Federal Court  Cour fédérale

Date: 20160411

Docket: IMM-2924-15

Citation: 2016 FC 404

Ottawa, Ontario, April 11, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SANJAY KUMAR VERMA, ANKUSH VERMA, MAMTA VERMA, CHEHELEENA VERMA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada ("RAD"), dated June 3, 2015, in which the RAD confirmed the finding of the Refugee Protection Division ("RPD") that the Applicants are neither Convention refugees nor persons in need of protection pursuant to s 96 or s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

Background

[2] The Applicants are a family of four who are citizens of India. The male Applicant, Sanjay Verma, is Hindu, and the female Applicant, Mamta Verma, is Sikh. They married in 2003. Ankush Verma is 22 years old and Cheheleena Verma is 19 years old, they are Mamta Verma's son and daughter, their biological father is her ex-husband, Subhas.

[3] The male and female Applicants claim that while Subhas and the female Applicant were married Subhas was abusive and that when they divorced in 2002, she was awarded sole custody of the children. When Subhas discovered that Mamta and Sanjay Verma had married, he threatened them. The family moved about 60 kilometers away from their home in Delhi and had no further contact with Subhas until 2013 when he located and contacted them. In particular, the Applicants describe an encounter outside their daughter's school with Subhas, accompanied by six tall Sikh men who the Applicants claim were "fanatical Sikhs". The male and female Applicants went to the school and confronted Subhas who said that he wanted to take Cheheleena back and that she should marry a Sikh. Further, because she was attending a good school, she would make a good salary in the future, and, as her father, he was entitled to that money. The male Applicant called the police who attended but stated that they did not want to be involved in a private matter concerning religion. After the police departed Subhas threatened to kill the female Applicant, but the Applicants did not report his threat to the police. The Applicants claim that following this incident they received phone threats and, in 2014, Subhas came to the Applicants' home with three Sikh men. The police were called and attended but did not register a case.

[4] The Applicants then decided to take a holiday to Canada and applied for visas on June 19, 2014. On June 22, 2014 Subhas advised that he had complained to a Sikh gurudwara about the male and female Applicants' interfaith marriage and that they believed that the male Applicant had insulted the Sikh community and faith. The male Applicant claims that the next day he encountered Sikhs who were angered by the alleged insult. On June 23, 2014 the Applicants went to a different area to await their Canadian visas, which were issued on June 24, 2014. They arrived in Canada on June 28, 2014. In August 2014 a neighbour advised that their home had been broken into and that there was graffiti on the walls that was obviously the work of Sikh fanatics. Upon learning of this, the Applicants made a claim for refugee protection.

[5] The Applicants' claim for refugee protection was denied by the RPD on December 2, 2014. The determinative factor was the credibility of their claim. The RPD found that the Applicants had provided an insufficient explanation as to why the male Applicant's name appeared on the children's birth certificates and found that it was more probable than not that he was their biological father. Further, that the Applicants had not established that Subhas was Ankush and Cheheleena's father or that he existed and was targeting the Applicants. The RPD assigned little weight to a report from a psychotherapist, Natalie Riback, dated November 18, 2014 ("Riback Report") because its author had relied on the information provided by the female Applicant in preparing the report. The RPD did not believe the events as alleged by the Applicants nor that they were targeted as they claimed. In the alternative, the RPD found that even if Subhas were persecuting the Applicants, they had access to an internal flight alternative ("IFA"). The Applicants' claim was again denied on June 3, 2015 on appeal to the RAD.

