Federal Court  Cour fédérale

Date: 20230417

Docket: IMM-6022-22

Citation: 2023 FC 555

Vancouver, British Columbia, April 17, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

VEERPAL SINGH KHOSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks to set aside a decision by the Refugee Appeal Division (the "RAD") of the Immigration and Refugee Board of Canada dated May 26, 2022. The RAD concluded that the applicant is neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "*IRPA*").

[2] The RAD determined that the applicant has an internal flight alternative ("IFA") within his home country, in Bengaluru and Indore, India.

[3] In this proceeding, the applicant argued that the RAD erred by failing to find that he was deprived of procedural fairness at the hearing before the Refugee Appeal Board (the "RPD"), and by finding that he had an IFA in Bengaluru.

[4] For the reasons below, I have concluded that this application must be dismissed.

I. Facts and Events Leading to this Application

[5] The applicant is a citizen of India and lived in Kot Karor Kalan village in Punjab. He based his claim for protection under the *IRPA* on the following allegations.

[6] The application converted from Sikhism to Hinduism around September 2012. He claimed that in late 2013, he was attacked in two separate incidents, two months apart. The applicant's father was a police officer and aside from the first incident, did not allow the applicant to report the matter to the police. The applicant then moved to Kolkata to live with his extended family. He suspected that the attackers followed him to Kolkata.

[7] In 2014, the applicant's Sikh cousins and neighbours started telling people (particularly Hindus) that he was eating beef, when in fact he was a vegetarian. The applicant alleges that two fights and violence ensued with members of the Hindu community.

[8] In October 2017, the applicant arrived in Canada on a visitor visa. He obtained a work permit. He intended to make an application for permanent residency in Canada; however, he lost his job, which the applicant attributed to the friendship between the owner of the employer company and the applicant's cousin. The claimant alleges that he felt that his only option to stay in Canada was to make a refugee claim.

[9] On December 23, 2021, the RPD heard the applicant's claim. The applicant was not represented by counsel or a consultant at the hearing. He testified in response to the RPD's questions.

[10] On January 10, 2022, the RPD concluded that the applicant is neither a Convention refugee under section 96, nor a person in need of protection within the meaning of subsection 97(1) of the *Act* and therefore dismissed his claim. The RPD held that the applicant had an IFA available in Bengaluru and Indore.

[11] The applicant appealed to the RAD. He argued that the RPD deprived him of procedural fairness by failing to explain fully the case he had to meet in respect of an IFA within India. The applicant also argued that the RPD erred by concluding that he had an IFA in the circumstances in Bengaluru and Indore.

[12] On May 26, 2022, the RAD confirmed the decision of the RPD and dismissed the applicant's claim.

II. Analysis

[13] Two issues arise in this case, which I will analyze in turn. The first is the applicant's argument that the RAD made a reviewable error in its application of IFA principles to his circumstances. The second concerns procedural fairness at the RPD hearing.

A. Internal Flight Alternative

(a) *Applicable Legal Principles*

[14] The first issue concerns the RAD's conclusions about the IFA on the evidence. The Court reviews those conclusions on the reasonableness standard: *Barreiro v Canada (Citizenship and Immigration)*, 2023 FC 404, at para 15; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430, at para 32; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350, at para 17.

[15] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision has the attributes of transparency, intelligibility and justification: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[16] The Federal Court of Appeal set out a two-prong test for an IFA in *Rasaratnam v Canada (Minister of Employment and Immigration),* [1992] 1 FC 706 (CA), at pp. 710-711 (paras 8-10). The test requires that the RAD be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the applicant being persecuted in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the applicant, conditions in the IFA are such that it would not be unreasonable for him to seek refuge there. The applicant bears the onus to show that the proposed IFA is unreasonable. See also *Thirunavukkarasu v Canada (Minister of Citizenship and Immigration)* (1993), [1994] 1 FC 589 (CA), at pp. 595-599.

[17] The Federal Court of Appeal in *Ranganathan* held that the second prong requires "actual and concrete" evidence of "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling to or temporarily relocating in a safe area": *Ranganathan v Canada (Minister of Citizenship and Immigration),* [2001] 2 FC 164 (CA), at para 15. The Court of Appeal noted the "sharp contrast" of those circumstances compared with undue hardships resulting from loss of employment, reduction in quality of life, the absence of relatives or loved ones in the proposed IFA, and comparable circumstances.

