

Federal Court



Cour fédérale

Date: 20221025

Docket: IMM-3028-21

Citation: 2022 FC 1457

Toronto, Ontario, October 25, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

**PRAVEEN VANAM
JAINUB SAFREEN SYED**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an April 20, 2021 decision [Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, confirming a decision of the Refugee Protection Division [RPD] that denied the Applicants' claim as Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant's claim was rejected by the RPD because of credibility and the availability of an internal flight alternative [IFA]. The RAD concluded that the RPD had erred in a number of its credibility findings and took issue with the location of the IFA, but maintained that an IFA existed and that certain aspects of the Applicants' evidence was implausible.

[3] As set out further below, I find the RAD's analysis reasonable and as such, the application will be dismissed.

I. Background

[4] The Applicants, Praveen Vanam and Jainub Safreen Syed, are citizens of India who claim a fear of persecution from an interfaith Hindu-Muslim marriage.

[5] In April 2013, the Applicants eloped. They allege that Ms. Syed's family began threatening Mr. Vanam shortly after they eloped, claiming that he had kidnapped and abducted Ms. Syed. Mr. Vanam also alleges members of the Muslim community threatened to kill him and sexually assault his sister.

[6] Ms. Syed asserts she has not had contact with her family since May 2013 because she feared they would hurt her and Mr. Vanam.

[7] The Applicants state that they then went into hiding with the assistance of a friend's uncle in a village eight hours from their hometown of Hyderabad. In May 2014, they married in

a civil ceremony in Hyderabad. They state that they were able to come and go from Hyderabad for the wedding without being recognized.

[8] Mr. Vanam went to the United States [US] in September 2015 to attend university. During this time, Ms. Syed continued to stay with their friend's uncle in the village outside of Hyderabad. She testified that she did not leave the house for over two years.

[9] Mr. Vanam returned to India at the end of October 2016 and left to return to the US two weeks later. He obtained a Master's of Computer Science in December 2016 and received authorization to work in the US in March 2017. He says he began work in a restaurant in San Jose, California after graduation.

[10] Mr. Vanam applied for a US visa for Ms. Syed that was rejected three times. After meeting with a lawyer, he applied for asylum in the US in April 2017, but the application was never finalized. He returned to India in April 2018, allegedly because Ms. Syed was depressed and threatened to commit suicide and states that he joined her in hiding for eight months until November 2018.

[11] The Applicants came to Canada in November 2018 and made a claim for refugee protection on January 10, 2019. The Applicants have two children that were born in Canada.

[12] The RPD rejected the Applicants' claim on the basis of credibility and the availability of an IFA in Mumbai.

[13] The RAD dismissed the Applicants' appeal. The RAD concluded that the RPD erred in many of its credibility findings, but did not find Mr. Vanam's testimony relating to the circumstances around his departure from the US to be credible and found the assertions that Ms. Syed and Mr. Vanam remained in hiding while in the town eight hours outside of Hyderabad to be implausible.

[14] The RAD agreed with the RPD that there was an IFA available to the Applicants, but found that this was in Bangalore instead of Mumbai. The RAD invited the Applicants to file additional evidence and submissions relating to this alternative IFA. However, it concluded that the Applicants had not established that there would be more than a mere possibility that Ms. Syed's family would locate the Applicants in Bangalore if they tried, and that the country condition evidence did not support a finding that they would face a serious risk of persecution from the community or organizations. It further concluded that the Applicants had not met the threshold of establishing that it would be unreasonable for them to resettle in Bangalore.

II. Issues and Standard of Review

[15] The Applicants raise the following issues in this application:

1. Did the RAD err in its negative credibility and implausibility findings?
2. Did the RAD err in finding the Applicants had an IFA in Bangalore?

[16] The parties assert and I agree that the standard of review is reasonableness. None of the situations that rebut the presumption of reasonableness review for administrative decisions are

present here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17.

[17] A reasonable decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision is reasonable if, when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

[18] While the Applicants have challenged the RAD’s remaining credibility findings, the determinative issue is the reasonableness of the RAD’s finding that there is a viable IFA in Bangalore. As discussed further below, in my view, only one of the RAD’s implausibility findings is in part relevant to its IFA analysis.

[19] There is a two-part test for determining whether an IFA is viable. First, the RAD must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists. Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CarswellNat 162 (FCA) at paras 6, 9-10.

