Federal Court  Cour fédérale

Date: 20231130

Docket: IMM-1438-23

Citation: 2023 FC 1602

Montréal, Quebec, November 30, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAJPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicant, Rajpreet Singh [the "Applicant"], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division ["RAD"] of the Immigration and Refugee Board of Canada ["IRB"]. The Judicial Review is dismissed for the following reasons.

[2] The Applicant is a citizen of India, of Sikh religion and from Shahanjapur, in the state of Uttar Pradesh. He fell in love with a Muslim woman named Shehnaaz who became pregnant of

him. Shehnaaz's family was against their relationship and attacked the Applicant. The Applicant asked the advice and assistance of his friend Rajesh Sharma who supported Shiv Sena, a Hindu nationalist political party. Rajesh's father was a local politician with the Shiv Sena and had influence over the police, and Rajesh blamed the Applicant for being with a Muslim woman.

[3] On October 18, 2019, the Shiv Sena's goons attacked Shehnaaz at the Applicant's house where she was hiding. They allegedly killed Shenaaz and left the Applicant fainted. The police took the Applicant to the station where they accused him of killing Shehnaaz. They took his fingerprints and signature and detained him for three (3) days before releasing him upon receiving a bribe from the Applicant's mother.

[4] On November 2019, the Applicant went to New Delhi where his mother had arranged with an agent to get him a passport and tickets to flee the country. He arrived in Canada on November 27, 2019 and claimed refugee protection in March 2020.

[5] The Refugee Protection Division of the IRB ["RPD"] heard the Applicant's claim on June 13, 2022, and on August 19, 2022, refused his claim on the basis that a viable internal flight alternative ["IFA"] was available to him in Hyderabad, India.

[6] The Applicant appealed the RPD's decision before the RAD which ultimately upheld the RPD's IFA analysis and dismissed the appeal. The Applicant then applied to this Court to judicially review the RAD's decision.

II. Preliminary Issue

[7] Pursuant to subsection 4(1) of IRPA, “the Minister of Citizenship and Immigration is responsible for the administration of the Act”. Therefore, the style of cause is amended to name it as the Respondent.

III. Decision

[8] I dismiss the Applicant’s judicial review application because I find the decision made by the RAD to be reasonable.

IV. Standard of Review

[9] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Vavilov*).

V. Analysis

A. *Legal Framework*

[10] The two-prong test for an IFA is well established. An IFA is a place in an applicant’s country of nationality where a party seeking protection (i.e., the refugee claimant) 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.

[11] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[12] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant 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. The burden for this second prong (reasonableness of IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] has held that it requires nothing less than 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. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at para 8.

B. *1st Prong: Was the RAD analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[13] The Applicant alleges that because of his arrest by the Uttar Pradesh police for murder, the existence of a database of criminals to all police, and the registration requirement for all tenants, the police will learn of his return to India and harm him.

[14] Moreover, the Applicant argues that the police are likely colluding with Shiv Sena "goons" and influential persons in the village, such as the father of Rajesh Sharma, in order to blame the Applicant for the murder of an innocent girl they had killed. At the hearing, counsel for the Applicant argued that because the Applicant is accused of murder, he is a high profile person of interest by the authorities as well as by Rajesh Sharma, his influential father and Shiv Sena.

[15] Therefore, even if the initial detention of the Applicant was an extra-judicial one, the Applicant remains a suspect in a murder case and, as such, a person of interest in the eyes of the police.

[16] I find that in its analysis, the RAD conducted a thorough analysis of the evidence before it on the actions of the police. The Applicant in effect is arguing that the unreasonableness of the RAD decision stems from the RAD member's failure to speculate into a range of possibilities of the police's various balancing acts of local politics.

[17] It was the Applicant's own evidence that he was not formally charged with a crime, he was not brought before a judge or a magistrate, which is the protocol of a judicial arrest, and was released upon the payment of a bribe, without further conditions. The Applicant is speculating as to what further interest the police might have retained in him because of the interplay of various local political actors.

[18] It was based on the analysis of the Applicant's personal evidence that the RAD reasonably concluded that he had faced an extra-judicial arrest and was probably not reported to the CCTNS, through which tenant verification is conducted. At the hearing, counsel for the Applicant also confirmed that the arrest was extra-judicial, but argued that because of it, the police is often not interested to create a paper trail, and therefore, the absence of official documents should not be seen as evidence that they did not enter the Applicant's name in the CCTNS database. In effect, the Applicant is arguing that what rendered the RAD's decision unreasonable was the failure of the member to speculate as to what the police might or might not have done. However, I find that the RAD member based their analysis on the evidence before them and not on assumptions or other speculations. This was reasonable for them to do.

