Federal Court  Cour fédérale

Date: 20240624

Docket: IMM-3461-23

Citation: 2024 FC 979

Montréal, Quebec, June 24, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

DAVINDER SINGH
RAMANDEEP KAUR

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, Davinder Singh and Ramandeep Kaur [the "Applicants"], who are husband and wife, are seeking a Judicial Review of the rejection of their 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 Applicants are citizens of India. They fear harm from the wife's ex-fiancé who is a drug dealer/gang member with alleged ties to the Congress party and the local police. After the wife broke her engagement and married her husband, the Applicants faced threats from the ex-fiancé and his associates. The Applicants allege that the ex-fiancé and his associates are continuing to look for them. They arrived in Canada in September 2019 and made claims for protection.

[3] The RPD found that the Applicants had a viable internal flight alternative (IFA) in Hyderabad. The RAD agreed with the RPD's ultimate finding of the viability of IFA in Hyderabad but did not agree with the RPD that the agents of persecution or harm lacked the motivation to harm the Applicants.

[4] At the Judicial Review, the Applicants limited their argument on the unreasonableness of the RAD's conclusion that the agents of persecution or harm lacked the means of harming the Applicants in Hyderabad.

II. Decision

[5] I dismiss the Applicants' judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[6] 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*

[7] 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.

[8] 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.

[9] 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 Applicants 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 (Hyderabad) reasonable?*

[10] The RAD clearly explained in its reasons whom they had found the agents of persecution or harm to be and it concluded that they were the ex-fiancé or the gang to which he belonged, the Dipreet Baba gang (the "Gang"). Even though the RAD found that the ex-fiancé and the Gang maintained the motivation to harm the Applicants, it found that that the Applicants had not

established that the police, beyond the local corrupt police officers who were connected to the ex-Fiancé, had the motivation to locate the Applicants in Hyderabad (RAD's decision, at para 24).

[11] The RAD disagreed with the RPD on motivation and found that the agents of persecution or harm maintained the motivation to harm the Applicants. The RAD's finding on motivation was limited to those local to the Applicants' region. However, it found that the ex-fiancé or the gang to which he belonged, did not have connections throughout India sufficient to harm the Applicants in the IFA, Hyderabad.

[12] To conclude that the agents of persecution or harm did not have the means, the RAD engaged with the relevant facts and made clear findings of facts, showing in its analysis how those findings were made:

- The Applicants had not established on a balance of probabilities that the agents of persecution or harm had connections to the Congress Party. The Applicants believed that the connection existed based on what family and friend/neighbour had noticed of the comings and goings from the ex-fiancé's house. The RAD found that it was speculative to equate this with a connection to the Congress Party. I find the RAD's reasoning to follow a clear chain of analysis and was therefore reasonable;
- The RAD member conducted an independent assessment of the evidence and found that there was insufficient evidence to establish that the Applicants faced risk at the hand of the police outside of the Applicants' usual locality. This is because the Applicants had argued that based on objective evidence, the police would act on the direction/influence of the political parties, and the RAD had explained why it had rejected the connection to

the Congress Party (RAD decision, at paras 25 and 26). I find this conclusion rationally connected to the evidence and therefore reasonable.

[13] The Applicants did not challenge the above findings but argued that they were relevant to the "motivation" of the agents of harm, which the RAD had already accepted.

[14] The Applicants argued that the crux of their argument was about the RAD's erroneous conclusion on not seeing that the agents of persecution or harm possessed the means to harm them in the IFA when they had continued to inquire about them from family members.

[15] Here is all the factual context before the RAD on the continued interest towards the family:

- At para 11of their Basis of Claim (BOC) Form, the Applicants state the following:

> While we were living in hiding, we contacted our parents through Harjit Singh and learnt that my father received anonymous calls that our days have been numbered. The caller said **we** would get killed soon, no matter where we live.

- From the RPD transcript:

> **MEMBER:** So why do you believe that Mr. Noni would be able to find you in Hyderabad?
>
> **CLAIMANT:** So Narinder Pal Noni has links with the police and he also gave a threat at our home that he is going to find RAMANDEEP KAUR and her husband anywhere in India with the help of the police.
>
> **MEMBER:** Thank you.
> Counsel, I've covered the areas that were important to me in the claim. Um it is now time, um, you – you may proceed to ask your questions.

[16] It is in this context that the RAD concludes the following:

> [49] The Appellants have not indicated that their family members or friends are afraid of being harmed or that they have been threatened. The Appellants' BOC and amended BOC mention only threats that they will be killed. There are no threats against family or friends.
>
> [50] The visit after marriage according to the BOC, the ex-fiancé asked about the couple's whereabouts but there is no mention that the family was threatened to expose to the whereabouts.24 The Appellants were still in India at this time.

[17] Therefore, the RAD looked at the totality of the evidence and found that there was no coercion to extract evidence from family members. This was a reasonable conclusion for which the RAD must be given deference.

