Federal Court  Cour fédérale

Date: 20240708

Docket: IMM-7315-23

Citation: 2024 FC 1061

Ottawa, Ontario, July 8, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SAHIL VERMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of India, claims that he is at risk from the police if he were returned to India. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated May 30, 2023, which dismissed his appeal of the decision of the Refugee Protection Division [RPD]. The RPD found that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In denying the

Applicant's appeal, the RAD found that the RPD was correct in finding that the Applicant had a viable internal flight alternative [IFA].

[2] The Applicant grew up in Punjab and was friends with certain individuals that he states were under investigation by the police for drug-related offences. He believes that his association with these people drew the police's attention to him. The Applicant maintains that the police arrested and detained him on August 30, 2019, and subsequently released him two days later after he paid a bribe. While detained, the Applicant claims he was beaten, photographed, fingerprinted and forced to sign a blank piece of paper. The police released the Applicant on the condition that he report back to the police station at the beginning of each month with information about the individuals under investigation.

[3] Instead of reporting to the police station, the Applicant fled to New Delhi and then travelled to Canada on September 23, 2019. Several months after arriving, the Applicant initiated his refugee claim in Canada.

[4] The Applicant's family advised him that the police continue to attend their residence to ask for him and extort money from them.

[5] On December 14, 2022, the RPD determined that the Applicant is neither a Convention refugee pursuant to section 96 of the *IRPA*, nor a person in need of protection pursuant to section 97. The Applicant appealed this decision to the RAD.

[6] In dismissing the Applicant's appeal, the RAD found that the RPD was correct in finding that the Applicant is neither a Convention refugee nor a person in need of protection because he has a viable IFA. In reaching this conclusion, the RAD stated that it made no credibility findings — it accepted that the Applicant genuinely believes he is at risk in India. Rather, the RAD explained that the objective evidence regarding India does not support the Applicant's belief.

[7] In relation to the first prong of the IFA test, the RAD found that there was no serious possibility of persecution or a risk of harm for the Applicant in the IFA, as the agents of persecution, the local police in Goraya, Jalandhar, Punjab, lacked the means and motivation to search for and locate him.

[8] In relation to the second prong of the IFA test, the RAD noted that the Applicant made no specific arguments about barriers or limitations he might face in the IFA. Notwithstanding the absence of any specific ground of appeal with respect to the second prong, the RAD nonetheless considered the country evidence and concluded that language, education and employment, transportation and travel, religion, accommodation, indigeneity and medical care (as well as mental health care) would not render the IFA unreasonable.

[9] The Applicant asserts that this application raises two issues: (i) whether the RAD's decision was reasonable; and (ii) whether the RAD's decision was procedurally unfair. However, the procedural fairness issue raised by the Applicant — namely, whether the RAD was overly deferential to the RPD — is not an issue of procedural fairness, but rather goes to the

reasonableness of the RAD's decision. Accordingly, I find that the sole issue for determination is whether the RAD's determination that the Applicant had a viable IFA was reasonable.

[10] The parties agree and I concur that the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[11] The test to determine if an IFA is viable is two-pronged: the RAD must be satisfied, on a balance of probabilities, that (i) an applicant will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the *IRPA* in the proposed IFA location; and (ii) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances [see *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 at 593-597 [*Thirunavukkarasu*]]. Both prongs must be satisfied in order to make a finding that an applicant has a viable IFA [see

Bassi v Canada (Citizenship and Immigration), 2024 FC 910 at para 16, citing *Thirunavukkarasu*, *supra* at 597-598].

[12] On the first prong of the test, a claimant bears the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge their burden, the claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have both the "means" and "motivation" to cause harm to the claimant in the IFA [see *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at para 20 [*Chatrath*], citing *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8]. This assessment is a prospective analysis and is considered from the perspective of the agents of persecution, not from the claimant's perspective [see *Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29 [*Vartia*], citing *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 and *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12]. The onus is therefore on an applicant to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA [see *Chatrath*, *supra* at para 20].

[13] For the second prong of the test regarding the reasonableness of the IFA, the threshold is very high and an applicant must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they were to attempt to relocate to that part of the country [see *Chatrath*, *supra* at para 21, citing *Ranganathan v Canada (Minister of Citizenship*

and Immigration) (CA), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 and *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20-21].

[14] The Applicant has raised a number of grounds upon which he asserts the RAD's IFA determination was unreasonable. The Applicant's arguments are difficult to follow and many of them were abandoned at the hearing of the application.

[15] The Applicant asserts that the RAD erred when it found that the agents of persecution were the local police, as opposed to the national police. The Applicant argues that the RAD failed to engage with his sworn evidence that the agents of persecution are the national police and that he was entitled to this benefit of the doubt. However, the RAD was not obliged to accept the Applicant's argument with respect to the identity, or characterization, of the agents of persecution. Although the Applicant asserted that the agents of persecution were the national police, the RAD provided detailed reasons as to why the agents of persecution were, in fact, the local police. The RAD explained that the local police had acted extrajudicially by arresting, detaining and physically abusing the Applicant and by accepting a bribe. Furthermore, there was no evidence the local police had issued a warrant or summons against the Applicant. As a result, the RAD found that the Applicant was not a "person of interest" in a criminal investigation, such that the national police force would pursue him. The RAD's findings regarding the identity of the agents of persecution, which were based on the Applicant's evidence and the evidence regarding the objective country conditions, were reasonable.