Decision Under Review

[6] Before the RAD the Applicants brought an application, pursuant to s 29(1) of the *Refugee Appeal Division Rules*, SOR/2012-257 ("Rules"), seeking to introduce a psychiatric assessment prepared by Dr. Monica Choi, dated March 6, 2015 ("Choi Report"), as evidence of the female Applicant's deteriorating mental state and distress exacerbated by the negative decision in her refugee claim. Because it was relevant to the assessment of the IFA and met the requirements of s 110(4) of the IRPA, the RAD admitted the report as new evidence. The Applicants also sought to introduce a DNA report ("DNA Report"), and a report from SIFS Forensic Science Organization India ("Birth Certificate Report") concerning the changing of the name of a child's father on his or her Indian birth certificate, both intended to refute credibility findings made by the RPD. The RAD determined that, because the availability of an IFA was determinative of the appeal, it was unnecessary to determine if that new evidence was admissible as it was not relevant to the IFA.

[7] On the IFA issue, the RAD referred to the two pronged test as set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*]. In assessing whether there was a serious possibility of persecution in the proposed IFA, the RAD found that the evidence did not support that Subhas was the type of person who would have the ability to locate the Applicants among millions of people in major centres located long distances from his home. Further, there was no persuasive evidence adduced to establish that he had used any advanced technology in pursuit of the Applicants nor that he had access to police resources or the ability to influence police actions.

[8] The RAD also found that there was no persuasive evidence that Subhas was associated with Sikh fundamentalists. And, while Subhas was able to locate the family after they moved in 2003, at that time their home was located only 60 kilometers from their original location, Subhas had not contacted them for ten years and did not do so until their new location was given to him by the Applicants' family members.

[9] In considering the *Chairperson's Gender Guidelines* [*Gender Guidelines*], the RAD noted, amongst other things, that the female Applicant is married and would be accompanied to the IFA by the male Applicant who would continue to provide assistance and support.

[10] The RAD also reviewed and considered the Riback Report which stated that the female Applicant suffers from post-traumatic stress disorder ("PTSD"), generalized anxiety and a major depressive disorder. The RAD noted that it was based on a single 60-90 minute interview and self-reporting and did not refer to any clinical testing. The RAD found that, without an explanation of the clinical basis on which the psychotherapist's opinions were formed, they amounted to speculation based on what was related by the female Applicant to the psychotherapist. The RAD also placed little weight on the Choi Report for several reasons: the assessment was terminated early at the request of the female Applicant and was, therefore, a clinical impression made without a full review of her situation; the diagnosis was the same as found in the Riback Report, both of which were based on self-reporting; and, the issues that caused the female Applicant to seek further medical intervention were not necessarily the direct result of the problems encountered in India. Further, the Applicants had not provided persuasive evidence that the female Applicant would be unable to obtain the recommended treatment in the

proposed IFA locations. The RAD found that there was no compelling psychological or psychiatric evidence that the two female Applicants would be unable to return to India in an IFA location.

[11] On the issue of state protection, the RAD found that despite the Applicants' claim that the police were unwilling to assist, the evidence indicated that the police had acted appropriately. During the first incident they spoke to the male and female Applicants as well as Subhas, gathered information and informed the female Applicant that if there were additional problems she should attend at the police station to open a First Information Report. After the second incident the police came to the family home. Although the Applicants were not happy with the police response, they did not contact a higher authority in the police department to complain. The RAD found that the Applicants' subjective reluctance to seek state protection did not rebut the presumption that state protection is available. Further, it found their allegations that the police were indifferent and unable to protect them from Subhas lacked credibility. The RAD noted that objective evidence on state protection in India is mixed and that the onus was on the Applicants to demonstrate that proposed IFA locations are unsuitable, which they had failed to do.

Issues

[12] The Applicants submit the following issues:

1. Did the RAD err by failing to analyse the new evidence that refutes the RPD's credibility findings?
2. Did the RAD err by rejecting the psychotherapist reports?

3. Did the RAD err in its IFA analysis?

[13] In my view, the issues may be addressed as follows:

1. Did the RAD err by failing to address the new evidence as to paternity?
2. Did the RAD err in its IFA analysis?

Standard of Review

[14] The parties submit and I agree that reasonableness is the applicable standard of review. Because the RAD's assessment of an IFA is primarily a factual inquiry it attracts deference (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]), it is also well-established that determinations on the availability of an IFA are reviewed on the reasonableness standard (*Momodu v Canada (Citizenship and Immigration)*, 2015 FC 1365 at para 6 [*Momodu*]).