[18] The Applicants relied on *Bhuiyan v Canada (MCI)*, 2023 FC 410 [*Bhuiyan*] to argue that there is no need to expect that the family was harmed. The Applicants argued that if and when there is continued interest in the family, means is automatically established.

[19] What is missing from the Applicants' arguments is to put their assertion in the context of the evidence as a whole. Means and motivation of the agents of harm are highly relevant factors to assess the first prong of the IFA test, and they are highly factual. It is in that context that potential harm to the family may be relevant.

[20] The Applicants' argument was not in the context of the fact-findings by the RAD, but based on an oversimplified assertion that once continued interest exists, means are established.

[21] I disagree with the Applicants' oversimplified interpretation of *Bhuiyan*. In *Bhuyian,* the RAD had accepted that one of the agents of persecution, a cousin, who had also appropriated Mr. Bhuyian's house, worked for the Awami League (AL) party in Bangladesh (*Bhuiyan,* at para 7).

At the RPD hearing, Mr. Bhuyian had testified that he feared his cousin, political operatives from both the Bangladesh National Party (BNP) and the AL, as well as extremists led by an Imam referred to Imam J (*Bhuiyan*, at para 8). While the RAD member here explained why she rejected the connection to Congress Party, the RAD in *Bhuiyan*, as explained in paragraph 11 of the decision, had identified that the BNP and AL operatives as well as Islamic extremists led by Imam J were the agents of persecution but that they lacked the means to follow the claimants in the IFA. It was in that factual context that the Court made the finding that notwithstanding the fact that the relatives were not harmed, the continued interest in them established the means of the agents of harm:

> [26] The fact that the agents of persecution contacted the Bhuiyans' relatives almost two years after they left their country indicates that they still "have the means" to locate the Bhuiyans, whether or not they rely on or obtain the cooperation of Mr. Bhuiyan's cousin.
>
> [27] In *AB*, this Court found that because the agents of persecution visited and endangered relatives to inquire about an applicant's whereabouts, IFAs were unreasonable. In such a situation, not being able to share location information with family or friends is tantamount to hiding, which does not support a viable IFA (*AB* at paras 20–23). Although there are no threats of violence by the agents of persecution against Mr. Bhuiyan's relatives, the situation is still similar to that in *AB*, as the relatives are being questioned about the applicants' whereabouts. The family and friends cannot be expected to lie and put their life in danger if they are visited again by the agents of persecution, who are known to be capable of making violent threats.

[22] The Applicants heavily relied on these paragraphs to argue that the Court had unequivocally pronounced that when there is ongoing interest in the family, regardless of context, it would be an error not to conclude that "means" is established, and that harm is not a pre-requisite.

[23] I agree that the RPD or the RAD cannot deal with the potential harm or threat to the family mechanically and in a checklist-like fashion without engaging with the context. They must engage in a factual, contextual fact-finding exercise to assess whether the interactions between the agents of harm and the family would amount to sufficient evidence to establish the test in the first prong of the IFA test, namely whether those interactions establish that the Applicants faced 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.

[24] In this case, the RAD's finding that those interactions did not support the conclusion above was reasonable and it was well explained. In *Bhuiyan*, given the factual findings on connections of the agents of harm with the two major parties and Islamic extremists, the Court found it unreasonable that the well-connected agents of harm would lack the means to locate them when they continue to inquire about them, notwithstanding the absence of violence. *Bhuiyan's* material facts are different and do not apply here. *Bhuiyan* heavily engages with the facts and makes its ultimate conclusion on the RAD's error in a factual context and not in a factual vacuum.

[25] I find that the Applicants' argument that at some point the family may have to provide the Applicants' location to be based not on the facts of this case but on inferences not supported by evidence. The Applicants are speculating that if they lived in Hyderabad instead of Canada, the agents of harm would change their behaviour or that they had to hide their whereabouts in Hyderabad from his relatives.

[26] In effect, the Applicants are arguing that it was unreasonable for the RAD not to have speculated that the relatives may, on a balance of probabilities, crack at some point in the future to share the Applicants' 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.

[27] The Applicants also rely 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 cases 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. I agree that the Applicants are not reasonably expected to hide in Hyderabad and the evidence in this case shows that the relatives have never had to put their own lives in danger in the course of their interactions with the local police about their son.

[28] The Applicants did not challenge the RAD's other findings, including the fact that they are probably not reported to the CCTNS database. However, the Applicants alluded to corruption in India, but I cannot find that the RAD's failure to speculate as to what the relatives or the Police's future actions might be to be unreasonable. I find that the RAD member based their analysis on the evidence before them.

[29] 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 Applicants, in their particular circumstances, to relocate to Hyderabad?*

[30] The Applicants have not made any submission on the reasonableness of the second prong. When prompted, counsel for the Applicants stated that because their argument on the first prong showed that the Applicants could not be safe in Hyderabad, it would also be unreasonable to expect them to relocate there. There was therefore 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 which rendered it to be reasonable.

V. Conclusion

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

[32] There is no question to be certified.

JUDGMENT IN IMM-3461-23

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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