[16] Moreover, it was open to the RAD to conclude that the evidence put forward by the Applicant did not establish that he was brought to the attention of the police in other cities because of the interactions he had with the local police in Punjab [see *Vartia, supra* at para 12]. A mere allegation that the agents of persecution could locate the Applicant does not suffice — there must be evidence to support that assertion [see *Arora v Canada (Citizenship and Immigration)*, 2024 FC 852 at paras 14-16]. For instance, the Applicant has not directed this Court to evidence that contradicts the RAD's findings that the local police, rather than the national police, are the agents of persecution. In the absence of such evidence, the Applicant cannot expect the Court to intervene in the RAD's assessment and weighing of the evidence; that is not the proper role of the Court on judicial review [see *Munoz Ramirez v Canada (Citizenship and Immigration)*, 2024 FC 221 at para 24, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 FC 52; *Vavilov, supra* at para 125].

[17] The Applicant asserts that the RAD erred in finding that the agents of persecution lacked the means to locate the Applicant in the IFA and pointed the Court to country condition evidence regarding the ability of the police to locate a person of interest anywhere in India. The Applicant further asserts that the RAD failed to consider his evidence that he was fingerprinted, photographed and made to sign a blank piece of paper when making its determination on the issue of "means."

[18] Contrary to the Applicant's assertions, I find that the RAD's analysis and conclusions regarding the means of the agents of persecution to locate the Applicant were reasonable and that the RAD did not ignore any relevant evidence. The RAD acknowledged that the country evidence was mixed with respect to the police's ability to locate a person of interest anywhere in India. For

instance, the objective evidence stated that police systems between districts and states are not integrated and there is no registration that allows police to check on the whereabouts of residents, but it also confirmed that the Crime and Criminal Tracking Network and Systems [CCTNS] is largely implemented and available and may include First Information Reports, along with other forms and police diaries, or daily records. The Applicant argued, before the RAD and before me, that the RPD and the RAD both failed to appreciate the interconnections of police throughout India — specifically, the police's ability to monitor communication to protect national security, find individuals through the tenant verification process and CCTNS and the impact of police corruption; thus, given that he was photographed, fingerprinted and signed a blank piece of paper, the Applicant asserts that the information to find him is readily available in such systems.

[19] However, the RAD did not accept the Applicant's arguments. As noted above, the RAD did not agree that the Applicant was sought on a national security basis, or considered a criminal within India. Rather, the RAD found the Applicant's assertion, that his personal information is in police databases or CCTNS, is speculative because the police acted extrajudicially. The RAD cited country condition evidence indicating that where the police act extrajudicially, no record will be kept. Such findings were entirely reasonable.

[20] Although the RAD acknowledged that there are various systems in place that permit limited monitoring of individuals, such as the tenant verification process (for which the CCTNS is searchable) or the use of an Aadhaar number, the RAD concluded that it was highly unlikely the use of the tenant registry process would reveal information about him. In support, the RAD cited country condition evidence from a Mumbai Police Commissioner, who shared that it is impossible for the police to identify all those that rent property because of a lack of resources — as a result,

the police focus on checks against fake documents. Further, the RAD cited evidence that the police conducting these checks do not follow up with the concerned police station of other states. However, since the Applicant is not a suspect in or charged with any crime, the RAD did not accept that there would be an official record, including within in the CCTNS. The RAD also noted that the Aadhaar number is often used if social services are sought, but that the country evidence indicates local police do not have access to this number as there is no legal access to the data in any police database including the CCTNS. Although the country evidence indicates some police stations gather information, including Aadhaar numbers, these local databases are compiled from existing criminal records, of which the RAD noted the Applicant does not have. As explained above, the RAD also concluded that the Applicant is not wanted by police nationally — there is no evidence that criminal charges were laid, or that a summons or warrant were issued. I find that these determinations were all reasonable.

[21] The Applicant asserts that the RAD was overly deferential to the RPD and simply adopted the RPD's reasons. However, there is no merit to this assertion. A review of the reasons reveals that the RAD conducted a thorough *de novo* analysis of whether the Applicant had a viable IFA and did not simply adopt the reasons of the RPD.

[22] The Applicant asserts that the RAD ignored evidence that the Applicant had no viable IFA in India. While the Applicant's argument on this point was difficult to follow, it appears that the Applicant is asserting that the RAD ignored the Applicant's evidence regarding motivation of the agents of persecution to pursue the Applicant in the IFA — namely, that the agents of persecution would be motivated to locate him, as his release from police custody was conditional on him

reporting back to the police station at the beginning of each month with information about the individuals under investigation which he did not do. Contrary to the Applicant's assertion, the RAD expressly addressed this evidence from the Applicant but found that the agents of persecution were not motivated to locate the Applicant in the IFA as there was no evidence that the agents of persecution had made any efforts, to date, to locate the Applicant outside of his former community (including attempting to locate him in New Delhi or preventing him from leaving India). The fact that the police are willing to locate the Applicant within their own community does not demonstrate that they would be motivated and capable of locating him outside of the state of Punjab, which is what the Applicant has to demonstrate to meet the IFA test [see *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1151 at paras 15–16].

[23] The Applicant asserts that the RAD erred in applying a balance of probabilities threshold to their determination of future risk. He asserts that the RAD failed to conduct an overall assessment of the risk the Applicant would be exposed to upon returning to India and, further, that they failed to determine whether that risk was serious. There is no merit to this assertion. The RAD's reasons demonstrate that the RAD properly made factual findings on a balance of probabilities and then conducted a risk assessment to determine whether there was a serious possibility of persecution in the future. I would note that the Applicant has not directed this Court to any passages or particular sections of the RAD's reasoning on the first prong that suggest otherwise.

[24] As the Applicant has failed to meet his burden of demonstrating that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[25] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-7315-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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