

Federal Court



Cour fédérale

Date: 20240723

Docket: IMM-7118-22

Citation: 2024 FC 1161

Toronto, Ontario, July 23, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

AJMER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Ajmer Singh is a citizen of India and an asserted member of the Aam Aadmi Party [AAP]. Mr. Singh claims fear of persecution because of his political opinion by members and officials of the Bharatiya Janata Party [BJP], Rashtriya Swayamsevak Sangh [RSS] and Vishva Hindu Parishad [VHP], as well as three individual members of the BJP and RSS.

[2] The determinative issue for both the Refugee Protection Division [RPD] and Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada in rejecting his claim was the availability of internal flight alternatives [IFA] in India.

[3] The sole issue in this judicial review of the RAD decision is whether it was unreasonable. I find that it was not. For the reasons below, the application will be dismissed.

II. Analysis

[4] There is no dispute that the presumptive review standard of reasonableness applies in the matter presently before the Court: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. The party challenging an administrative decision has the onus of satisfying the Court that it is unreasonable (para 100). The Applicant here has not met his onus.

[5] The RAD IFA determinations take into account the applicable two-part conjunctive test for the viability of the contemplated locations, namely, that there is no serious possibility the claimant will be persecuted there, on a balance of probabilities, and that it would not be objectively unreasonable, in all the circumstances, including those particular to the claimant, to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA).

[6] Regarding the first prong of the test, Mr. Singh takes issue with the RAD's conclusion that he would not face the possibility of persecution in the IFAs because the AAP is the ruling party there. Contrary to Mr. Singh's argument, I find this is a logical, intelligible and justified determination. Mr. Singh's submissions do not rebut the presumption that the RAD considered all the evidence before it, but rather they are tantamount to a request to reweigh the evidence, in particular certain specified items in the National Documentation Package [NDP] for India.

[7] Similarly, Mr. Singh's submissions that the RAD misapprehended evidence (including evidence about the role of local versus national police forces, his wife's support letter, a friend's affidavit, and evidence about whether Mr. Singh was in hiding when he relocated from his home in a different district for a period of time) invite the Court to reweigh evidence. This is not the role of the Court, however, on judicial review: *Vavilov*, above at para 125.

[8] Regarding the second prong of the IFA test, I find that Mr. Singh has raised new arguments before this Court that were not raised before the RAD, including his testimony before the RPD that his brother-in-law assisted him with his construction job in Canada, his level of education, the state of his mental health, and the potential risk of using the Aadhaar system to access services in India.

[9] The RAD cannot be faulted, however, for failing to consider issues that were not raised by Mr. Singh before it, nor is the RAD obligated to comb through the NDP to find support for meeting the high threshold that applies to this part of the test: *Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564 at para 37.

[10] Further, it is not appropriate for this Court to consider these new arguments. Generally, “the Court on judicial review will not address arguments that could have been raised before an administrative tribunal but were not”: *Shirzad v Canada (Citizenship and Immigration)*, 2022 FC 89 [*Shirzad*] at para 11.

[11] While the Court retains some discretion to consider a new issue (*Shirzad*, above at para 12), I am not persuaded that the exercise of the Court’s discretion is warranted in this case in respect of the psychology report. The transcript of the RPD hearing discloses that the RPD member reviewed the psychology report which was submitted ostensibly for the purpose of showing that Mr. Singh might require accommodation at the hearing. I find this is clear in the exchange between Mr. Singh’s then counsel and the RPD member about the report.

[12] The report was not raised before the RAD in the RAD submissions made by Mr. Singh's representative at the time, and current counsel now seeks to raise it for a different purpose before this Court. Again, however, I cannot find fault with the RAD for failing to address an issue that Mr. Singh did not raise before it: *Oluwo v Canada (Citizenship and Immigration)*, 2020 FC 760 at para 43.

[13] I find that, on the whole, Mr. Singh’s submissions demand a level of perfection in the RAD’s reasons that is not an appropriate measure of their reasonableness: *Vavilov*, above at para 91.

III. Conclusion

[14] For the above reasons, this judicial review application will be dismissed.

[15] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-7118-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7118-22

STYLE OF CAUSE: AJMER SINGH v THE MINISTER OF CITIZENSHIP
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