Issue 1: Did the RAD err by failing to address the new evidence as to paternity?

[15] The Applicants submit that the RAD erred by failing to analyse new evidence that refutes the RPD's credibility findings. This evidence was the DNA Report that confirmed that the male Applicant is not Ankush and Cheheleena's biological father, and the Birth Certificate Report that addressed how a father's name is changed on a birth certificate in India thus explaining why the male Applicant's name appears on the birth certificates of Ankush and Cheheleena as their father. The Applicants submit that this was an error because the RPD's IFA analysis was infected by its negative credibility findings (*Khachatourian v Canada (Citizenship and Immigration)*, 2015 FC 182 at paras 35-36 [*Khachatourian*]).

[16] I would first note that, as stated in *Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263 at para 10, if it is determined that an IFA exists, this is determinative of the claim for refugee protection:

> 10 The question of the existence of an IFA is determinative of the matter. As set out in *Irshad*, above, at paragraph 21, the concept of an IFA is an inherent part of the Convention refugee definition. In order to be considered a Convention refugee, an individual must be a refugee from a country, not from a region of a country. Therefore, where an IFA is found, a claimant is not a refugee or a person in need of protection (see *Sarker v. Canada (Minister of Citizenship & Immigration)*, 2005 FC 353, [2005] F.C.J. No. 435 (F.C.)).

[17] In this situation the RPD stated that its credibility finding was determinative but also explicitly stated that, in the alternative, it considered whether an IFA was available to the Applicants. The RAD found that the IFA was the determinative issue in the appeal before it and stated that the new evidence, the DNA Report and Birth Certificate Report, did not impact its findings on that issue and, for that reason, it was not necessary to make a determination on the admissibility of that evidence.

[18] In my view, this was reasonable. The IFA analysis conducted by both the RPD and RAD presumed that Subhas did exist and that he was Ankush and Cheheleena's father. Further, the Applicants' reliance on *Khachatourian* is misplaced as, in that case, the Court found that where a central credibility finding is flawed, the RAD must consider its impact on the rest of the credibility findings. There, credibility was the only finding and there was no distinct alternative analysis, as is the case in this matter. And, upon review of the RAD's reasons, I find that the RAD's IFA analysis was not impacted by the RPD's credibly findings concerning paternity.

[19] Accordingly, I find that in these circumstances the RAD did not err in declining to make a determination on the admissibility of the DNA and Birth Certificate Reports.

Issue 2: Was the RAD's determination that an IFA was available to the Applicants reasonable?

Applicants' Position

[20] The Applicants submit that the RAD erred by rejecting the Riback and Choi Reports as the hearsay nature of self-reporting is an insufficient ground on which to reject medical evidence (*Lainez v Canada (Citizenship and Immigration)*, 2012 FC 914 at para 42 [*Lainez*]). Further, while the RAD noted that the Choi assessment was incomplete, it did not note the reason for this being that the female Applicant was in distress and indicated that she was not able to continue. The RAD's finding that the female Applicant's mental state may not have been caused as a direct result of her experiences in India is unreasonable, given the findings of the Choi Report. Finally, the Applicants submit that the fact that the Choi Report makes the same diagnosis as the Riback Report is not a reason to undermine the former, but rather speaks to the strength of the evidence, as corroborated by two separate mental health professionals.

[21] The Applicants submit that the RAD's errors in assessing the reports are linked to the IFA analysis as the reports demonstrated the female Applicant's fragile mental state and, therefore, that relocation to another city in India would not be reasonable (*Okafor v Canada (Citizenship and Immigration)*, 2011 FC 1002 [*Okafor*]).