[20] Once an IFA is identified, the onus is on an applicant to show that they are nonetheless at risk of being persecuted in the IFA (*Yafu v Canada (Citizenship and Immigration)*, 2014 FC 293 at para 8) or that it would be objectively unreasonable to avail themselves of it. This is a high threshold: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 2000 CanLII 16789 (FCA) [*Ranganathan*] at paras 13, 15.

[21] On the first part of the IFA test, the Applicants argue the RAD departed from prior IFA jurisprudence. They say that police corruption, in conjunction with a tenant registration system, make it likely that agents of persecution elsewhere in the country will be able to misuse government resources to find the Applicants. The Applicants assert that the RAD unreasonably rejected Ms. Syed's evidence that she was in hiding from 2015 to 2018 and did not fully consider the presence of Ms. Syed's paternal cousin in Bangalore. They further assert that the RAD did not properly address the evidence of dangers faced by interfaith couples in India.

[22] In my view, the Applicants have failed to demonstrate an error in the first part of the RAD's IFA analysis.

[23] First, the prior IFA decisions cited by the Applicants are distinguishable and are not the type of decisions imposing a "justificatory burden" on the RAD to explain a departure from its previous decisions: *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 at para 134.

[24] The decisions involve politically connected agents of persecution rather than those that may have some social or business connections like Ms. Syed's family. In *X (Re)*, 2019 CanLII

95338 (CA IRB), the RAD found the appellant's continued political activities and the opposing political party's influence over the police put him in danger (at paras 22-30). Similarly, in *X (Re)*, 2019 CanLII 135127 (CA IRB), the appellant was actively being persecuted by members of the police at the behest of an individual with political connections (at para 2). In *X (Re)*, 2018 CanLII 151789 (CA IRB), the jurisprudential guide referred to at paragraphs 34-37 regarding inter-state police communications and the tenant registration system in India has been revoked and the country condition evidence it considered is no longer part of the National Documentation Package [NDP]. Further, in three of the decisions, the appellants were not from India, but were from Albania: *X (Re)*, 2018 CanLII 139857 (CA IRB) at para 1; *X (Re)*, 2018 CanLII 139879 (CA IRB) at para 1; *X (Re)*, 2018 CanLII 117200 (CA IRB) at para 1.

[25] Further, the RAD's reasons provide justification and distinguish the circumstances of this case from the prior decisions. As noted by the RAD, there was no evidence that Ms. Syed's family would rely on police assistance or resources moving forward as the police in Hyderabad had previously declined to arrest Mr. Vanam and dismissed Ms. Syed's parents' allegations against him. The RAD considered the NDP and noted that the documentary evidence showed that police collusion tended to be with the dominant religious community, which in Bangalore was Hindus, not Muslims, which is the religion of Ms. Syed's family. I see no error in the RAD's chain of analysis. While the Applicant argues that the RAD failed to consider the broader country condition evidence, the full scope of the reasons indicate otherwise. The Applicants' argument seeks to have the Court reweigh evidence, which was already considered.

[26] Second, the reasons demonstrate that the RAD considered the implications of Ms. Syed's paternal cousin residing in Bangalore. However, as he had never met Mr. Vanam, there was no evidence that he had partaken in threats against the Applicants, and it was not known what his opinion was of the marriage, the RAD did not consider his presence to be a risk. While the Applicants point to general statements from the Basis of Claim regarding the disapproval of Ms. Syed's family, in my view, it was not unreasonable for the RAD to find that such statements were insufficient to suggest that Ms. Syed's paternal cousin would seek to find Ms. Syed in Bangalore. Ms. Syed acknowledged that there was no suggestion that her family had continued to seek out the Applicants since shortly after their marriage. Given the size of Bangalore, it was open for the RAD to conclude that it was unlikely that Ms. Syed's paternal cousin would encounter her in Bangalore, or if he did that he would report her to other family members. Although the Applicants cite the relatively smaller size of the Muslim population, I do not consider this argument persuasive as the evidence does not suggest that Ms. Syed is active within the Muslim community.