[19] The RAD also took into account these elements of the evidence to make its findings:

- The documentary evidence shows that the CCTNS mainly allows communication within a state or a district and that India does not have a centralized registration system to enable the police to check the whereabouts of all inhabitants;

- Even if information are entered into the CCTNS, the police is generally ill-equipped, short-staffed and not comfortable with technology to conduct searches.

[20] The RAD's analysis shows a thorough understanding and awareness of the CCTNS system and the tenant verification system. The RAD's ultimate conclusion that the Applicant's information was unlikely to be in the CCTNS given the particular circumstances of his arrest was reasonable and based on the RAD's analysis of the NDP documents before it.

[21] The Applicant's long quotes from the NDP on CCTNS and tenant registration do not reasonably demonstrate that the RAD had ignored material evidence. Rather, the Applicant is asking this Court to reweigh the evidence differently.

[22] Even though other decisions of a single panel of the RAD is not binding on the RAD (or the RPD), the RAD member in this case entertained the Applicant's reliance on a 2019 RAD appeal of X (128885). In that case, the RAD had found that the tenant registration system put the appellants in jeopardy because there was a chance that information of their new whereabouts would find its way back to their local police. The RAD member distinguished the case before them reasonably from that case. In the case of X, the appellant had been used as a police informant and had been arrested, tortured, released and re-arrested and again released under conditions to report to the police, which is different than the Applicant's extra-judicial arrest in this case.

[23] The RAD here also mentioned that even in X, the RAD had found that the CCTNS does not contain information regarding persons of interest and limited its finding to the particular circumstances of the appellant who faced a heightened risk. I agree with the RAD member that the circumstances in the two cases are not materially similar.

[24] In addition to the risk paused by the police, the RAD member fully engaged with the material evidence on the risk by Rajesh Sharma's father and Shev Sena in the proposed IFA. They engaged with the RPD's analysis of the objective evidence in the NDP that Shiv Sena principally had an active presence in Maharashtra, Bihar, Haryana, Goa, Punjab, and West Bengal – but not Uttar Pradesh. The RPD also noted that the proposed IFA, Hyderabad, is located in the Indian state of Telangana and that there was no indication in the NDP that Shiv Sena had a meaningful presence in Telangana. The RPD thus found that Shiv Sena would not be able to track the Applicant to Hyderabad. The RAD then engaged in its own independent analysis to conclude that the influence of Rajesh Sharma's father did not extend beyond the local police at best. Therefore, given the RAD's conclusion of the police's inability to locate the Applicant in the IFA, the RAD reasonably concluded that the police would still lack the means to track the Applicant to Hyderabad because no FIR or other information regarding the Applicant was likely entered into the CCTNS system.

[25] In the oral argument, counsel for the Applicant argued that the RAD did not reasonably consider the specific situation of the Applicant in that he is wanted by the Police for murder, which is a high profile crime. While the Applicant alleges that the police is likely treating him like a murder suspect, his personal evidence on how the police treated him does not support it. He presented no evidence of being formally charged, no FIR were filed and he was released after the payment of a bribe and with no reporting condition. These were all relevant facts that the RAD considered reasonably. The Applicant argued that even in the absence of those "administrative record", the Applicant is likely reported in the CCTNS report and is therefore traceable. The RAD cannot be faulted for its failure to speculate.

[26] I also do not agree with the Applicant's characterization that the RAD should have found the case of X (2019) 128885 to be persuasive. The RAD could not have been expected to speculate on the profile of the Applicant when the balance of the evidence pointed in the opposite direction. In fact, the RAD had specifically turned its mind into the profile of the Applicant: "I find, on the balance of probabilities, that had the police actually considered the Applicant a criminal, they would not have released him without at least restricting his movements or by issuing some reporting requirement" at paragraph 19 of its decision.

[27] The RAD's analysis and conclusion that the father of Rajesh Sharma and Shiv Sena lack the means and ability to pursue the Applicant to Hyderabad is reasonable. The RAD member fully engaged with the argument that they want to blame him for their murder of Shenaaz and looked at RPD's analysis of Shiv Sena's influence in various parts of India which did not include Telegana, where Hyderabad is located. The RAD held:

> Having independently reviewed the record before me, including the NDP, I also find, and for the same reasons, that—even if local Uttar Pradesh Shiv Sena were motivated to pursue the Appellant across state lines—nothing in the NDP concerning Shiv Sena (and nothing the Appellant has disclosed) indicates that local, Uttar Pradeshi Shiv Sena would be able to motivate Shiv Sena in Telegana, where they lacked support. I therefore find that Rajesh Sharma and Shiv Sena's power does not extend beyond a localized influence.