[22] The Applicants also submit that because the female Applicant faces risk from her ex-husband and her daughter is at risk of a forced marriage, gender is central to their claim. However, that the RAD failed to engage in a meaningful way with the *Gender Guidelines*. The RAD also failed to consider objective evidence which demonstrated the prevalence of gender-based violence in India and lack of state protection, which was consistent with the Applicants' subjective experience.

[23] Additionally, the RAD failed to mention crucial evidence in the form of an affidavit sworn by an Indian lawyer which stated that Subhas' father was a member of a Sikh extremist group, Babbar Khals. The RAD concluded that there was no persuasive evidence that Subhas was associated with Sikh fundamentalists, yet that affidavit established a serious possibility that the Applicants would be persecuted in the proposed IFA as Subhas has connections to criminal groups with extensive influence in India.

Respondent's Position

[24] The Respondent submits that it was open to the RAD to confirm the RPD's assessment of the Riback Report. The RPD had several credibility concerns, only one of which was related to paternity. Once a negative credibility finding has been made, it is open to the decision-maker to give low probative value to documents that reflect the applicant's statements (*Giron v Canada (Citizenship and Immigration)*, 2008 FC 1377 at paras 11-12). For the same reasons, it was also open to the RAD to assign little weight to the Choi Report which was based on self-reporting rather than independent assessments. Regardless, the RAD concluded that the Applicants had

failed to show that they could not obtain the recommended psychological treatment in the proposed IFA locations.

[25] The Respondent also submits that once the RAD had proposed an IFA, the onus was on the Applicants to prove that the proposed IFA was unreasonable and that they failed to do so. Although the Applicants argue that the RAD ignored the Indian lawyer's affidavit, the RPD gave it little weight and the RAD concluded, after reviewing the record, that there was no evidence of Subhas associating with Sikh fundamentalists. The RAD's consideration of the *Gender Guidelines* was also reasonable as it considered the social and cultural context of these Applicants. It was based on the existence of familial support and state protection, as demonstrated by the Applicants' prior experiences with the police. The RAD acknowledged the mixed evidence on state protection, but determined that in this particular case with these particular Applicants, the presumption of state protection was not rebutted. A subjective reluctance to approach authorities is not clear and convincing evidence of a state's inability to protect (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at paras 49-51).

Analysis

[26] The two pronged test for assessing an IFA is well established in the jurisprudence and was identified by the RAD in its decision. As stated in *Rasaratnam:*

> …the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in [the IFA] and that, in all the circumstances including circumstances particular to him, conditions in [the IFA] were such that it would not be unreasonable for the appellant to seek refuge there

(see also *Momodu* at para 6; *Abdalghader v Canada (Citizenship and Immigration)*, 2015 FC 581 at para 3 [*Abdalghader*]).

[27] The Applicants' submissions concerning the Riback and Choi Reports go to the second prong of the test, whether the IFA is reasonable in the circumstances of their case (*Rasaratnam* at para 6). While *Rasaratnam* considers only country conditions in determining the reasonableness of the proposed IFA, as the Applicants note, this Court has also determined that psychological evidence can be central to the reasonableness of a proposed IFA (*Cartagena v Canada (Citizenship and Immigration)*, 2008 FC 289 at para 11 [*Cartagena*]; *Okafor* at para 13).

[28] However, contrary to the Applicants' submissions, the RAD did consider the Riback Report. It did not dispute its clinical impression, but afforded it little weight because: the impression of the psychotherapist was based on a single 60-90 minute interview; its findings were based on self-reporting by the female Applicant and made no reference to the application of any additional clinical testing; and, because it offered no medical basis for its opinion. The RAD concluded that without a clinical basis upon which the opinion was formed it amounted to speculation based on self-reporting. In this regard I would note that the Riback Report states that the female Applicant was traumatised by the threats and abuse suffered at the hands of her ex-husband and that she would not be able to work through the past events and trauma as long as there was a threat of return to India. The author stated that she believed that returning to India would put the female Applicant in serious physical danger and would very likely cause her mental and physical stress symptoms to increase considerably, causing her psychological and emotional state to deteriorate. Further, that the family in whole would likely face danger and

significant trauma if returned and that it was in their best interest to remain in Canada. If the female Applicant were to remain in Canada, then a plan of medical and therapeutic care could be implemented.