[18] The concept of an IFA is inherent in the definition of a Convention refugee. A claimant must be a refugee from a country, not from a particular part or region of that country: *Ranganathan*, at para 16; *Thirunavukkarasu*, at p. 599; *Singh v. Canada (Citizenship and Immigration),* 2023 FC 64, at para 15 (citing *Henao v Canada (Citizenship and Immigration),* 2020 FC 84, at para 11); *Iyere v Canada (Citizenship and Immigration),* 2018 FC 67, at para 35.

(b) *Did the RAD make a reviewable error in its IFA analysis?*

[19] The applicant submitted that the RAD erred by improperly assessing the evidence related to the IFA. He argued that his cousins and family members were able to locate him in Canada and it was possible he would also be located in Bengaluru as it has a significant Sikh population. He submitted that the RAD failed to consider the second prong of the IFA test. He claimed that both the RPD and the RAD concentrated on the first prong, and "did not at all deal with the second prong" of the IFA test.

[20] Respectfully, the applicant is mistaken. The RAD did expressly address the second prong of the IFA test. It stated that the "standard is high and requires evidence demonstrating the existence of conditions that would jeopardize [the applicant's] life and safety in travelling to and living there" in the two identified cities, citing *Ranganathan* and *Mustapha v Canada (Minister of Citizenship and Immigration)*, 2022 FC 622, at para 17. The RAD concluded, based on its own analysis of the record, that the applicant had not presented any such evidence.

[21] Similarly, the RPD addressed the second prong of the IFA test. The RPD expressly set out the same conditions related to jeopardizing the life and safety of the applicant in relocating to a safe place, and the requirement of actual and concrete evidence of adverse conditions. The analysis concluded on a balance of probabilities that the applicant could reasonably live in either proposed IFA city. The RPD's analysis took into account the applicant's own characteristics and the circumstances in the two cities.

[22] The applicant's submissions do not reveal a reviewable error by the RAD. The Court is not permitted to reweigh or reassess the evidence in the record absent exceptional circumstances, which do not exist here: *Vavilov*, at paras 125-126.

B. Should the RAD's Decision be set aside due to Procedural Unfairness?

[23] The second issue in this case concerns procedural fairness.

[24] Although the RAD's decision is under review in this proceeding, the applicant did not argue that the RAD failed to provide him with procedural fairness. He argued that the RAD erred by concluding that the RPD's hearing was procedurally fair.

[25] The applicant was not professionally advised or represented at the RPD. His procedural unfairness argument concerned the RPD's alleged failure to adequately explain the legal test to establish an IFA, which, according to the applicant, affected his ability to participate fully and meaningfully in the hearing. He claims he did not know the legal case he had to meet.

[26] While there are links between procedural fairness and substantive review of the merits of a decision (*Vavilov*, at paras 76-77 and 127), the present argument does not concern a review of the substantive merits of the RAD's or the RPD's decisions.

(a) *Legal Standard to be Applied by this Court*

[27] Both parties submitted that the applicable standard of review is reasonableness. However, the applicant's submissions were in substance about the unfairness at the RPD and the

incorrectness of the RAD's decision. The applicant relied generally on *Turton v Canada (Citizenship and Immigration)*, 2011 FC 1244, [2013] 3 FCR 279. While the applicant did not refer to the standard of review applied in *Turton*, the Court applied a correctness standard to procedural fairness at the RPD: at paras 25-26.

[28] The respondent argued the matter on the reasonableness standard in *Vavilov*, citing *Ahmad v Canada (Citizenship and Immigration)*, 2021 FC 214, at paras 13, 16-26.

[29] When a procedural fairness question arises on judicial review, the Court determines whether the procedure used by the decision maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected. While technically no standard of review applies, the Court's review exercise is akin to correctness: *Hussey v Bell Mobility Inc*, 2022 FCA 95, at para 24; *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63; *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, [2021] 1 FCR 271 ("*CARL*"), at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, at paras 54-55.

