Federal Court  Cour fédérale

Date: 20240212

Docket: IMM-12202-22

Citation: 2024 FC 190

Ottawa, Ontario, February 12 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

GURJIT SINGH HAYER
MANTEJ SINGH HAYER
MANDEEP KAUR HAYER

Applicants

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 Applicants, who are Indian citizens, are 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”].

[2] The Principal Applicant, Gurjit Singh Hayer [the "PA"], supported the Shiromani Akali Dal Badal political party (SAD) during the 2018 Panchayat elections in his village in Punjab. This angered the Congress Party candidate, PS. PS had also acted as a village head or Sarpanch in 2018, so he started to target him and had the police arrest him on February 2, 2019. The police accused him of hiding drugs and being involved with antinational individuals. He was never formally charged and was released the next day upon payment of bribe. He alleged to have been questioned again by the local police on April 20, 2019. He arrived in Canada in June 2019 and later made a refugee claim.

[3] Both the RPD and the RAD found that the Applicant had a viable IFA in Delhi and he was therefore not a Convention Refugee or a person in need of protection. The Applicant argues that the RAD's decision is unreasonable.

II. Decision

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

III. Standard of Review

[5] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*]).

IV. Analysis

A. *Legal Framework*

[6] 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.

[7] 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.

[8] 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 paragraph 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?*

[9] The Applicant argues that the RAD analysis placed an undue burden on him to expect him to prove that the Punjab police or PS's motivation or ability reached him in the IFA. I find that the Applicant's argument ignored the legal test for the IFA or that once it is raised as an issue, the onus shifts on the Applicant to show that they do not have a viable IFA, in this case in Delhi.

[10] The Applicant also argued for the first time at the hearing that the RAD's failure to engage with credibility made the decision unreasonable. I disagree. As this Court has repeatedly

found, if a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola* v *Canada (Citizenship and Immigration),* 2020 FC 799 at para 7, or *Singh* v *Canada* 2023 FC 1715 at paragraph 19).

[11] I find that the RAD considered the relevant evidence before it and found that the agents of harm, namely PS or the local police, lacked the motivation and the ability to find the Applicants in the proposed IFA, Delhi. To achieve this, the RAD engaged with the record, which included the relevant country documents before it and applied the evidence to the two-prong IFA test.

[12] It was the Applicants' evidence that alleged that the Principal Applicant's political involvement was local and in the context of the 2018 election, that PS was a local Congress Party candidate, a Sarpanch and with influence over the local police, that the PA was arrested and released with the payment of bribe and without a formal legal process against him. The RAD accepted new evidence on the ongoing questioning of family by the local police, and the Applicants submitted that some of the evidence was provided by families living about half an hour away from each other.

[13] To make a finding on the motivation and ability of the agents of harm to locate the Applicants, the RAD member conducted a thorough and independent assessment of the record and concluded that the influence or reach of PS and the local police did not extend beyond its

own locality. It agreed with the RPD findings on the motivation of the agents of harm and did not see that their local motivation translated into motivation to locate and harm them in Delhi.

[14] The RPD had conducted a thorough assessment on India's large population and geography, including those of Delhi. It concluded that with no formal proceedings and with the payment of bribe to gain his release, PA's arrest was probably extrajudicial, which according to the documentary evidence, was not reflected in any of the national databases such as the Crime and Criminal Tracking Network & Systems (CCTNS). It considered the objective documentary evidence to conclude that there was minimal interstate police communication. It dealt with the Applicants' arguments on tenant verification which described verification to be "extremely limited" due to lack of resources.

[15] The RAD conducted its own assessment and noted that the Applicants had not provided updated information with respect to the PS' profile and whether he continued to hold the role of the village head, Sarpanch. In fact, PS had never shown influence that went beyond the local police (within half an hour where the other family members being questioned lived).

[16] The RAD thoroughly turned its mind into the motivation of the police and noted that even when the PA was within their reach until June 2019, they chose to release him after the extra judicial arrests in February and April 2019. Notably, in April 2019, when the police called the PA for questioning, they released him after a few hours without harming him or requesting a bribe.

[17] All of this demonstrates that the RAD thoughtfully considered the relevant evidence before it and reached a logical and legally sound conclusion on IFA where one can easily follow the chain of reasoning. In effect, the Applicants' arguments are tantamount to asking this Court to reweigh the evidence, which is not the job of this Court.

[18] The jurisprudence confirms that risk under either sections 96 or 97 IRPA must be established by evidence and that facts must be established on a *balance of probabilities,* including whether a persecutor has the means and motivation to pursue an applicant in a proposed IFA. When assessing risk under section 96 of the IRPA, the RAD is to consider whether the applicants have established "on a balance of probabilities that there is a serious possibility of persecution in the IFA." When assessing risk under section 97 of the IRPA, the RAD is not to apply the "serious possibility of persecution" standard applicable to section 96 of the IRPA. Rather, under section 97 of the IRPA, applicants must establish "on a balance of probabilities that they would be personally subject to a risk to life, to a risk of cruel and unusual treatment or punishment, or that there is a danger, believed on substantial grounds to exist, of torture in the proposed IFA." *Sadiq v Canada (Minister of Citizenship & Immigration),* 2021 FC 430, paragraphs 43, 47-48.

[19] The RAD's decision, in this present case, is entirely consistent with the jurisprudence above.

[20] The Applicant relies on the case of *Ali v Canada (Citizenship and Immigration),* 2020 FC 93 [*Ali*] to argue that a refugee claimant is not expected to live in hiding in the IFA. The agents

of harm had also visited the family in *Ali* and inquired about their whereabouts. The Court concluded in *Ali* that it was unreasonable to expect family members to put their own lives in danger by denying knowledge of the Applicants, which was not the case here. In fact, there is no evidence of undue pressure or harm by PS or the police on any of the family members. There is no need for the Applicants to live in hiding in Delhi or not to tell their families about it.

[21] It was the Applicants' 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. This is why the RAD reasonably concluded that his extra-judicial arrest was probably not reported to the CCTNS database. At the hearing, counsel for the Applicant also confirmed that the arrest was extra-judicial, but argued that the police's repeated visits to the parents continued to show their motivation. Motivation and ability must be assessed in context, which is exactly what the RAD did.

[22] I find the RAD's analysis of the first prong of the IFA test to be 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 Delhi?*

[23] The Applicant has not made any submission on the reasonableness of the second prong. Upon review of the record, I am satisfied that the RAD's assessment of the second prong showed a clear chain or reasoning and was also reasonable.

V. Conclusion

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

[25] There is no question to be certified.

JUDGMENT IN IMM-12202-22

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

DOCKET:	IMM-12202-22
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