[29] The Riback Report does not provide the basis for the author's belief that the Applicants would all likely face physical danger and trauma if they returned to India. Nor does it assess the impact of returning to cities far from her hometown, including the proposed IFAs. Further, as the RAD noted, and unlike *Lainez*, the Riback Report does not include details of any testing upon which its conclusions concerning the female Applicant were based. It states only that the author's clinical impression was based on her experience, training and ability to evaluate and assess symptoms of trauma, anxiety and depression. There is also no evidence in the record that the female Applicant followed up with its author on the suggested future counselling sessions.

[30] The Choi Report was prepared by a psychiatrist and postdates the Riback Report. It acknowledges the Riback Report and concurs with its clinical impression.

[31] It is of note that Dr. Choi referred to her discussions with the female Applicant as well as with her daughter, Cheheleena, who believed that her mother's distress was exacerbated by the adjustment of residing in a new country and having limited financial security. Further, that the stress of having the family's refugee claim rejected and the possibility of having to return to India contributed to her mother's overall distress. Dr. Choi concluded that the female Applicant continues to experience profound fear and depressed mood which were precipitated by the traumatic events she experienced in India with her ex-husband. Her anxiety and depression were

further exacerbated by having to adjust to life in Canada and even more so by recently having her refugee claim rejected and the resultant possibility of having to return to India. Dr. Choi stated that the female Applicant's presentation was consistent with a diagnosis of PTSD and major depressive disorder, single episode, chronic, severe, and suggested a trial of two medications. Significantly, however, there was no suggestion as to the impact, if any, that return to India would have on the female Applicant's mental health. Nor was there any evidence in the record that the female Applicant was taking the suggested medications, although the report states that Dr. Choi would see her for follow up in two weeks' time, or that she would be unable to access those medications in India.

[32] As the RAD noted, the assessment by Dr. Choi was terminated early and was based on self-reporting without additional independent clinical studies. The RAD also stated that the issues that caused the female Applicant to seek further medical intervention were not necessarily the direct result of the problems she encountered in India. For these reasons, the RAD did not give the Choi Report significant weight.

[33] In *Cartagena* Justice Mosley found that the RPD had noted the applicant's fragile mental health but found that an IFA was available despite the psychological opinion in evidence. Further, that the RPD had failed to thoroughly assess the reasonableness of the IFA locations in the context of the applicant's situation and vulnerable mindset. As a young man with little education and no prospects of employment he was in a high risk category and his lack of family and fragile psychological state compounded that risk. Therefore, the decision of the RPD was unreasonable. Similarly, in *Okafor*, Justice Beaudry found that the applicant suffered from

physical and emotional stress, and was a single mother with no formal education and no family support. The RPD's analysis concluding that there was a possible IFA was unreasonable because it did not take into account the applicant's personal particular situation. In the assessment of the second prong of the test, an IFA must be reasonable for the particular claimant in the context of the particular country.

[34] This Court has also held that it is unreasonable to afford little weight to a psychological report solely on the basis that the events it describes were not based on first hand knowledge of the psychologist and that the RPD errs when it rejects expert psychological evidence without basis (*Lainez* at para 42). Other jurisprudence has determined that evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 26). That principle has been applied to decision-makers' assessments of reports from counsellors (*Forde v Canada (Citizenship and Immigration)*, 2012 FC 147 at paras 30-31) and letters from psychiatrists and other mental health professionals (*Nguyen v Canada (Citizenship and Immigration)*, 2015 FC 59 at paras 8-9).

