the RAD's conclusion on the second prong of the test is unreasonable. The onus is on Mr. Kumar to show that Mumbai is not a viable IFA, and he has failed to discharge it.

V. Conclusion

[23] In light of the foregoing, I am not satisfied that the RAD made an error in its decision that would justify the Court's intervention. I will therefore dismiss the application for judicial review.

JUDGMENT in IMM-6137-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6137-21

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**JUDGMENT AND REASONS
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