[27] The Applicants' argue that the RAD erred in its implausibility findings that Ms. Syed remained in hiding for two years to not be detected by her family members, and that she later remained in hiding with Mr. Vanam when he returned. While they assert that the Applicants would be forced into hiding if they relocated, I do not agree that this argument is supported by the evidence. As noted by the RAD, Mr. Vanam communicated with his parents, had his sister visit, and took a vacation trip with Ms. Syed to UAE after he returned. Further, the couple had earlier returned to Hyderabad to formalize their wedding without issue. In view of this evidence, I do not agree that the RAD erred in its implausibility finding that Ms. Syed remained in hiding

with Mr. Vanam after he returned. As the Applicants would be relocating together as a family, it was not unreasonable for the RAD to consistently view it unlikely that the couple would go into hiding on relocation.

[28] Third, I disagree that the RAD cherry-picked or misconstrued the evidence in concluding the Applicants would not be at serious risk from the general public and the community due to their interfaith marriage. The vast majority of the country condition articles address interfaith marriages between Muslim men and Hindu women and refer to the legal ramifications of women being forced into a marriage or conversion of faith (Human Rights Watch Article, Certified Tribunal Record (CTR) pp 101-102; see also Indian Express Article CTR p 98-99), or facing threats of violence arising from these circumstances (NDP Item 12.5, “India: Situation of inter-religious and inter-caste couples, including treatment by society and authorities; situation of children from such marriages (2017-May 2019)”, IND.106276.E). As noted by the RAD:

The overall rate of inter-religious marriages in India is just over 2%, so they are uncommon though not exotically rare. They are reportedly frowned upon, though especially in rural areas. The least societally accepted intermixed unions, whether between faiths or castes, are those between Hindus and Muslims (as well as between rich and poor or Dalits and non-Dalit Hindu), especially where, unlike the Appellants, the male is Muslim and the female is Hindu, the latter scenario generally seen as a threat to the dominant Hindu community. [Footnotes omitted]

[29] While some articles referenced by the Applicants also referred to tensions arising from interfaith marriages more broadly, including between Hindu men and Muslim women, these articles referred to familial, not community response and to efforts of family to stop such marriages from happening (Guardian Article, CTR p 391, BBC Article, CTR p 109). Here, the RAD found that the evidence did not support that a serious risk of persecution would exist from

Ms. Syed's family on an ongoing basis, or that there was any evidence to suggest that Muslim community groups would engage in it or threaten to do so. It further found that there was no serious possibility of persecution from Mr. Vanam's family who had accepted the marriage and had not threatened him or cut him off financially, and there was no suggestion of threats to safety from the Hindu community.

[30] The RAD considered the evidence referenced by the Applicants in coming to the conclusion that the Applicants would not be subject to a serious possibility of persecution due to their interfaith marriage. Although the Applicants disagree with the RAD's conclusion, in my view their arguments amount to a request for the Court to reweigh the evidence, rather than an apparent error or omission in the RAD's handling of such evidence.

[31] I similarly find that the Applicants have failed to demonstrate an error in the second part of the RAD's IFA analysis and its determination that relocating to Bangalore would be reasonable.

[32] The Applicants' central contention on the second part of the analysis is that the RAD erred in failing to consider that they will be forced to live in isolation, will be cut off from their support groups and will not be able to live openly and freely. In my view, these arguments cannot succeed. As set out earlier, the RAD found it implausible that Ms. Syed had lived in isolation with Mr. Vanam after he returned. If the Applicants were to relocate, they would do so as a family. It follows that the RAD considered that the Applicants when together would not be forced to live in hiding in Bangalore. In my view, this follows a rational chain of analysis.

[33] As noted by the RAD, the evidence suggests that Mr. Vanam's family has accepted the marriage and there is no threat to cut him off financially.

[34] Further, more is required than the absence of relatives to make an IFA unreasonable; there must be evidence that there are conditions that would jeopardize the life and safety of a claimant: *Ranganathan* at paras 14-15. In my view, it was open for the RAD to find that Applicants had not established that such evidence was present in this case. I do not consider the Decision to be unreasonable in this respect.

IV. Conclusion

[35] In my view, the determinative issue on this application is the RAD's IFA analysis. While the RAD made certain credibility and implausibility findings regarding the Applicants' narrative, I only consider one such finding to be relevant to its IFA analysis. However, I do not consider this finding or the RAD's IFA analysis unreasonable or in error.

[36] In my view, the RAD reasonably assessed the evidence and concluded the Applicants did not face a serious possibility of persecution from the Applicants' families or the general community in Bangalore and that it was not unreasonable that they move to Bangalore.

[37] The application will accordingly be dismissed.

[38] No question for certification was proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-3028-21

THIS COURT'S JUDGMENT is that

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

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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