Federal Court Cour fédérale

Date: 20240521

Docket: IMM-4555-23

Citation: 2024 FC 758

Ottawa, Ontario, May 21, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ANIL SAINI, MANAV SAINI,
NEERAJ SAINI & VANSHIKA SAINI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a family from India: Anil Saini (Principal Applicant) and his wife Manav Saini (Associate Applicant) as well as their two children. They seek judicial review of the decision of the Refugee Appeal Division ("RAD") that dismissed their appeal and found that they had a viable Internal Flight Alternative ("IFA") in India.

[2] The determinative issue in this case is whether the RAD’s IFA finding is reasonable. For the reasons that follow, I can find no basis to question the RAD’s analysis or conclusions on the IFA. The application for judicial review will therefore be dismissed.

[3] The Principal Applicant says that he fled India because police falsely accused him of being a terrorist and criminal sympathizer based on his connection with a work associate whom the police suspected of involvement in terrorism and criminality. He says the police wrongly arrested him, and that he was assaulted during his detention. He states the police also sexually assaulted his wife. All of this was so that the police could obtain information about the Principal Applicant’s work colleague. Following these incidents, the Applicants left India and claimed refugee protection in Canada.

[4] The Refugee Protection Division accepted the Applicants’ narrative as credible but found that they had a viable IFA and therefore dismissed their claim. The Applicants’ appeal to the RAD was not successful, because the RAD upheld the IFA finding. They seek judicial review of this decision.

[5] The only issue in this case is whether the RAD’s IFA finding is reasonable. This is assessed under the framework for reasonableness review set out in *Canada (Minister of*

Citizenship and Immigration) v Vavilov, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[6] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The onus is on the Applicants to demonstrate that there are "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102). A court will not interfere with factual findings except in exceptional circumstances, such as where there is no basis in the record to support the specific finding of fact (*Vavilov* at paras 125-126).

[7] The test for whether an IFA is available requires the RPD or RAD to be satisfied, on a balance of probabilities, that: (a) there is no serious possibility of the individual being persecuted in the IFA location; and (b) the conditions in the IFA are such that it would not be unreasonable in all the circumstances for the individuals to seek refuge there. The Applicant argues that the RAD erred in its analysis of both prongs of the test.

[8] The Applicants advance a number of arguments about the flaws in the RAD's analysis of the risk they will face in the IFA. The Principal Applicant argues that the police are motivated to

find him because they believe he is involved in supporting terrorism and criminality. The Applicants submit that the RAD engaged in a selective review of the objective country condition documentation about the capacity of the police to use various government information systems to track them down in the IFA locations. In the Applicants' view, it is obvious that police have the means to track individuals down, and the RAD did not offer adequate reasons to justify its finding that the police lacked the means to find them.

[9] The Applicants also submit that the RAD placed too much emphasis on the fact that the Principal and Associate Applicants were able to leave India using their own passports, because travel restrictions are not often imposed. Finally, the Applicants point out that the RAD failed to engage with their argument that the police would be able to locate them by putting pressure on their families.

[10] Overall, the Applicants contend that the RAD's reasoning is inadequate, given the stakes for them. They rely on the principle from *Vavilov* (at para 133) that the burden of justification increases in proportion to the impact of the decision on an individual. Here, their lives are at risk in India, and they say that the RAD's reasons do not reflect the stakes.

[11] I am not persuaded by the Applicants' arguments. The RAD's decision reflects a careful and thorough analysis of the Applicants' submissions on appeal, and it is not the role of the

Court to re-weigh the evidence. The Applicants do not dispute that the RAD applied the proper legal test in assessing the IFA. The RAD's examination of the evidence took into account the Applicants' particular circumstances as well as the general country condition evidence.

[12] On the facts, the Applicants do not dispute the findings that they have never been charged with any crime related to the alleged association with a terrorist and criminal, or that there is no arrest warrant issued or First Information Report written about them. Nor do the Applicants challenge the finding that the police last visited their family in search of the Principal Applicant in August 2020.

[13] I disagree with the argument that the RAD engaged in a one-sided discussion of the evidence in the National Documentation Package, or that it relied on outdated information. The RAD specifically stated that the evidence about the capacity of the Punjabi police to use various government information databanks to locate the Applicants elsewhere in India is "mixed" and it noted that while these systems have expanded and are increasingly used, police lack resources to implement them effectively. This is a finding of fact based on the evidence in the record, and there is no exceptional circumstance that justifies interfering with it on judicial review.

[14] As regards the Applicants' submission that the RAD may have relied on outdated information, I note two things. First, the onus is on the Applicants to show that the IFA is not

available, and if they had updated information regarding police use of the databases they should have provided it to the RAD. Second, the Applicants do not point to any more recent information in the National Documentation Package that the RAD missed. I cannot accept their argument on this point.

[15] Similarly, I find that the RAD explained its finding that the police lacked the motivation to launch a country-wide search for the Applicants and this is also based on the evidence. The Applicants were never suspected or charged with the types of very serious offences that the evidence shows can lead to such an undertaking by the police. The Applicants acknowledged at the hearing that using a personal passport to leave the country is a relevant consideration where the agent of persecution is the state. They also acknowledge that there is no evidence that their families have been threatened since 2020. It is unclear why the RAD would have had to engage in any further analysis of the possibility that the police would locate them by pressuring their families.

[16] In summary, the RAD’s analysis of the first prong of the IFA test is sound, and I am not persuaded by the Applicants’ arguments challenging it.

[17] Turning to the second branch of the test, I reject the Applicants’ submission that the threshold is lower than the RPD and RAD suggested. While I agree that an IFA cannot be merely

theoretical and speculative, the binding case-law is crystal clear. There is a "very high threshold regarding what makes an IFA unreasonable"; such a finding "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant": *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FCR 164, 2000 CanLII 16789 (FCA) at para 14. This is a high bar, and the RAD clearly explained why the Applicants' evidence did not meet it. There is no basis to set aside this part of the decision.

[18] Overall, stepping back and considering the Applicants' submissions as a whole, I am not persuaded that they have demonstrated any fatal flaw in the RAD's reasoning. I find the RAD decision to be careful and thorough, responsive to the Applicants' submissions, and rooted in the evidentiary record. The RAD's conclusions are clearly explained and its analysis demonstrates an application of the proper legal tests to the specific facts of this case. Reasonableness demands nothing more from a decision-maker.

[19] For all of these reasons, the application for judicial review will be dismissed.

[20] There is no question of general importance for certification.

JUDGMENT in IMM-4555-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4555-23
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