[28] At the hearing, the Applicant argued that because of Rajesh Sharma and his father's continued anger with the Applicant going out with a Muslim woman, the RAD should have considered the evidence of corruption in India and found that they could easily locate him through their influence on the police in Hyderabad. To substantiate this, the Applicant tried to rely on updated NDP document dated July 7, 2023, which was not before the RAD. The

Applicant did not point to how a document not before the RAD falls into an acceptable exception for this Court to consider. I therefore cannot accept any evidence not before the RAD. In any event, the RAD specifically considered the evidence and made a finding that Rajesh Sharma and his father had no influence beyond a local one, and not over anyone in Hyderabad, and this Court will not reweigh the evidence.

[29] I find that the RAD's analysis of the first prong of the IFA test was reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicant, in his particular circumstances, to relocate to Hyderabad?*

[30] As stated above, to overcome the second prong of the IFA test, the Applicant needs to present concrete evidence of conditions that would jeopardize his life and safety in relocating to the IFA. I find that there was no such evidence before the RAD, and it was therefore reasonable for the RAD member to conclude that it was reasonable for him to relocate to Hyderabad.

[31] The Applicant is arguing that due to his Sikh religion and his membership in a scheduled cast, he would face discrimination amounting to persecution in Hyderabad. The compound effect of these also contributes to a heightened risk profile due to his intersectionality.

[32] I find that the RAD member fully engaged with the Applicant's particular circumstances in a reasonable manner:

- As the Applicant raised the factor of his belonging to the Ravidasia caste (Scheduled Caste or Other Backward Class (OBC)), the documentary evidence indicates that some members are well-off, landowning and powerful, and some are poor. However, they OBC

members are not considered untouchable. The Applicant's personal evidence demonstrates that he worked as a farmer, like his father, and had made sufficient money to travel extensively to Europe and through Asia;

- The documentary evidence shows that Scheduled castes do not generally experience discrimination in housing and securing employment. However, the Applicant has experience in farming, selling vegetables and truck driving, and there is insufficient evidence to demonstrate that he would not be able to secure reasonable employment and accommodation because of his caste;

- Whereas the Applicant also alleged that he would face discrimination on the basis of his Sikhism, the evidence does not demonstrate, on the balance of probabilities, that discrimination would amount to hardship: the documentary evidence mentions that Sikhs outside Punjab do not experience noticeable issues with health care, education and employment and that Sikhs in India generally face a low level of societal and official discrimination and violence.

[33] At the hearing, the Applicant argued that the situation of Sikhs in India is particular because it is a minority religion and that the RAD should have considered it because of the discrimination the Applicant would face in accessing health and housing. The Applicant tried to point to documents not before the RAD, which I cannot consider, and the fact that the Sikh population in Hyderabad is relatively small, which is not particularly relevant to rendering the IFA unreasonable. In fact, through paragraphs 24 and 25 of their decision, the RAD member engaged with the Applicant's Sikh religion, and in paragraph 26, they engaged with the

Applicant's caste. Then, they looked at the particular circumstances of the Applicant and his father to conclude that the IFA was not unreasonable.

[34] I find that the RAD was not required to quote from all documents. However, it did consider the Applicant's relevant arguments in the context of the high threshold under the second prong of the IFA test. This was reasonable.

[35] Through quotes from the UNHCR handbook and Ontario Human Rights Commission, and without much analysis, the Applicant argues that the RAD did not take the cumulative effect of the Applicant profile. In effect, he disagrees with how the RAD member engaged in weighing the evidence. RAD specifically engaged with the Applicant's particular circumstance to address the reasonableness of IFA. It is not for the Court to reweigh the evidence.

[36] Upon considering the evidence on file, the RAD determined, for the second prong of the test for IFA, that even on a cumulative basis, namely his religion, caste and personal factors such as his family's socio-economic position, circumstances would not render his relocation in Hyderabad unduly harsh or objectively unreasonable.

[37] I find that the RAD's analysis of the second prong is reasonable.

VI. Conclusion

[38] Following the assessment of the two prongs of the test for IFA, the RAD reached the conclusion that the decision in the first instance was correct and that the Applicant is not a Convention refugee or a person in need of protection. The RAD's independent analysis of the evidence in reaching the conclusion that a viable IFA exists in Hyderabad was reasonable.

[39] The Application for Judicial Review is therefore dismissed.

[40] There is no question to be certified.

JUDGMENT IN IMM-1438-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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