

Federal Court



Cour fédérale

**Date: 20220506**

**Docket: IMM-4429-21**

**Citation: 2022 FC 668**

**St. John's, Newfoundland and Labrador, May 6, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**RUPALI AMIT DHAKRAO  
AMIT ASHOK DHAKRAO  
EDHITHA AMIT DHAKRAO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Ms. Rupali Amit Dhakrao (the “Principal Applicant”), her husband Mr. Amit Ashok Dhakrao and their minor daughter Ms. Edhitha Amit Dhakrao (collectively, the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”) whereby their claim for protection was refused. The determinative issue

was the availability of an Internal Flight Alternative (“IFA”), a new issue that arose before the RAD and upon which the Applicants availed of the opportunity to make submissions.

[2] The Applicants are citizens of India. They based their claim upon a fear of persecution from Mr. Dhakrao’s cousin, who opposes the Applicants’ inter-caste marriage. The RAD determined that at least 3 IFAs were available to them in India, that is in Delhi, Bangalore and Hyderabad.

[3] The Applicants argue that the RAD erred by relying upon credibility findings made by the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) in conducting its IFA analysis. They also submit that the RAD unreasonably assessed the evidence in making its conclusions about IFA.

[4] The Minister of Citizenship and Immigration (the “Respondent”) argues that the RAD reasonably assessed the evidence and reached a reasonable conclusion.

[5] The decision of the RAD is reviewable upon the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[6] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is

justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov, supra* at paragraph 99.

[7] Upon considering the Certified Record, the affidavit of Mr. Dhakrao and the written and oral submissions of the parties, I agree with the Applicants that the RAD unreasonably allowed the credibility findings.

[8] In paragraphs 58 to 60 of its Reasons the RAD set out three credibility findings made by the RPD as follows:

- The Applicants’ evidence about “harm suffered at the hands of their agent of persecution” was inconsistent;
- The Applicants “do not fit the profile of honour killings related to marriage”; and
- The agent of persecutions’ motivation for targeting the Applicants no longer exists.

[9] In paragraph 61, the RAD says “for all these reasons, I find that the Appellants have not met their burden to demonstrate, on a balance of probabilities, that they will be subject to persecution...”.

[10] I understand the words “for all these reasons” to refer to the findings of the RPD. Those findings include the credibility findings made by the RPD.

[11] In *Orozco Velasquez v. Canada*, 2010 FC 1201, the Court said the following at paragraph 21:

It may have been the case, as in *Velasco Moreno*, above, that the Board did not believe all of Ms. Orozco's allegations. If so, it had an obligation to make explicit credibility findings. The analysis of a proposed IFA is not a substitute for those findings.

[12] In my opinion, this observation applies in the present case. The RAD did not make explicit credibility findings. This failure makes its decision unreasonable, within the meaning of the *Vavilov*, *supra* test.

[13] In the result, the application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a different panel of the RAD for redetermination. No question for certification is proposed.

**JUDGMENT in IMM-4429-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to a different panel of the Immigration and Refugee Board, Refugee Appeal Division for redetermination. No question for certification is proposed.

“E. Heneghan”

---

Judge

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

**DOCKET:** IMM-4429-21

**STYLE OF CAUSE:** RUPALI AMIT DHAKRAO, AMIT ASHOK  
DHAKRAO, EDHITHA AMIT DHAKRAO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF TELECONFERENCE BETWEEN  
TORONTO, ONTARIO AND ST. JOHN'S,  
NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** APRIL 13, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** MAY 6, 2022

**APPEARANCES:**

Rebeka Lauks FOR THE APPLICANTS

Margherita Braccio FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Battista Smith FOR THE APPLICANTS  
Migration Law Group  
Barristers & Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario