Federal Court  Cour fédérale

Date: 20240212

Docket: IMM-1263-23

Citation: 2024 FC 188

Ottawa, Ontario, February 12 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAJAN KARNWAL

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, Rajan Karnwal [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 from Punjab and fears the father of the girl he loved [the "Father"]. The Father influenced local goons from the local Congress party and the local

police to persecute the Applicant. Both the RPD and the RAD found that the Applicant had a viable IFA in Jaipur, Rajasthan and he was therefore not a Convention Refugee or a person in need of protection. The Applicant agues that the RAD's decision is unreasonable.

II. Decision

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

III. Standard of Review

[4] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 (CanLII), [2018] 3 FCR 75 [*Vavilov*]).

IV. Analysis

A. *Legal Framework*

[5] 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.

[6] 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.

[7] 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 light of 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's 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?*

[8] The Applicant refers to the RAD's decision at paragraph 13 where the RAD agreed that the Father continues to be interested in the Applicant. However, the Applicant argues that it was unreasonable for the RAD not see the police as motivated as well. He argued that local police's repeated visits to his parents home, a fact accepted by the RAD, proves that the police remains interested in him. While the parents have not yet shared their son's whereabouts with the police as they have not yet been harmed by them, they might have to in the future under ongoing police pressure and potential violence. If the Applicant returns to India and settles in the IFA, he is not expected to hide his whereabouts from his own parents. To substantiate this, the Applicant relied on case law that stands for the principle that an applicant is not expected to live in hiding in the IFA.

[9] I find that the Applicant has based its arguments not on the facts of this case but on inferences not supported by evidence. The evidence before the RAD demonstrated that while the police attended the parents' home, and that the parents knew of their son's whereabouts in Canada because they had provided him with an affidavit, they had never shared the Applicant's whereabouts with the police. Nor had the police harmed them. The Applicant is speculating that if he lived in Jaipur instead of Canada, this would have changed or that he had to hide his whereabouts in Jaipur from his parents.

[10] In effect, the Applicant is arguing that it was unreasonable for the RAD not to have speculated that the parents may, on a balance of probabilities, crack at some point in the future to share their son's whereabouts with the police. I find that it was entirely reasonable for the RAD to not have speculated and to have based its decision on weighing the evidence before it. It is not for this Court to reweigh the evidence differently.

[11] The Applicant relies on the case of *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 and A.*B. v Canada (Citizenship and Immigration)*, 2020 FC 915 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 those and inquired about their whereabouts. The Court concluded that it was unreasonable to expect family members to put their own lives in danger by denying knowledge of or misleading the agents of persecution. However, the facts of this case are different. The Applicant is not reasonably expected to hide in Jaipur and the evidence in this case show that the parents have never had to put their own lives in danger in the course of their interactions with the local police about their son.

[12] 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. 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. In addition, the Father's ongoing motivation will allow him to use corruption to get

information on the Applicant in Jaipur. 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 Father or the Police's future actions. I find that the RAD member based their analysis on the evidence before them.

[13] 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 Jaipur?*

[14] The Applicant has not made any submission on the reasonableness of the second prong. When prompted, counsel for the Applicant stated that because their argument on the first prong showed that the Applicant did not have a viable IFA, there was no need for them to argue 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

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

[16] There is no question to be certified.

JUDGMENT IN IMM-1263-23

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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STYLE OF CAUSE:	RAJAN KARNWAL AND THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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