Federal Court  Cour fédérale

Date: 20231207

Docket: IMM-12585-22

Citation: 2023 FC 1653

Toronto, Ontario, December 7, 2023

PRESENT: Madam Justice Go

BETWEEN:

Latchmin Kumar
Suruj Kumar

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Latchmin Kumar [Principal Applicant or PA] and Suruj Kumar [Associate Applicant or AA, together, the Applicants] are a married couple and citizens of Guyana.

[2] The Applicants sought refugee protection in Canada claiming fear of persecution and harm by AA's family members, who never approved of the couple's union. The PA alleges that she has been continuously mistreated by her in-laws. The Applicants also allege that they were in a land dispute with the AA's family over the Applicants' home in Guyana, which led to threats and attacks against the PA while the AA was working in Trinidad.

[3] In a decision dated November 23, 2022 [Decision], the Refugee Appeal Division [RAD] upheld the decision of the Refugee Protection Division [RPD]. It found that the Applicants failed to establish that they faced a forward-looking risk under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Consequently, the RAD held the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *IRPA*.

[4] The Applicants seek judicial review of the Decision. I find the Decision reasonable and I dismiss the application.

II. Preliminary Issues

[5] In their written submission, the Applicants asked the Court to censure the Respondent for misquoting a decision from the Federal Court of Appeal [FCA]. At the start of the hearing, counsel for the Respondent acknowledged they misquoted the FCA and offered some corresponding explanation. I pause to note that a different counsel worked on the written submission. The Applicants asserted the explanation provided was insufficient.

[6] I see no reason to censure the Respondent for this one error.

[7] The Applicants also took issue with the Respondent raising new oral arguments during the hearing. Counsel for the Respondent argued that these were arguments in response to the Applicants' submissions, and that the Court should allow the Respondent to provide further written submissions, if need be.

[8] As I recently stated in *Orakposim v Canada (Citizenship and Immigration)*, 2023 FC 1472 at para 8, the jurisprudence establishes that a party cannot raise a new argument at a hearing on the basis that it would prejudice the other party.

[9] Here, while the Respondent did file written submissions, their arguments were general in nature and, in some cases, non-responsive to the Applicants' arguments. I do not find it proper for the Respondent to raise new oral arguments that they did not raise in writing, given the absence of an adequate explanation for why the issues were not previously put forward. As such, I will disregard any new argument the Respondent made at the hearing.

III. Issues and Standard of Review

[10] The Applicants advance two arguments that the RAD's decision was unreasonable:

a. The RAD ignored the factual matrix in concluding that the PA's life was not at risk independently from the property dispute; and

b. The RAD failed to engage with one of the Applicants' central arguments relating to the forward-looking risk posed by the AA's family.

[11] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94, and 133-135.

[13] For a decision to be unreasonable, the Applicants must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

IV. Analysis

A. *Did the RAD ignore the factual matrix in concluding that the PA's life was not at risk independently from the property dispute?*

[14] The Applicants claim that the RAD failed to consider evidence that demonstrates the primary danger the Applicants face stem from the AA's family's hatred of the PA as independent from their property dispute. They submit that the RAD erroneously upheld the RPD's conclusion that "[w]hile the [Applicants] may have a subjective fear of the Associate [Applicant's] family, […] the actions directed towards the Principal [Applicant] before the property dispute [are largely described] as general dislike and disapproval of the [Applicants'] relationship." The Applicants submit the RAD ignored evidence demonstrating that the hostility towards the PA predated the land dispute and so, even if they relinquished their claim over the land, the AA's family would continue to be interested in causing the PA harm. They state that the RAD ought to have considered the land dispute as part of the escalation of the hostilities stemming from the AA's family's hatred of the PA, rather than an independent incident.

[15] In particular, the Applicants submit that the RAD ignored the timeline provided by the evidentiary record. The AA's brother attempted to physically assault the PA at her house in 2007, as corroborated by the PA's narrative, the police report from December 2007, and a letter from the Applicants' neighbour. The PA did not receive an eviction notice from the AA's mother until July 2008, corroborated by the PA's narrative and a copy of the eviction notice, upon which she was victim again to violent and harassing behaviour. The Applicants argue these facts show that the threats to the PA's life "began at least a full seven months prior to the eviction notice and the property dispute." The Applicants submit there is nothing in the evidentiary record supporting the decision to treat the AA's family's hatred towards the PA and the property dispute as independent problems to which only the latter incurred life-threatening incidents giving rise to a risk under section 97 of the *IRPA*.

[16] I find the Applicants' arguments somewhat confusing and contradictory. On the one hand, the Applicants argue the RAD erred in concluding the PA's life was not at risk "independently from the property dispute," and on the other, submit the RAD ought to have considered the land dispute as part of the escalation of the hostilities, rather than "an independent incident."

