Federal Court  Cour fédérale

Date: 20231101

Docket: IMM-8892-22

Citation: 2023 FC 1459

Ottawa, Ontario, November 1st, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

JARNAIL SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jarnail Singh, is a citizen of India. He seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated August 16, 2022, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting his claim for refugee protection, finding that he is neither a Convention refugee nor a person in need of protection because he has a viable internal flight alternative [IFA] in Ludhiana [Decision].

[2] The Applicant claims to fear goons, ruling party members in the National Bharatiya Party and the Delhi police. The determinative issue for both the RPD and the RAD was the Applicant's viable IFA in Ludhiana.

[3] The Applicant submits that the Decision is unreasonable on the basis that: (i) the RAD did not seem to understand the tenant verification system; (ii) the record demonstrates that there is an ongoing interest in the Applicant based on his profile as a suspected anti-nationalist; (iii) the RAD failed to appreciate that the arrest was arbitrary but not illegal; (iv) the agents of persecution have the means and motivation to locate the Applicant; (v) the RAD engaged in a selective reading of the documentary evidence; and (vi) it would be unreasonable for the Applicant to relocate to the IFA.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the Decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

II. Standard of Review

[5] The applicable standard of review is that of reasonableness as set out in Canada (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent

exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

[6] I first address a preliminary point concerning the Applicant's memoranda and the record before the RAD. To be clear, counsel in the present judicial review, Allen & Associates, are not the counsel who represented the Applicant before the RAD, Stewart Istvanffy [RAD Counsel]

[7] The first appeal record that was submitted to the RAD was for the most part illegible. Included among the parts that were legible were wholly irrelevant material. By way of example, it contained an article on what Trump was served while visiting India, and the outrage at the inclusion of broccoli in the samosas. The staff of the Immigration and Refugee Board [IRB] contacted the RAD Counsel and requested that a legible record be provided.

[8] A second copy of the record was provided. While legible, the memorandum was completely different from the one that was initially submitted. It is clear that significant parts of the second memorandum do not actually relate to the Applicant or his claim. The IRB contacted the RAD Counsel and requested clarification as to the memorandum. After several weeks with no response, the IRB called the RAD Counsel who said he would look into it. After several more weeks with no response, the RAD Counsel was informed that the second memorandum would be accepted because it was legible.

[9] I commend the RAD for the approach it took. As the RAD details in the Decision, it proceeded with the second memorandum, albeit ignoring the substantial portions that were clearly irrelevant to the Applicant or his circumstances. Out of fairness, the RAD also proceeded to take into account the portions of the first memorandum that were legible and relevant to the determinative issue. The RAD identified the IFA as the determinative issue and then proceeded to conduct a thorough and detailed analysis in spite of the deficient record that it had received.

[10] It should not be for the RAD to have to seek to cobble together arguments for the Applicant from badly prepared, irrelevant, and difficult to read documentation. The conduct of the RAD Counsel is not in keeping with the standards of the legal profession and I condemn it in the strongest of terms.

[11] In my view, counsel for the Applicant in the present judicial review have done a commendable job given the record before the RAD. Nevertheless, and despite the able submissions of counsel, I have not been persuaded that the RAD erred.

[12] The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. The first prong consists of establishing, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution in the proposed IFA. In the context of section 97, it must be established that the claimant would not be personally subjected to a section 97 danger or risk in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the

claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-98; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5 [*Mora Alcca*]; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17; *Ifaloye v Canada (Citizenship and Immigration)*, 2021 FC 1110 at para 14). The onus is on the Applicant to negate either of the two prongs (*Chitsinde v Canada (Citizenship and Immigration)*, 2021 FC 1066 at para 21).

[13] First, the Applicant submits that his arrest by the Delhi police was arbitrary but not illegal, thus there would have been traces of this arrest, notably his fingerprints and his photograph. As such, it was a legal arrest (rather than an extra-judicial detention). The Applicant states that the RAD failed to understand this difference and thus his agents of persecution will be able to locate him.

[14] This argument was not raised before the RAD. This Court has consistently held that it is inappropriate to grant judicial review based upon a ground not raised before the RAD (*Tcheuma v Canada (Citizenship and Immigration)*, 2022 FC 885 at para 27; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 24; *Ogunmodede v Canada (Citizenship and Immigration)*, 2022 FC 94 at paras 23-30; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1692). Indeed, the RAD can hardly be faulted for not considering a submission that was not put before it (*Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14; *Enweliku v Canada (Citizenship and Immigration)*, 2022 FC 228 at para 42).

[15] Moreover, and in any event, the section of the Decision addressing whether the Applicant's information would be contained in the Crime and Criminal Tracking Network and Systems [CCTNS] database, addresses the concepts of an official or sanctioned arrest vs. an extrajudicial detention. There is no indication that the RAD failed to appreciate the difference between the two.

[16] The remainder of the Applicant's arguments as to the means and motivations of the agents of persecution amount to, in my view, an impermissible request to reweigh the evidence considered by the RAD (*Vavilov* at para 125). Considering the material before the RAD, including the articles in the National Documentation Package [NDP], I have not been persuaded that the RAD erred in its analysis of the tenant verification system or the CCTNS. While there was much debate during the hearing as to the capabilities and the limits of these two systems, the RAD was entitled to come to the conclusions that it did as they were justified in relation to the evidence. Nor do I agree with the Applicant's submission that the RAD engaged in a selective reading of the evidence before it.

[17] As to the Applicant's argument that it would be unreasonable for him to relocate to the proposed IFA for mental health reasons, I am not persuaded that the RAD erred. As stated by Justice René LeBlanc in *Mora Alcca*, in the second prong of the IFA test, the onus on the Applicant is an exacting one:

> [14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one. In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily

> relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.
>
> [Citations omitted.]

[18] The RAD noted, and the Applicant admits, that he had not raised any arguments or issues with the RPD's findings regarding mental health considerations in the IFA location nor had he presented evidence that he will be unable to seek treatment and medication there. The Applicant now seeks to rely on general evidence in the NDP as to mental health care in India. In my view, while relevant, this is insufficient to demonstrate that the RAD's conclusion is unreasonable – namely, that the Applicant had not established that there were circumstances that would result in undue hardship or place his life or safety in jeopardy.

IV. Conclusion

[19] For the foregoing reasons, this application for judicial review is dismissed. Given the record before it, the Decision bears the required hallmarks of reasonableness - justification, transparency and intelligibility. No question for certification was proposed, and I agree that none arises.

JUDGMENT in IMM-8892-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed;

2. No question of general importance is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8892-22
STYLE OF CAUSE:	JARNAIL SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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