Federal Court  Cour fédérale

Date: 20221021

Docket: IMM-1877-21

Citation: 2022 FC 1441

Ottawa, Ontario, October 21, 2022

PRESENT: Mr. Justice Norris

BETWEEN:

FAHAD BASHIR
VANESSA GARCIA VALENZUELA
MAJDA BASHIR GARCIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants Fahad Bashir and Vanessa Garcia Valenzuela are a married couple. Majda Bashir Garcia is their daughter. All three are citizens of Mexico.

[2] Mr. Bashir was born in Pakistan and is Muslim. Ms. Garcia Valenzuela was born in Mexico and was raised as a Roman Catholic. The two began a romantic relationship in Mexico

in 2011. Ms. Garcia Valenzuela eventually converted to the Shia faith. The couple were married in January 2017. Their daughter Majda was born in April 2017.

[3] The applicants lived in Puebla, Mexico. Members of Ms. Garcia Valenzuela's family also lived there, as did some members of Mr. Bashir's family.

[4] Ms. Garcia Valenzuela's family did not approve of her religious conversion or her marriage to Mr. Bashir. According to the applicants, Ms. Garcia Valenzuela's family enlisted the assistance of a local police officer in Puebla who was a family friend to harass and threaten them. The officer threatened Mr. Bashir that if he did not leave the country he would find himself behind bars on fabricated drug charges. Unknown callers repeated this threat. In January 2019, members of Ms. Garcia Valenzuela's family visited her home and threatened to disown her and kill Mr. Bashir if she did not leave the marriage.

[5] The applicants fled Mexico for Pakistan shortly after this last incident. In March 2019, they entered Canada and made a claim for refugee protection on the basis of their fear of persecution at the hands of Ms. Garcia Valenzuela's family.

[6] The Refuge Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the applicants' claims in a decision dated July 30, 2020. The determinative issue for the RPD was the availability of an Internal Flight Alternative ("IFA") in Mexico City, Mexico.

[7] The applicants appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. They did not seek to file any new evidence in support of their appeal nor, as a result, did they request a hearing before the RAD.

[8] In a decision dated February 24, 2021, the RAD agreed with the RPD that the applicants have a viable IFA in Mexico City and that this is determinative of their claims for protection. Accordingly, the RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

[9] The applicants now seek judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). They submit that the RAD's finding that they have a viable IFA in Mexico City is unreasonable. For the reasons that follow, I do not agree. This application must, therefore, be dismissed.

[10] The parties agree, as do I, that the substance of the RAD's decision is to be reviewed on a reasonableness standard: see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29. This includes the RAD's determination as to the availability of an IFA: see *Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14, and *Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at para 7. That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[11] 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13.

[12] The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[13] As set out above, both the RPD and the RAD found the existence of a viable IFA to be determinative of the applicants' claims for protection. Simply put, an IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant is not entitled to protection from another country. To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there:

see *Aigbe v Canada*, 2020 FC 895 at para 9; for the IFA test generally, see my discussion in *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at paras 38-45 and the cases cited therein.

[14] In their appeal to the RAD, the applicants challenged the correctness of the RPD's findings with respect to both branches of the IFA test. While the RAD agreed with the applicants that the RPD had erred in one factual respect (the number of Muslims living in Mexico City), it concluded that the RPD's ultimate determination that the applicants have a viable IFA in Mexico City was correct.

[15] The applicants contend that the RAD's conclusion under the first branch of the IFA test – that they had not established that they would be at risk in Mexico City – is unreasonable. I do not agree.

[16] In the circumstances of this case, the determinative issue is whether the applicants' agents of persecution – namely, Ms. Garcia Valenzuela's family and the local police officer (whether at the behest of Ms. Garcia Valenzuela's family or for his own reasons) – had the motivation and the means to locate the applicants in Mexico City. In my view, the RAD reasonably determined that the applicants' contention that their agents of persecution had both the motivation and the means to seek them out in Mexico City did not rise above mere speculation.

[17] With respect to the police officer, the RAD reasonably concluded that a mere attempt by the applicants to file a complaint against him in December 2018 (which the police refused to

accept, according to the applicants' narrative) was an insufficient basis to conclude that the officer had a motive of his own to seek them out now.

[18] Furthermore, the RAD reasonably determined that, even if Ms. Garcia Valenzuela's family could enlist the officer to attempt to locate the applicants, there was insufficient evidence that he had the means to find the applicants in Mexico City. The only evidence to this effect came from the applicants themselves and, as the RAD pointed out, it was very limited. The applicants adduced little evidence about the police officer or his ability to access information through which the applicants could be located in Mexico City. They did not know his name and were unsure of his specific title and rank. There was no evidence to establish his influence or his connections within police agencies either locally or nationally. The RAD did not question the credibility of the applicants' evidence; rather, it found their evidence to be insufficient to counter the proposition that they would not be at risk in Mexico City. This was an entirely reasonable determination on the record before it: see *Jimenez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1225 at paras 14-22.

[19] The applicants contend that the RAD erred by failing to consider that the police officer could lay a fabricated criminal charge against one of them and thereby enlist national law enforcement resources to locate them in Mexico City. The applicants did not raise this possible scenario in their appeal so the RAD cannot be faulted for not addressing it. In any event, it is mere speculation on the part of the applicants that this could happen. This hypothetical possibility is not reasonably capable of meeting the applicants' onus with respect to the first branch of the IFA test.

[20] I agree with the applicants, as does the respondent, that the RAD misapprehended the evidence when it stated that Ms. Garcia Valenzuela had not alleged that she feared harm at the hands of her family. Contrary to the RAD's understanding, in her testimony before the RPD, Ms. Garcia Valenzuela stated expressly that she feared her family would kill her because of her religious conversion. Nevertheless, in my view, this error by the RAD is immaterial. The RAD understood the family's central role as the alleged agents of persecution. It understood that family members had threatened to kill Mr. Bashir because of his marriage to Ms. Garcia Valenzuela and it engaged with this allegation fully. Most importantly, in any event, the RAD reasonably determined that the applicants had failed to establish that the family had the means to locate the applicants in Mexico City. Thus, while the RAD did not properly appreciate the nature of Ms. Garcia Valenzuela's fear of her family, this error could not reasonably have affected the ultimate outcome of the appeal.

[21] For these reasons, this application for judicial review must be dismissed.

[22] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

[23] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: see *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1).

Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-1877-21

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1877-21
STYLE OF CAUSE:	FAHAD BASHIR ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 16, 2022
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DATED:	OCTOBER 21, 2022

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