Federal Court  Cour fédérale

Date: 20240719

Docket: IMM-7390-23

Citation: 2024 FC 1134

Ottawa, Ontario, July 19, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

JAGDEEP SINGH
SANDEEP 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], Jagdeep Singh and his wife, Sandeep Kaur (together, the "Applicants"), are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division (the "RAD") of the Immigration and Refugee Board of Canada (the "IRB"). The Judicial Review is dismissed for the following reasons.

[2] The Applicants are citizens of India. Both the Refugee Protection Division (the “RPD”) and the RAD, whose decision is under judicial review, found that at the time of the RPD hearing, they had a status analogous to permanent residence in Italy. Their claim in India stemmed from a land dispute.

[3] The RPD found the Applicants’ allegations were not credible. However, it rejected their claim because it found that they were excluded under Article 1E of the Convention Relating to the Status of Refugees (the “Convention”). In addition, it continued to make an alternative finding by examining the claim against India.The RPD assessed whether the claimants faced a serious possibility of persecution on a Convention ground, or on a balance of probabilities, a personal risk of harm in India. It found that they did not due to lack of credibility and the availability of an internal flight alternative (“IFA”). The RAD engaged in an independent assessment of the RPD’s decision and upheld the exclusion finding under Article 1E.

[4] The Applicants argue that the RAD’s decision is unreasonable because the member failed to reasonably assess their credibility and their residency status in Italy.

[5] Exclusion is a threshold issue, meaning that it is a crucial legal question that must be satisfied before other legal considerations can be examined. As such, it was not necessary for the RAD to engage with the merits of the claim against India, unless it was concerned about potential errors in the assessment of the exclusion issue that would render the decision unfair or unreasonable. I find that the RAD assessment on exclusion was reasonable in this case, and it

was therefore reasonable to not continue with RPD's alternative findings on the merits of the claim against India.

II. 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*]).

III. Analysis

A. *Legal Framework*

[7] According to section 98 of the IRPA, a person who is excluded under Article 1E of the Convention is neither a Convention refugee nor a person in need of protection. Section E of Article 1 of the Convention provides as follows:

> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[8] For this ground of exclusion to apply, the person must have taken up residence in a country outside the country of his or her nationality and have been recognized as having the rights and obligations which are attached to the possession of the nationality of that country (*Shamlou v Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (FCTD), at page 152).

[9] The framework of analysis for Article 1E was set out in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 (CanLII), [2011] 4 FCR [*Zeng*], at paragraph 28:

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[10] In this case, even though the RAD did not explicitly cite *Zeng*, the RPD had. The RAD's independent assessment of the evidence correctly applied the evidence to the test set out in *Zeng* without citation, which is not an error, nor does it render the decision unreasonable. Both the RPD and the RAD found that, at the date of the hearing, the Applicants had status – substantially similar to that of its nationals – in Italy. There was therefore no need to go any further in the decision tree.

B. *Was the RAD's decision reasonable?*

[11] The Applicants do not dispute that their rights in Italy were analogous to those of Italian citizens. What they contest is the RAD's agreement with the RPD findings that at the time of the RPD hearing, they enjoyed those rights and that they were therefore excluded.

[12] The RAD gave substantial weight to the findings of the RPD, which was based on its analysis of the country documents, including Italian law, on how the loss of status was not

automatic and needed to be revoked. It commented that the Applicants had not provided any documentary evidence to corroborate that Italian authorities had revoked, or started the revocation process of their permanent residence status, and how in the absence of a revocation, they probably still had status at the time of the RPD hearing. The RAD also stated that the Applicants would have appeal rights even if their status was revoked, which it was not. The RAD referred to country documents that had referenced how individuals could be in Italy during the revocation and appeal processes.

[13] The Applicants argue that the absence of 12 months from the EU is one of the grounds upon which they could face revocation. They argue that the RAD ignored their Italian lawyer's letter on the potential loss of their status. I disagree. The RAD fully engaged with the letter and highlighted why, in the context of the documentary evidence on the importance of revocation, and the fact that revocation was not automatic, the lawyer's letter did not amount to sufficient evidence of the loss of their status (RAD's decision, at para 24). The RAD showed why they preferred the guidance of the Italian law, as stated on government websites, on revocation over the lawyer's opinion letter, which was silent on many of the key points. I find that the RAD provided a clear chain of reasoning. I also find that it was reasonable for the RAD to prefer the objective documentary evidence on a legal issue to the Applicants' testimony on their subjective belief of the loss of their status.

[14] The RAD did not question the fact that by the time of the RPD hearing, the Applicants were outside of Italy for at least 12 months. It also was not disputed that a person who has been absent from Italy for at least 12 months could potentially lose their permanent residence status.

However, the determinative question for the RAD was that the loss of status was not automatic. The absence would trigger a process and appeal rights. There was no evidence before the RAD to suggest that any of this was initiated, and the RAD found that it would be speculative to find that the Applicants would probably lose their status then.

[15] I find this matter to be analogous to *Melo Castrillon v Canada (MCI)*, 2018 FC 470 [*Melo Castrillon*] where the Court found that a similar analysis by the RPD was reasonable. In that case, the RPD had found that while revocation was possible, it was not automatic, and where there was no action by Italian authorities, the Board's interpretation of the documentary evidence was correct (*Melo Castrillon*, at para. 23). Similarly, in this case, when the Applicants could not establish whether they were automatically excluded from permanent resident status, it was perfectly reasonable for the RAD to conclude that they had that status on the day of the RPD hearing. Therefore, without explicitly citing *Zeng*, it was reasonable for the RAD to stop the analysis there and it was unnecessary to proceed with an analysis based on the decision tree proposed at paragraph 28 of *Zeng*.The RAD independently engaged with the complexity of the revocation of status, which the RPD had found, and concluded that it would not take place automatically. The RAD engaged with contrary evidence, including the Applicants' submissions on the loss of status upon their absence of at least 12 months, and found that their belief that they have lost their status was speculative in the circumstances.

[16] I find that there is a clear chain of reasoning in the RAD's reasons. The RAD's reasons demonstrate that the member reviewed the RPD record, including its reasons, and agreed with it while conducting its own independent assessment.

[17] I find that the RAD applied the correct test in assessing the exclusion under article 1E of the Convention.

[18] I find that the Applicants are in effect asking this Court to reweigh the evidence, which is not this Court's role. (*Vavilov*, at para 125)

IV. Conclusion

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

[20] There is no question to be certified.

JUDGMENT IN IMM-7390-23

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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