[30] In other words, the Court must be satisfied the duty of procedural fairness was met: *Rebello v Canada (Justice)*, 2023 FCA 67, at para 10; *Koch v Borgatti Estate*, 2022 FCA 201, at para 40 (citing *Lipskaia v Canada (Attorney General)*, 2019 FCA 267, at para 14).

[31] In this case, there is an intermediate decision maker (the RAD) whose decision is under review, but the argument about procedural fairness issue concerns the original decision maker (the RPD). The Court's recent judicial review decisions have recognized challenges in determining the proper approach to the Court's review: see *Al Hommos v Canada (Citizenship and Immigration)*, 2022 FC 1294, at paras 12-13; *Omisore v Canada (Citizenship and Immigration)*, 2022 FC 444, at paras 3, 12-13; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62, at paras 8-10, 42; *Larrab v Canada (Citizenship and Immigration)*, 2021 FC 135, at paras 8, 25; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62, at paras 8-10, 42; *Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148, at paras 12-18.

[32] In my view, the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v Paramo de Gutierrez,* 2016 FCA 211, [2017] 2 FCR 353, addresses the proper approach in this matter. I will explain.

[33] In *Paramo de Gutierrez*, the appeal court concluded that it was a breach of both the *IRPA* and procedural fairness for an officer to examine a refugee claimant without their appointed legal counsel: *Paramo de Gutierrez,* at para 56 (question 2). An officer (hearing advisor) interviewed the two applicants, knowing that they were represented by legal counsel, but without advising their counsel about the interview or asking the interviewees if they wanted their counsel present. The officer provided evidence about the interview to the RPD, which it accepted into evidence.

[34] On appeal, the RAD concluded that the RPD should have excluded the evidence because the officer had breached principles of natural justice and fairness (the statutory right to counsel in

subsection 167(1) of the *IRPA*). The RAD held that it could not use the evidence itself without perpetuating the breach of procedural fairness: *Paramo de Gutierrez,* at paras 15-16.

[35] On judicial review in this Court, Justice Zinn applied a correctness standard to the RAD's decision to exclude the evidence because the decision was based on the principles of fairness and natural justice: *Paramo de Gutierrez,* at para 20; *Canada (Citizenship and Immigration) v Gutierrez,* 2015 FC 1198, [2016] 2 FCR 394, at para 21. The Federal Court held that the officer had breached the interviewees' right to counsel and the RPD had further breached it by failing to exclude the evidence pertaining to the interview: *Paramo de Gutierrez,* at para 23; *Gutierrez,* at para 45.

[36] On further appeal, the Federal Court of Appeal held that its task was to answer the question of whether the duty of procedural fairness was breached on the facts and circumstances of the case, noting that the content of the duty of fairness is fact-specific: *Paramo de Gutierrez,* at paras 41-42, citing *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817, at para 21. The Federal Court of Appeal agreed that the RAD's decision to exclude evidence was a decision based on the application of principles of fairness and natural justice and should be reviewed on a standard of correctness: *Paramo de Gutierrez,* para 44. The appeal court had to decide whether the Federal Court properly applied the standard of correctness: *Paramo de Gutierrez,* para 45. The Federal Court of Appeal agreed with the Federal Court's conclusion that the interviewees had a statutory right to counsel and that the failure of the officer to respect their right constituted a breach of procedural fairness: *Paramo de Gutierrez,* at paras 52, 56.

[37] Thus, the Federal Court of Appeal in *Paramo de Gutierrez* confirmed that this Court should apply a "correctness" standard when reviewing a RAD decision concerning procedural fairness arising in a decision of the RPD. The appeal court also analyzed whether this Court's decision was correct, and itself determined whether the original RPD decision was procedurally fair.

[38] It appears that the standard in *Paramo de Gutierrez* has only been applied by the Court in *Canada (Citizenship and Immigration) v Barrios*, 2020 FC 29, at para 9, a case that did not involve a RAD decision.

[39] The approach in *Paramo de Gutierrez* is consistent with the standard of review applied by the Supreme Court in *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 SCR 502, at para 79, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43. The Supreme Court did not doubt this standard for judicial review matters in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, at paras 27-28, and 129.

