Federal Court  Cour fédérale

Date: 20231205

Docket: IMM-6968-22

Citation: 2023 FC 1633

Ottawa, Ontario, December 5, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SHAH JAMAL, ANWAR HOSSAIN, TASNIM AFROZA AND NILUFA YASMIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugees Protection Act* (LC 2001, c27) [IRPA] of a decision by the Refugee Appeal Division [RAD] dated July 6, 2022, refusing the Applicants' appeal. The RAD concluded that the Applicants, who are citizens of Bangladesh and Sunni Muslims, were not Convention refugees nor persons in need of protection because they have viable internal flight alternatives [IFA] available to them in the cities of Dhaka, Chittagong and Khulna in Bangladesh.

[2] The Applicants fear persecution from alleged Jamaat-e-Islami [JEI] leaders, Mr. Malek and Mr. Miah, since Shah Jamal, the principal Applicant [PA], refused to join the JEI organization and to provide monetary donations.

[3] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the Applicants have failed to discharge their burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

I. Factual background

[4] The Applicants are citizens of Bangladesh and Sunni Muslims who previously resided in Saudi Arabia. Shah Jamal, the father, had been living in Saudi Arabia since 1991, Nilufar Yasmin, the Mother, since 1999 and Anwar Hossain, Afrza and Tasnim [the Children] since they were born.

[5] On June 28, 2015, the family returned to Noakhali, Bangladesh with the intention of residing there permanently.

[6] During the last week of August 2015, the Applicants' home was visited by the principal and the imam of the local *madrassa*, Mr. Malek and Mr. Miah respectively, who the Applicants claim were members of the JEI organization. The PA was not home at the time.

[7] On September 5, 2015, the PA alleges that Mr. Miah and Mr. Malek returned to his home and spoke with him. He further alleges that he was told to meet the JEI leaders at a local *madrassa*.

[8] On September 8, 2015, the PA allegedly met the two religious leaders at the *madrassa* along with five other men who were dressed as Islamic fundamentalists. The PA claims that Mr. Malek and Mr. Miah asked him for financial support for their religious ventures and for him and the male Associate Applicant, his son, to join their organization. The PA refused and expressed critical views of the *madrassa* education and Islamist activism, linking the two with human rights abuses and terrorist activity. Angered by these statements, the two leaders allegedly declared that a death sentence should be carried out against the PA.

[9] On September 14, 2015, the Applicants returned to Saudi Arabia fearing for their lives. They eventually arrived in Canada where they filed claims for refugee protection on August 30, 2018.

[10] On February 25, 2022, the Refugee Protection Division [RPD] refused the Applicants' claims and on July 6, 2023, the RAD dismissed the Applicants' appeal.

II. Issues and Standard of Review

[11] The only issue is whether the RAD's decision is reasonable.

[12] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). It is the party challenging the decision, who bears the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court 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", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[13] 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). A reasonableness review also is not a "line-by-line treasure hunt for error" the reviewing court simply must be satisfied that the decision maker's reasons "add up" (*Vavilov* at paras 102, 104).

[14] The Applicants submit that the decision was unreasonable because the IFA assessment is based on mischaracterized profiles of risk of the Applicants, and the profiles of the agents of persecution. The Applicants also argue that the reasons provided by the RAD lack an intelligible rationale in relation to the determinative issue, namely the assessment of the motivation and of the means of the agents of persecution.

III. Analysis

[15] It is trite law that refugee claimants must first seek protection in another part of their own country before seeking refuge in Canada (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 752; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]; RAD's decision at para 9).

[16] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) [*Rasaratnam*]. The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under subsection 97(1) of the IRPA in the proposed IFA location, and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs must be satisfied in order to make a finding that a claimant has an IFA (*Thirunavukkarasu*at 597-598; *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 [*Leon*]; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17).

[17] On the first prong of the test, the Applicants bear the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge its burden, a claimant must demonstrate that they will

remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the "means" and "motivation" to cause harm to the claimant in the IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8). This assessment must be made by the decision maker, is a prospective analysis, and is considered from the perspective of the agents of persecution, not from the claimant's perspective (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12). The onus is therefore on the Applicants to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA and that therefore, they will be subject to a serious possibility of persecution or to a likelihood of a section 97 of the IRPA danger or risk in the proposed IFA.