[35] In my view, the jurisprudence suggests that the RAD was entitled to weigh the psychological evidence based on the source of the facts relied on, but that the Reports could not be dismissed solely because they relied on evidence from the female Applicant. However, that is not what the RAD did in this case. Here the RAD considered the totality of the evidence, including the Riback and Choi Reports, in determining that a suitable IFA was available to the Applicants. It did not afford the Riback and Choi Reports little weight solely because of the self-

reporting, it also found that the analyses were not accompanied by or based on clinical testing. And while the Applicants take issue with the RAD's statement that the issues that caused the female Applicant to seek further medical intervention were not necessarily the direct result of the problems she encountered in India, the Choi Report specifically mentions a number of factors that were attributed to the female Applicant's overall distress. The RAD further found that the Applicants had failed to establish that treatment would be unavailable to the female Applicant in the proposed IFA locations. In my view, given the foregoing, the RAD's weighing of the psychological evidence was not unreasonable in this case, particularly considering the lack of any evidence that the female Applicant followed up on the treatment and medication proposed by the authors of those reports.

[36] Further, as stated in *Momodu* and *Abdalghader*, the onus or burden of proof is on the Applicants to prove that no IFA exists or that the proposed IFA is unsuitable. In the absence of evidence that the female Applicant would be unable to obtain the recommended treatment and medication in the proposed IFA, this aspect of the RAD's decision falls within the possible, acceptable outcomes (see for example, *Alves Dias v Canada (Citizenship and Immigration)*, 2012 FC 722 at para 22; *Gonzalez v Canada (Citizenship and Immigration)*, 2008 FC 1259 at para 12 [*Gonzalez*]).

[37] The Applicants' submissions regarding Subhas' association with Sikh fundamentalists and the RAD's assessment of the *Gender Guidelines* concern the first prong of the IFA test, that is, whether removal to the IFA locations would subject the Applicants, particularly the female

Applicant and her daughter, to a serious possibility of persecution (*Rasaratnam* at para 13). In my view, the RAD's determination on these points was also reasonable.

[38] The Applicants rely on the affidavit of the Indian lawyer to link Subhas to Sikh fundamentalists and submit that the RAD failed to mention this critical evidence. However, the RAD, in reviewing the record, specifically noted the affidavit which it stated attested to the background of Subhas. The RAD described only an excerpt of its content in its reasons but what the affiant actually says is significant; which is that Sh. Singh Gogna was the father of Sh. Subhash Gogna, and that the father ".. was associated with Sikh extermist [sic] group named Babbar Khals and he was killed by the police in the domestic vilance [sic] in the year 1984… That he was santed [sic] and was also had bad contact with interrogative people. He was drunker [sic], unemployed, aggressive and worthless… That he had relation with other women as well". In my view, at best, all that can be taken from this affidavit is that Subhas' father was associated with Babbar Khals, although the affiant does not provide the basis of his belief nor does he explain the nature of that group and how this is known to him. Nor do the Applicants explain how this purported association to the Babbar Khals by Subhas' father relates to Subhas.

[39] The RAD also specifically addressed the Applicants' submission that Subhas had connections to Sikh fundamentalists. It stated that it had reviewed the record as well as the audio recording of the hearing. It also noted the Applicants' Basis of Claim form, which stated that they do not believe that Subhas has become a religious Sikh. Further, that the documents submitted by the Applicants described individuals who associate with Subhas as having the

appearance of members who dress in the traditional garb of the Sikh faith, but that there was no persuasive evidence that Subhas was associated with Sikh fundamentalists.