[40] I am not aware of any appellate decisions since *Paramo de Gutierrez* to alter its approach. *Vavilov* did not address or alter the standard of review for procedural fairness and confined its analysis to judicial review standards related to the substantive merits of an administrative decision: *Vavilov*, at paras 23, 77, 143; *Girouard v Canada (Attorney General)*, 2020 FCA 129, [2020] 4 FCR 557, at para 38.

[41] The Federal Court of Appeal has also confirmed, including since *Vavilov*, that the reviewing court's responsibility is to ensure that the process was procedurally fair: see e.g., *CARL*, at para 35. The appeal court has done so in its own analyses of procedural fairness by a decision maker, including in decisions on appeal from a decision of this Court in judicial review proceedings: see *Koch*; *Hussey*, at paras 96-97; *CARL*, at paras 92-101; *Canadian Pacific Railway*, at paras 84-89 and 90-91; *Paramo de Gutierrez*, at paras 52, 56.

[42] With this appellate guidance in mind, I turn to the procedural fairness issues in this case.

(b) *Should the RAD's Decision be set aside for procedural unfairness?*

[43] When considering the *audi alteram partem* principle, the ultimate question for procedural fairness is whether the applicant knew the case to meet and had a meaningful opportunity to be heard – a "full and fair" chance to respond: *Canadian Pacific Railway*, at paras 41 and 56; *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320, at para 50; *Air Canada v Robinson*, 2021 FCA 204, at paras 54, 66; *Baker*, at para 22.

[44] The applicant's submissions focused on alleged procedural fairness issues at the RPD hearing, arguing that the RAD's decision did not properly address the issues. As noted, the applicant alleged inadequacies in the RPD's explanation of an IFA to him, as he was not represented by counsel at the RPD's hearing.

[45] At that hearing, the RPD member advised the applicant that the hearing would focus on three issues: credibility, whether or not there was state protection available for the applicant in India, and the availability of an IFA. With respect to the IFA, the RPD stated:

> … The third issue is what we call internal flight alternative and so this means whether there is any safe place for you to live in your country and whether it would be reasonable and practical for you to live there? And so in your case, I am suggesting two potential locations, Bengaluru and Indore.

[46] On his appeal to the RAD and now in this Court, the applicant submitted that the RPD failed to adequately explain the "highly technical" principles of IFA to him, with the result that he could not participate fully and meaningfully in his refugee claim hearing. The applicant relied on *Turton*, in which Justice Russell stated, at paragraph 36:

> Where a claimant is unrepresented at a hearing, the RPD has a more onerous obligation to indicate what issues are in play and explain the case to be met. Since the RPD did not meet this obligation, the applicants' right to procedural fairness was breached.

[47] At the RAD, the applicant relied on the two-pronged IFA test set out in *Rasaratnam* and argued that the RPD did not explain either prong. Specifically, he argued that for the second prong, the RPD failed to explain why he was being asked about possible relocation in Bengaluru.

[48] In his written submissions to the Court, the applicant contended that the RPD should have fully explained the legal meaning of an IFA to him. The applicant set out ten propositions related to proof of an IFA, citing the Federal Court of Appeal's decision in *Ranganathan*. He argued that the RAD failed to consider that if the RPD had properly explained what was required to satisfy the RPD member of an IFA, and "had the proper IFA analysis been conducted", then the applicant "would have provided his answers accordingly".

[49] At the hearing in this Court, the applicant argued that the RPD's initial statement about IFA did not explain to the applicant (a) that he must show that his life or safety would be in jeopardy, (b) that he had the burden of proof on the IFA issue, or (c) the implications of not meeting the IFA test. The applicant agreed at the hearing that consideration of the procedural fairness of the RPD's approach was not restricted solely to the RPD's description of an IFA in the initial statement made to the applicant, but also could account for the RPD's questions posed to the applicant during the hearing.

[50] The respondent argued that it was reasonable for the RAD to conclude after fully reviewing the evidence that the applicant was able to understand the nature of the proceedings, was able to participate meaningfully in the hearing, and was able to present his case in its entirety. The respondent noted that the RPD explained what an IFA was, specifically whether there was a safe place for him to live in India and whether it was reasonable for him to live there. The respondent maintained that while the language used by the RPD "did not conform strictly to the legal test wording for determining an IFA, the language used was appropriate in ensuring that a layperson would be able to understand the nature of the proceedings."