[18] For the second prong of the test regarding the reasonability of the refuge in other parts of the country, the threshold is very high and an applicant for asylum must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration)*(CA), 2000 CanLII 16789 (FCA) [*Ranganathan*]; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20-21). An IFA will only be viable if both criteria are met (*Rasaratnam* at 711).

A. *The RAD's decision is reasonable*

[19] The RAD's decision that viable IFAs exist in Bangladesh is reasonable on the basis of the evidence adduced which demonstrates that the agents of harm were not motivated to pursue the Applicants in the proposed IFAs. The RAD reasonably held that there was no serious possibility of persecution in the IFAs because there was insufficient evidence that the agents of persecution would be interested in pursuing the Applicants in the IFAs. The evidence demonstrates that the PA's father continues to attend the *madrassa* where the agents of persecution also attend, and the PA's father was never asked of the Applicants' whereabouts nor threatened. Moreover, the PA testified that his friends and family were never approached by the agents of persecution in an attempt to find him. The lack of any evidence of any ongoing interest was a reasonable basis for the RAD to conclude that there is no continuing interest by the agents of persecution to harm the Applicants.

[20] The Applicants argue that the RAD mischaracterized their profiles to reach its determination on the first prong of the IFA test. The RAD analyzed the prospective risk faced by the Applicants based on their profile as "Sunni Muslims" who are "not politically active" and "not particularly religious". The RAD concluded that the Applicants did not match the profile of religious minorities or secular bloggers who, according to the National Documentation Packages [NDP] for Bangladesh, have been particularly at risk of violence.

[21] The Applicants argue that the RAD wrongly characterized them as "mostly private unbelievers". Despite the fact that the evidence demonstrates that their religious or political

views were not publicly accessible on social media, the Applicants submit that they are liberal foreigners who have espoused secular, if not blasphemous views regarding the role of religion in the public sphere.

[22] The Applicants further argued at the hearing that they could not relocate anywhere in Bangladesh because they have lived abroad for most of their lives (all of their lives for the Children) and that therefore, they are perceived as foreigners. The Applicants assert that the risk profile for foreigners, liberals, secularists or public "unbelievers" or blasphemers is thoroughly different from that of the majority population of Bengali Sunni Muslims (as assessed by the RAD) as is noted in the NDP (NDP, April 29, 2022, item 2.4, *Bangladesh Freedom in the World 2021*, Freedom House, 2021; NDP April 29, 2022, item 12.6, *Bangladesh Freedom of Though Report*, Humanists International, October 13, 2020). Since the Children have accents in Bengali and speak Arabic amongst themselves, they will therefore be perceived as foreigners.

[23] Thus, the Applicants submit that the situation they faced in Noakhali, Bangladesh would inevitably reoccur anywhere in Bangladesh. In other words, as foreigners with accents, Islamic and religious leaders will approach them wherever they reside in Bangladesh (in any potential IFA) and seek support and funding. The Applicants will inevitably refuse, resulting in the religious leaders again declaring a death sentence on the Applicants.

[24] The Applicants also rely on a recent RAD decision (*X (Re)*, 2020 CanLII 68122), where the tribunal member found in a similar situation that because the applicant had expressed their

belief in secularism publicly to the local imam, it placed them apart from other privately less religious individuals.

[25] Finally, at the hearing, Counsel for the Applicants referred to item 4.2 of the NDP (*Bangladesh: Les organisations islamistes, France. Office français de protection des réfugiés et apatrides,* January 9, 2018 [NDP item 4.2]), which is cited at footnote 12 of the RAD's decision, to argue that the agents of persecution would want to kill the PA because he did not make a monetary contribution to the *madrassa* and because he stated his view against Islam.

[26] In my view, the Applicants have failed to demonstrate that the RAD's findings were unreasonable.

[27] First, the Applicants have not brought any argument that would demonstrate that the RAD's conclusion that the agents of persecution would not be motivated to locate and harm them in any of the proposed IFAs is unreasonable. They have not demonstrated how, or why, the RAD's conclusion, based on the PA's father still attending the same *madrassa* as the agents of persecution without issue, and the fact that the PA's friends and family members were not approached by the agents of persecution in attempts to locate him, is unreasonable. The Court has held that where no evidence exists of efforts by agents of persecution to locate a claimant, by contacting their family or otherwise, a reasonable inference may be made that the agents of persecution do not have an ongoing motivation to locate the claimant in an IFA (*Chavez Perez v Canada (Minister of Citizenship and Immigration)*, 2021 CF 1021 at para 12; *Leon*, at paras 16,

18, 23; *Rodriguez Llianes v Canada (Minister of Citizenship and Immigration)*, 2013 FC 492 at para 10).

