

Federal Court



Cour fédérale

**Date: 20210304**

**Docket: IMM-2185-20**

**Citation: 2021 FC 201**

**Ottawa, Ontario, March 4, 2021**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**HUMAYON MALIK  
MALIK NOMAN AKHTAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Mr. Humayon Malik and Mr. Malik Noman Akhtar, seek judicial review of a decision of the Refugee Appeal Division [RAD], which upheld the dismissal of their refugee protection claim by the Refugee Protection Division [RPD] due to the availability of an internal flight alternative [IFA] in Pakistan. The applicants argue that the RAD misconstrued or ignored relevant evidence, rendering its findings on the existence of a viable IFA unreasonable.

Additionally, they submit that the RAD failed to analyse the applicants' *sur place* claim.

[2] In my view, the RAD's findings were reasonable. The application for judicial review is therefore dismissed.

I. Background

[3] The applicants are brothers. They are both citizens of Pakistan and Sunni Muslims. After selling a plot of land to a local Shia Muslim, Mr. Malik was targeted by multiple Sunni extremist groups and summoned to appear before a religious court of the Lashkar-e-Jhangvi [LeJ], an anti-Shia terrorist organization. Mr. Malik did not attend the LeJ's hearing and fled to Canada, where he claimed refugee status in January 2017. Following Mr. Malik's refusal to appear before their court, the LeJ issued a fatwa, instructing their followers to kill him.

[4] Mr. Malik's family were then subjected to various assaults and death threats by individuals they believed to be related to one of the Sunni extremists groups. Mr. Akhtar was assaulted and threatened by members of one of these groups, and fled to Canada where he claimed refugee status in May 2017.

[5] The RPD analyzed their refugee claims jointly. Despite issues with regard to their earlier travel histories, it found that the applicants' core allegations were credible. It concluded that they had a viable IFA in Hyderabad, and dismissed their claims accordingly. The RPD did not assess whether the applicants had a *sur place* refugee claim, even though they had raised this issue in relation to their participation in public political protests in Canada.

[6] The applicants appealed this decision to the RAD. They submitted numerous pieces of new evidence, most of which were found to be inadmissible by the RAD because they predated the RPD's decision, pertained to events unrelated to the applicants' claims, or were already part of the National Documentation Package [NDP] available to the Immigration and Refugee Board [IRB].

[7] The RAD found that the RPD erred in failing to consider the applicants' *sur place* claim, and proceeded to make its own determination. It found that the applicants' participation in political demonstrations did not provide an objective basis for their refugee claims. Moreover, the RAD confirmed the RPD's conclusion that a valid IFA existed in Hyderabad and that this question was determinative of the appeal. The applicants' refugee claim was therefore dismissed.

[8] The applicants now seek judicial review of this decision.

## II. Analysis

[9] The applicants' central submission pertains to the RAD's assessment of a viable IFA in Hyderabad. They also argue that the RAD erred by failing to assess their *sur place* claim.

### A. *Viability of the IFA*

[10] The applicants challenge the reasonableness of a viable IFA in Hyderabad on both prongs of the well-established test developed in *Rasaratnam v Canada (Minister of Employment and*

*Immigration*), [1992] 1 FC 706 (CA), at paragraph 10. Establishing the existence of an IFA requires the following criteria to be met:

1. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
2. Conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[11] In challenging the first prong of the test, the applicants argue that there is no basis for the RAD's conclusion that the applicants lack the kind of profile that would motivate the LeJ to pursue them across Pakistan. The applicants also submit that there is clear documentary evidence of a Taliban "stronghold" in Hyderabad with connexions to the LeJ and the increase of targeted killings that would affect the applicants due to their Punjabi ethnicity. They further believe that the extremist groups could easily locate them through the tenant registration system maintained by the police.

[12] On the second prong of the test, the applicants assert that the RAD ignored significant evidence of ethnic and sectarian violence in Hyderabad, including against persons of Punjabi ethnicity. At the hearing, counsel for the applicants emphasized that their profile as Punjabi and Punjabi speakers would make them identifiable targets by Sunni militant groups.

[13] In disputing the RAD's conclusions, the applicants essentially attempt to shift the burden of establishing the viability of an IFA to the respondent. However, the onus of demonstrating a serious possibility of persecution in Hyderabad fell on the applicants: *Thirunavukkarasu v*

*Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA), at paragraph 6. The applicants did not direct my attention towards any piece of evidence that the RAD ignored or misconstrued or that would contradict its findings.

[14] In its decision, the RAD mentions having reviewed “the voluminous media, non-governmental, and academic coverage” adduced by the applicants and yet not finding “one single mention of any low-profile, ordinary Sunni individual having been tracked from one part of Pakistan to another in order to continue previous persecution.” It further notes that it found no evidence that the police would collaborate with terrorist groups in sharing the tenant registry data. Moreover, while the RAD did find that the LeJ was a notorious extremist group with ties to the Taliban, it found no evidence to support the claim that the applicants would be persecuted by the Taliban due to its links with the LeJ. Neither did it encounter evidence of a Taliban stronghold nor of significant ethnic and sectarian violence in Hyderabad.

[15] In light of the evidence on the record, it was open to the RAD to conclude that pursuing civilian targets across the country was not part of the LeJ’s *modus operandi*, and that they lacked the organizational capacity in the proposed IFA to do so.

[16] As to the second prong of the test, I find that the RAD already addressed the issue of the alleged state of violence in Hyderabad in its analysis of the first prong of the IFA and could find no evidence that the applicants would be at risk. The argument that the applicants would be targeted due to their ethnicity and primary spoken language was also addressed by the RAD. It concluded that these factors would not adversely affect the applicants in Hyderabad. As the

applicants do not point to any error that the RAD may have committed in reaching this conclusion, I find that they are essentially asking for a reassessment of the evidence, which is not permitted on judicial review: *Canada (Minister of Citizenship and Immigration) v Vavilov*. 2019 SCC 65, at paragraph 125. It was not unreasonable for the RAD to determine that the applicants would not face conditions that would jeopardize their life or safety if they were to relocate to Hyderabad: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at paragraph 15.

B. *Sur place claim*

[17] Lastly, the applicants submit that the RAD erred in failing to assess their *sur place* claim. I disagree. Based on pictures of the events, the RAD accepted that the applicants had participated, while in Canada, in demonstrations against extremism in Pakistan. These pictures were the only evidence filed. The applicants did not provide evidence that those protests were either being monitored by potential agents of persecution or covered by the media in Pakistan, or that they would be targeted due to their participation. In light of the evidence, I am satisfied that the RAD's conclusion that they would not be subjected to any harm as a result of their participation in protests in Canada was reasonable.

III. Conclusion

[18] This application for judicial review is dismissed.

**JUDGMENT in file IMM-2185-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2185-20

**STYLE OF CAUSE:** HUMAYON MALIK AND MALIK NOMAN AKHTAR  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
OTTAWA, ONTARIO AND CALGARY, ALBERTA

**DATE OF HEARING:** MARCH 1<sup>ST</sup>, 2021

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** MARCH 4, 2021

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