[51] The respondent did not submit that the RPD had no duty to inform the applicant about the legal test it proposed to apply for an IFA. However, neither party made any specific submissions on the scope or content of the RPD's procedural fairness obligations based on the factors in *Baker*. In *Baker*, the Supreme Court set out five non-exhaustive factors to be considered in determining the content of the duty of procedural fairness owed in a particular situation: 1) the nature of the decision being made and the process followed in making it; 2) the nature of the

statutory scheme and the terms of the statute pursuant to which the decision maker operates; 3) the importance of the decision to the individual or individuals affected; 4) the legitimate expectations of the person challenging the decision; and 5) the court must account for and respect the decision maker's choices of procedure: *Baker*, at paras 22-28.

[52] The applicant characterized the refugee claim hearing before the RPD as "inquisitorial", which goes to the first *Baker* factor. The respondent did not disagree. No additional evidence about the RPD's processes was filed. On the second *Baker* factor, there is a full statutory appeal to the RAD: *IRPA*, subsection 110(1). The importance of the decision to the applicant is self-evident. The applicant made no reference to any legitimate expectations and neither party referred to any procedural choices, administrative guidance, or prior RPD or RAD precedents affecting the RPD's duty to explain IFA legal principles to the applicant.

[53] In some administrative contexts, a decision maker may have a procedural fairness obligation to disclose information to an affected party, such as facts or evidence, in order to ensure meaningful participation in the hearing process: see e.g., *Quebec (Attorney General) v. Canada (National Energy Board)*, [1994] 1 SCR 159, at pp. 181-182; *Kane v Bd. of Governors of U.B.C.*, [1980] 1 SCR 1105, at pp. 1116-1117. In some contexts, such disclosure may also include the legal standard against which the party's conduct will be analyzed, in order to ensure that the party has an opportunity to respond meaningfully: see *Khela*, at paras 93-98; *May v Ferndale Institution*, 2005 SCC 82, [2005] 3 SCR 809, at paras 7, 77, 88, 92 and 117-120.

[54] The extent of disclosure varies with the specific context and the application of the *Baker* factors: see *Baker*, at para 22; *Taseko Mines*, at paras 28-31; and, e.g., *Seyoboka v Canada (Minister of Citizenship and Immigration)*, 2009 FC 104, [2010] 2 FCR 3, at para 35.

[55] The applicant emphasized that he was self-represented before the RPD. However, neither party referred to cases considering the role of the RPD when a claimant is not represented by counsel or another professional, nor to legal principles about the role of decision makers when a litigant is not represented. See, for example, *Olifant v Canada (Citizenship and Immigration)*, 2022 FC 947, at paras 16-18.

[56] I accept that the RPD had to provide the applicant with procedural fairness, including a meaningful opportunity to be heard. However, I do not propose to define the level or content of the RPD's procedural fairness obligations further or more precisely, given the circumscribed legal point raised by the applicant, the factual and legal record before the Court and the result I have reached: *Taseko Mines*, at para 44.

[57] Having read the RPD and RAD's reasons, the RPD hearing transcript and the parties' submissions, I have concluded that there is no basis for the Court to set aside the RAD's decision on procedural fairness grounds in the present case. The applicant's submissions did not demonstrate that the RAD improperly identified or misapplied the applicable principles of procedural fairness, nor has the applicant shown that the RPD's hearing was procedurally unfair as alleged.

[58] I will start with the RAD's reasoning on the procedural fairness issue as argued before it, before turning to its conclusion on that issue and the arguments made to the Court about procedural unfairness at the RPD.

[59] The RAD's analysis found and applied a correctness standard of review, both generally and to the RPD's conclusion on procedural fairness. Neither party challenged the RAD's approach.

[60] The RAD's reasoning commenced with two broad statements of applicable law. First, the RAD stated that a hearing before the RPD "is fair if the refugee protection claimant understands the nature of the proceeding, is prepared to represent themselves, and is able to participate meaningfully in the hearing, which means that the claimant has whatever leeway is reasonably possible to allow them to present their case in its entirety" (footnotes to case citations omitted). Second, the RAD stated that "[w]hen a person represents himself, the RPD must encourage them to state what they fear and present evidence of that fear, explain the process and clarify the nature of the decision being made. The consequences of the decision and the complexity of the matter have an impact in determining whether a hearing is fair", citing *Larrab*, at paras 26-30.