[40] The Applicants point to the affidavit of the male Applicant which states that, following the incident outside his daughter's school, an attending police officer told him that one of the men accompanying Subhas had an identity card showing that he was a member of the committee that governs Sikh gurudwaras for all of India. The male Applicant stated that the committee is notorious for being fanatical about the Sikh religion. Further, that Subhas had called him to say that he had complained to the committee about the family and that it believed that Cheheleena had to be brought into the Sikh religion and married to a Sikh man. And, that after the family fled to Canada, their home was broken into and vandalized with graffiti on the walls "that was obviously the work of Sikh fanatics", although no explanation as to why this was obvious was provided.

[41] In my view, even if this were accepted as evidence of a connection of Subhas to Sikh "fanatics", the Applicants do not explain how Subhas' alleged association with Sikh fundamentalists gives rise to a serious possibility of persecution in the proposed IFA locations and the record contains no evidence in that regard. The RAD also pointed out that the Applicants had been able to live in a community just 60 km outside of Delhi for ten years and were only located by Subhas when the female Applicant's family provided him with information. And, given the description of Subhas found in the lawyer's affidavit, it found that he likely did not have the ability to locate the Applicants among millions of people in major centers, long distances from his home. In my view, the RAD's conclusion was not unreasonable.

[42] With respect to the *Gender Guidelines*, while the RAD's assessment could have been more thorough, it stated that it had considered all relevant factors, including the social and cultural context in which the Applicants' allegations arose, and that country conditions were examined in consideration of the *Gender Guidelines*.

[43] While the Applicants take issue with the RAD's comment that the female Applicant is married and would be accompanied to an IFA location by her husband, this was made in the context of RAD's quote of the *Gender Guidelines*. Specifically, that the *Gender Guidelines* state that decision-makers are required to consider the ability of women, because of their gender, to travel safely to the IFA and stay there without facing undue hardship. Further, the RAD's finding that the female Applicant will benefit from her husband's support is not unreasonable. Familial support, or lack thereof, has been considered as a factor in IFA analyses (*Gonzalez* at para 12; *Okafor* at para 14). And, although the Applicants submit that gender based violence is central to their claim, I would note that based on the Applicants' evidence, the police reluctance to respond was not based on gender, but on religion. The male Applicant's affidavit states that the police told him following the school yard incident that they did not want to get involved in a religious confrontation and, as Subhas claimed to be Cheheleena's father, the police saw the matter as a private one concerning religion. Similarly, after the break in at the family's home, their neighbour stated that he did not want to go to the police as he was Muslim and did not want to get involved in religiously coloured matters.

[44] In any event, in its state protection analysis the RAD acknowledged that the objective evidence in the record on state protection was mixed. That evidence included information

concerning gender based violence. It is well established that decision-makers are presumed to have considered all of the evidence on the record (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16) although that presumption may be rebutted by a failure to expressly consider evidence that directly contradicts the decision. In my view, however, that is not the situation in this matter. Here the RAD was aware of the mixed nature of the evidence and weighed the Applicants' testimony of their personal encounters with police against the mixed objective evidence. It noted, for example, that while the female Applicant claimed that the police did not seem interested in assisting her, her testimony indicated that they attended at the school when called and that they acted appropriately. They spoke to her and her husband, gathered information and informed her that if there were additional problems she should attend at the police station and file a First Information Report. She did not do so. And, after the second incident at her home, the police again attended. While the male Applicant's affidavit asserts that the family was not happy with the response, he also stated that he had not complained to a higher authority as he thought the police were too busy.

[45] The RAD concluded that the Applicants' subjective reluctance to seek police protection did not rebut the presumption that it exists and that they had not provided clear and convincing evidence that, if they were to make a complaint against Subhas, state protection would not be available to them. In my view, the RAD's finding was reasonable and to come to a different conclusion would be to re-weigh the evidence that was before the RAD which is not the role of this Court (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 19-33; *Dunsmuir* at para 47).

[46] Given that the onus is on the Applicants to demonstrate that a proposed IFA location is not suitable, in my view it was within the possible, acceptable outcomes for the RAD to find that the Applicants had failed to do so. For these reasons, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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