[17] The same confusion can be found in the Applicants' critique of the RPD decision, and in their appeal submissions to the RAD. The Applicants start by noting that the RPD "repeatedly distinguished between the hostility towards the [PA] because of her relationship with the [AA] and the dispute over the [AA's] land." In their appeal to the RAD, the Applicants challenged the RPD's treatment of the matter as problematic. They argued that the hostility towards the PA predated the introduction of the land dispute and reiterated that it was because of her in-laws' hatred towards her that they would continue to be interested in harming her. But they also argued that the land dispute should be seen "as part of the escalation of the hostilities, rather than an independent incident."

[18] In any event, regardless of whether the Applicants were urging the RAD to treat the land dispute independently from the hostilities, or part of it, I reject the Applicants' argument that the RAD ignored the factual matrix, including the hostilities towards the PA that pre-date the eviction notice (which the Applicants allege was the starting point for the land dispute).

[19] Throughout the Decision, the RAD acknowledged the Applicants' allegations of harm due to the AA's family's rejection of their marriage. This was noted at the start of the Decision under the heading "Background" at para 3:

> The [Applicants], who are married, allege that the family of the [AA] never approved of their union. The [PA] alleges that she has been continuously mistreated by her in-laws. The [Applicants] allege that they were in a land dispute with the [AA's] family which led to threats, and escalated into an attack against the [PA] in 2011.
>
> [Emphasis added]

[20] Later in the Decision, at para 16, the RAD addressed the Applicants' submissions head on:

> The [Applicants] argue that the problems between the [AA's] family and the [PA] predate the property dispute. They also argue that the [PA] testified that her in-laws would continue to say mean things to her and want the [Applicants] to divorce….

[21] The RAD then noted the Applicants' argument that it was an error for the RPD to require them to give up their land and that the RPD failed to consider their continuing subjective fear of harm, regardless of whether they gave up their attempts to claim the land. Taking this into consideration, the RAD agreed with the RPD's conclusion that the Applicants have not established a forward-looking risk.

[22] Thus, contrary to the Applicants' argument, the above noted analysis in the Decision demonstrates the RAD was alive to the Applicants' claim that the family hostilities pre-date the land dispute, and that the family mistreated her for reasons other than the land dispute.

[23] At the hearing, the Applicants focused specifically on the police report relating to the 2007 attack on the PA by her brother-in-law. The Applicants submitted that this incident pre-dated the eviction notice in 2008, and demonstrated that the family's cruelty towards the PA goes beyond the property dispute. The Applicants argued that the RAD ignored this evidence and the general increase in hostility.

[24] I note that the RAD in fact admitted the police report as new evidence, and found it to be credible. Ultimately, the RAD concluded that the Applicants "largely describe the actions directed towards the [PA] before the property dispute as general dislike and disapproval of the [Applicants'] relationship" [emphasis added]. I note here again that *Vavilov* cautions reviewing courts against reweighing evidence considered by the decision-maker: *Vavilov* at para 125. While the Applicants may disagree with the RAD's assessment, they have not pointed to any reviewable error arising from this conclusion.

B. *Did the RAD fail to engage with one of the Applicants' central arguments relating to the forward-looking risk posed by the AA's family?*

[25] The Applicants claim the RAD failed to engage with their submission that the RPD erred in concluding the Applicants did not face a future risk given the AA's family had "not tried to contact the claimants in several years" The Applicants argue that this demonstrates a lack of internally coherent reasoning and rational chain of analysis sufficient to find the decision unreasonable: *Vavilov* at paras 102-103. That is, the Applicants have no way of knowing, and providing corroborative evidence, as to whether the AA's family attempted to contact them as they severed all communication with their Guyanese family and did not leave behind any contact

information. The Applicants argue that the RPD's conclusion, upheld by the RAD, is not a logical inference but instead mere speculation: citing *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419 at para 32; *Builes v Canada (Citizenship and Immigration)*, 2016 FC 215 at paras 11, 17, and 19. The Applicants submit that the RAD did not engage with this argument in its reasons.

[26] I reject this argument.

[27] I acknowledge that the RAD did accept the RPD's conclusion in this regard. However, in upholding the RPD's conclusion, the RAD also provided its own analysis for doing so, at para 23:

> As noted by the RPD, since the [Applicants] left Guyana in 2011, effectively ending their pursuits of the property, they have not been contacted by the agents of harm. While the [Applicants] may have a subjective fear of the [AA's] family, they largely describe the actions directed towards the [PA] before the property dispute as general dislike and disapproval of the [Applicants'] relationship. The [Applicants'] assertion that the [AA's] family may pressure them to end their relationship or generally be unwelcoming to their children does not establish a forward-looking risk under section 97.

[28] Having reviewed the record, including the audio recording of the Applicants' testimonies, I find the RAD's conclusion well supported by the evidence before it, and does not turn on whether the Applicants have been contacted by the agents of harm. At the end of the day, the Applicants bear the onus of demonstrating a forward-looking risk. The RAD's conclusion that the Applicants have not done so is well supported by the evidence before it, including the Applicants' own testimonies.

V. Conclusion

[29] The application for judicial review is dismissed.

[30] There is no question for certification.

JUDGMENT in IMM-12585-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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