[61] The applicant did not challenge either statement as erroneous in law, or argue that the RAD should have applied any other cases or principles to guide its decision.

[62] Next, the RAD stated that it had carefully read the transcript of the RPD hearing. It described certain contents of the transcript. It noted that the RPD had explained, with respect to

IFA, that the issue was whether there was a safe place for the applicant to live in India and whether it was reasonable for him to live there, and that the RPD identified two locations for a proposed IFA in India.

[63] In three detailed paragraphs, the RAD described RPD's questions to the applicant and his answers in relation to IFA issues. The applicant did not criticize or challenge the contents of the RAD's summary. The applicant also acknowledged that it was appropriate to review the questions and answers for the purposes of assessing procedural fairness. Having reviewed the transcript myself, I am satisfied that the RAD properly understood and set out the relevant contents of the transcript for procedural fairness purposes.

[64] The crux of the applicant's submissions in this Court concerned the RPD's explanation to the applicant about the legal requirements for an IFA, which, in turn, raises the RAD's conclusion on procedural fairness. The RAD stated (writing as though speaking directly with the applicant):

> In light of the case law, I am of the opinion that the RPD's actions complied with procedural fairness. In other words, it encouraged you to state what you feared in India, to present your testimony and your arguments. It used simple terms to address the issue of whether you could live safely in the two cities identified as IFAs. It also asked you to indicate whether it would be reasonable for you to relocate there. In its decision, the RPD explained to you why it concluded that you had an IFA in either Bengaluru or Indore. Therefore, I see no breach of the principles of a fair hearing for the person representing themself.

[65] The applicant maintained that the RAD erred in this conclusion. According to the applicant, the RPD did not meet its "more onerous obligation" to the (then) self-represented

applicant to “explain the case to be met” concerning the proposed IFA in accordance with legal standards in *Ranganathan*: *Turton,* at para 36. The applicant submitted that the RPD’s failure deprived him of the opportunity to make his case by adducing evidence to meet the requirements of an IFA.

[66] I do not agree. In my view, the RAD made no legal error in its conclusion on this issue and the applicant has not shown that the RPD deprived him of procedural fairness.

[67] The applicant has not demonstrated that the RAD made a legal error in concluding that the RPD adequately explained the IFA to the applicant. The applicant did not cite any case that sets a minimum standard for what must be explained about an IFA to a self-represented claimant before the RPD. The RAD’s reasoning accepted that the RPD met the required standard in its initial statement to the applicant.

[68] In my view, the RAD made no legal error in that conclusion because the RPD’s initial statement was substantively correct, adequate and fair to the applicant. Near the outset of the hearing, the RPD made the applicant aware of the essence of the IFA analysis (is there “any safe place for you to live in your country”?) which reflects the underlying principle that the applicant is not a Convention refugee if he can safely take refuge elsewhere in his country of origin. The RPD’s initial statement to the applicant also raised whether it would be reasonable for him to relocate to the proposed cities (“whether it would be reasonable and practical for you to live there?”). These two points reflect the essence of the two prongs of the IFA test.

[69] The RAD also noted that the RPD used “simple terms” to describe the IFA requirement. This observation is accurate and accords with expectations for self-represented claimants to ensure their meaningful participation in the hearing: see *Olifant*, at paras 16-18, citing *Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201; *Ait Elhocine v. Canada (Citizenship and Immigration)*, 2020 FC 1068, at para 15; *Li v. Canada (Citizenship and Immigration)*, 2015 FC 927, at para 37; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 274, at paras 36-42; *Martinez Samayoa v. Canada (Citizenship and Immigration)*, 2012 FC 441, at para 7.