[28] Second, the Applicants argued at the hearing a different claim than that identified in their Basis of Claim [BOC]. The BOC identified specific individuals involved with the *madrassa*. The Applicants did not claim to be subject to any other serious possibility of persecution nor to any other risk of harm under subsection 97(1) of the IRPA, other than at the hands of the agents of persecution noted in the BOC.

[29] The Court cannot accept the Applicants' argument that as "foreigners," they fear persecution everywhere in Bangladesh because, as I understand the argument, what occurred in Noakhali is bound to occur everywhere else. Not only is there no evidence on this, but the argument is speculative.

[30] Moreover, while the Applicants disagree with the way the RAD depicted their profile, the objective evidence also clearly indicates that Islamist extremists in Bangladesh target "secular activists, minorities, writers, journalists, intellectuals, and artists who publicly insult Islam, and not mostly private unbelievers" (NDP item 4.2). In other words, Islamic extremists target minorities and people who are active and publicly outspoken about their views. The Applicants have not demonstrated being within these groups.

[31] Therefore, in my view, the Applicants have not demonstrated how the RAD's conclusion that the agents of persecution in their case are not motivated is unreasonable. That finding was

based on clear evidence that the agents of persecution have not approached the PA's father, who continues to attend the same *madrassa*, or the PA's friends and family, in a quest to locate the Applicants. I find no error in that assessment.

[32] A finding that the agents of persecution are not motivated to find an applicant in an IFA is dispositive of the first prong of the IFA test. It was therefore reasonable for the RAD not to determine whether the agents of persecution had the means to locate the Applicants.

[33] This Court has held that an IFA may be reasonable if it is established that an agent of persecution is not motivated to locate a claimant in the IFA. There is no need in those circumstances to also analyze whether the agent of persecution would have the means to locate the claimant (*Ocampo v (Minister of Citizenship and Immigration)*, 2021 FC 1058 at para 28; *Kandel v (Minister of Citizenship and Immigration)*, 2021 FC 1293 at paras 16-17; *Kaur v (Minister of Citizenship and Immigration)*, 2021 FC 1219 at paras 17-18).

B. *The RAD's decision on the viability of the proposed IFA is not unreasonable*

[34] The Applicants did not make an argument on the second prong of the IFA test in their factum.

[35] At the hearing, the Applicants argued that the proposed IFAs were not objectively reasonable. As stated above, the threshold is very high and an applicant has the onus to demonstrate, with "actual and concrete evidence," the "existence of conditions that would jeopardize the life and safety" (*Ranganathan* at paras 14-15).

[36] In this case, the Applicants followed their new argument noted above and argued that as "foreigners", the situation that occurred in Noakhali, Bangladesh would inevitably reoccur. As it happened in Noakhali when they were newly arrived there, they will go to other IFAs, will be approached by religious leaders for support and money, and when the Applicants will refuse, a death sentence will be passed upon them. According to this argument, all IFAs in Bangladesh would "jeopardize their life and safety."

[37] With respect, the Applicants' argument, far from being "actual and concrete evidence" as required, remains speculative. There is no evidence that the country conditions are such that the Applicants, as "foreigners", liberal thinkers, secularists, or otherwise, will be targeted for persecution. Moreover, and again, the Applicants did not claim, in their BOC, any possibility of persecution or a risk of harm under on those grounds.

[38] The Applicants are inviting the Court to assess a new claim for persecution that they are making for the first time, on the basis of the evidence adduced before the RAD and RPD. The Court cannot accept this invitation.

[39] The Applicants have not otherwise contested the RAD's assessment of the second prong of the IFA test. Consequently, in my view, the RAD's decision on the second prong is reasonable.

IV. Conclusion

[40] The RAD's decision in relation to the test for IFA is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD properly considered all of the evidence that was before it, and found that there were viable IFAs in Bangladesh. The application for judicial review is dismissed.

[41] The Parties proposed no question of general importance for certification, and I agree that none arise.

JUDGMENT in IMM-6968-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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