[70] For procedural fairness purposes, particularly the applicant’s ability to present his case, the RPD’s questions enabled him to provide relevant evidence related to the IFA test. Reading the transcript, the RPD asked him short, simple, open-ended questions designed to elicit facts and explanations from the applicant related to the requirements for an IFA. As the applicant acknowledged, the questions posed are relevant to whether he had a procedurally fair hearing. In my view, the questions supplemented the contents of the RPD’s initial statement about IFA to the applicant and enabled him to present his case through his answers. For example, and as the RAD described in its reasons, the RPD asked the applicant about his ability to live safely elsewhere in India, who he feared and whether they would be able to find him in one of the proposed cities. The questions and answers show that he was asked and testified about possible jeopardy to his life and safety. He was asked whether he could live reasonably in the proposed IFA cities. The RPD member (who heard his testimony) and the RAD held that the applicant testified that he could live anywhere. Although the applicant attempted to cast doubt on that conclusion based on the phrasing of his answer, I cannot disagree with the RAD and the RPD on what is essentially a question of fact.

[71] The applicant correctly argued that the RPD did not explain his burden of proof on IFA issues. The applicant made this point to the RAD and I agree that the RAD's reasons did not expressly address it. However, I do not believe that omission reveals a basis for the Court to intervene in this case, either due to an error in the RAD's decision or procedural unfairness to the applicant during the RPD hearing. As the RPD and RAD concluded, and the RAD described in the course of assessing procedural fairness, the applicant's answers during his testimony did not meet the required standard on either prong of the IFA test. Indeed, the RAD concluded that his answers on the first IFA prong were "very vague" and that he had not present "any evidence" to meet the high requisite standard on the second prong. The burden of proof made no difference in this case, and the RPD's failure to explain it was of no moment.

[72] This leads to a related point. Although the RAD had the ability to admit additional evidence for use on the appeal, the applicant did not seek to introduce any new evidence at the RAD about what he would have added to his testimony if he had known more about the IFA test: see *Larrab*, at para 29. By that time, the applicant was represented by counsel. Similarly, the applicant did not attempt to adduce additional evidence in this Court to that effect. He submitted that if the RPD had explained more about the IFA test then he "would have provided his answers accordingly", which is uninformative.

[73] Recognizing that the applicant arguably did not have to demonstrate actual prejudice to show a breach of procedural fairness (*Taseko Mines*, at para 61), it remains that adducing additional specific evidence that he would have provided if he had known additional details of the IFA test in law (or if he had been asked additional or more probing questions) would surely

have bolstered his argument that the process was unfair to him. Such evidence could have tangibly shown that the absence of additional legal guidance, or further questions, was or could have had a prejudicial effect on the applicant at the RPD hearing: *Taseko Mines*, at paras 52-53. The absence of this evidence implies that the Court does not need to intervene and grant an Order, either because there was no prejudicial effect on the applicant to support a breach or because the circumstances do not warrant a remedy: *Taseko Mines*, at paras 62-64.

[74] In all the present circumstances, I believe the applicant knew the case to meet and had a meaningful opportunity to be heard. The RPD provided correct and adequate substantive disclosure of the legal principles relevant to IFAs, provided in understandable language. The applicant testified on relevant topics and the RPD elicited his evidence through appropriate questioning. The non-disclosure of the additional details of the applicable IFA law did not raise any practical or realistic possibility of prejudice to him.

[75] Accordingly, I conclude that the applicant has not shown that the RAD's decision should be set aside on the basis of procedural unfairness at the RPD as alleged.

III. Conclusion

[76] For these reasons, the application for judicial review will be dismissed.

[77] At the end of oral submissions (and in response to a question from the Court), the applicant sought to propose a question to certify for appeal. Despite the requirement of notice to the respondent in the Court's *Practice Guidelines for Citizenship, Immigration, and Refugee Law*

Proceedings dated November 5, 2018, a proposed question was not raised in the applicant's written submissions or otherwise with the respondent before the end of the hearing.

[78] In any event, I find no appropriate question for certification. An appeal would focus on the application of procedural fairness principles to the circumstances of this case. A future case may raise the appropriate standard of disclosure of this or another legal issue to self-represented claimants at the RPD on a suitable evidentiary and legal record, and as a determinative issue. However, this is not an appropriate case for determination of that issue at the Federal Court of Appeal.

JUDGMENT in IMM-6022-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6022-22
STYLE OF CAUSE:	VEERPAL SINGH KHOSA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 18, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	APRIL 17, 2023

APPEARANCES:

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