

Federal Court



Cour fédérale

**Date: 20220517**

**Docket: IMM-3346-21**

**Citation: 2022 FC 729**

**Ottawa, Ontario, May 17, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**FAYYAZ HAIDER SHAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Fayyaz Haider Shah, is a citizen of Pakistan. He seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated April 23, 2021, to dismiss the Applicant's appeal and confirm the decision of the Refugee Protection Division [RPD] to reject the Applicant's claim for refugee protection and find that the Applicant is neither a Convention

refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant alleges that he fears religious extremists due to his conversion from Sunni Islam to Shia Islam and the police. The determinative issue before the RAD was the existence of viable internal flight alternatives [IFA] in Islamabad and Karachi.

[3] The Applicant submits that the RAD: (i) failed to assess the risk presented to the Applicant by the police; (ii) minimized and overlooked documentary evidence which spoke to the lack of safety for the Applicant in the proposed IFA cities due to his profile as a Shia convert; and (iii) unreasonably assessed the Applicant's explanation as to why he could not gather evidence of an ongoing pursuit by his agents of persecution. The Applicant further submits that, ultimately, the RAD's reasons lacked sufficiency in a number of key regards resulting in the decision being unreasonable.

[4] The Respondent submits that the RAD reasonably found that the Applicant: (i) would not be threatened in Islamabad or Karachi; and (ii) does not have the profile of a person who would be targeted or persecuted in the proposed IFA cities. The Respondent further submits that the RAD reasonably found that there was no evidence that the Applicant's persecutors had made any efforts to locate him since May 2018. The Respondent pleads that the RAD's findings were reasonable in light of the record before it.

[5] For the reasons that follow, this application for judicial review is dismissed.

II. Standard of Review

[6] Having considered the record and the submissions of counsel, I find that the numerous issues raised by the Applicant are properly reviewed on a standard of reasonableness.

[7] The Applicant, in his written submissions, sought to frame the RAD's treatment of the risk presented by the police, and the rejection of the Applicant's explanation for the lack of ongoing threats, as an error of law and a breach of procedural fairness. The Respondent submits that reasonableness is the standard of review applicable to the matter at hand.

[8] I agree with the Respondent. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada was clear: on judicial review of an administrative decision, a reviewing court should start with the presumption that the applicable standard of review for all aspects of that decision is reasonableness (at para 25) and then determine whether one of the issues raised warrants a departure from this presumption (at para 17). In my view, no such departure is warranted in the present case.

[9] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). It is the Applicant, the party challenging the decision, who bears the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such

alleged shortcomings or flaws “must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[10] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). A reasonableness review also is not a “line-by-line treasure hunt for error,” the reviewing court simply must be satisfied that the decision maker’s reasons “add up” (*Vavilov* at paras 102 and 104).

### III. Analysis

#### A. *The Police as an Agent of Persecution*

[11] The Applicant lived in the United Arab Emirates from 1995 to April 2018, where he worked as a truck driver, and returned to Pakistan approximately a month per year. The Applicant converted from Sunni to Shia Islam in 2000. The Applicant alleges that in 2018, he purchased a small house for himself and his family in Gujrat; however, he was defrauded and was never able to take possession because the Sipah-e-Sahaba [SSP] accused the Applicant of seeking to expand the Shia presence in Gujrat. When the Applicant returned to Gujrat in April 2018, according to his Basis of Claim form [BOC], he “went to the area police but since they are part of such groups did not address [his] complaint”. The Applicant also stated in his BOC that

the “mafia launched a complaint against [him] in the police station” and as a result, he was summoned by the police on April 15, 2018. The Applicant alleges that there were witnesses from the SSP who falsely alleged that he was involved in an arson, and thus he was arrested, beaten, and was only released upon paying a bribe. Later that month, the Applicant alleges that the SSP kidnapped his son, who was released upon payment of a ransom. In May 2018, the Applicant left Gujrat, travelled through the United States and arrived in Canada in June 2018.

[12] The RAD noted that the Applicant’s testimony was that his encounters with the police and the SSP were limited to Gujrat in 2018. The Applicant had testified that the police had issued a first information report [FIR] against him, however, both the RPD and the RAD found there was no FIR registered against the Applicant. This finding was not contested. In his submissions to the RAD, the Applicant argued that “there is complicity of the police with powerful clerics and militant organizations”, and thus since the police are corrupt, the SSP would be able to locate him in the proposed IFAs through the tenant registration system. In considering the argument that the Applicant would be located in the proposed IFAs, the RAD found that although the Applicant had some encounters with the police, they and the state were not his agents of persecution.

[13] The Applicant submits that the RAD erred by not engaging with the totality of the evidence presented by the Applicant as to his experiences with the police. The Applicant further submits that he stated that he feared the police and as such, the RAD ought to have explained why the police were not an agent of persecution.

[14] The Respondent pleads that the Applicant testified and submitted that he feared the police of Gujrat because they were colluding with the SSP. The Respondent notes that the RPD and RAD found the Applicant not credible in terms of the issuance of a FIR by the police, and that the Applicant never mentioned that the national police would have an interest in him if he moved to an IFA. It was reasonable, in the Respondent's view, of the RAD to find that the police and the state were not persecutors in the content of its analysis of the proposed IFAs. The RAD concluded that the SSP were not looking for the Applicant, there was no FIR, and thus it was reasonable to conclude that there was no reason for the police to have any interest in the Applicant in an IFA.

[15] The record before the RAD supports the Respondent's position, and I find the RAD's decision to be reflective of what was submitted to it. The Applicant's evidence spoke to the police in Gujrat and the concern that they were cooperating with the SSP. At the RPD hearing, the Applicant addressed his fear that the SSP were colluding with the Gujrat police:

MEMBER: Okay. Now, you said -- well, he says -- well, I would like to know, what do you fear from the police, sir?

CLAIMANT: It means that they are colluding with the police and they, the police, will hunt me down.

MEMBER: Who are they, please, who are you talking about?

CLAIMANT: They -- the Sipah-e-Sahaba and the police, and their men are also in the police.

[...]

MEMBER: Why you are telling me you fear the police? What level of police are you talking about, sir? Is it a lot of police, the territorial, the national?

CLAIMANT: The police of my city.

MEMBER: Which city is that sir, please?

CLAIMANT: Gujarat [*sic*].

[16] The Applicant's BOC also repeatedly referred to the police in his area and their collaboration with the SSP. In the Applicant's submissions to the RAD, he argued that there was no reason to doubt his "allegations that the SSP targeted him and the police were cooperating with the SSP."

[17] Contrary to the Applicant's submissions, I do not find that the RAD failed to address a ground of appeal. On appeal, the Applicant argued that the RPD erred by dismissing the Applicant's apprehension of fear of the consequences the tenant registration system may have on him in a new city. The Applicant argued that the police could communicate with police in other provinces to locate the Applicant through the tenant registration system and thus the test for an IFA had not been met. The RAD's decision was responsive to the arguments made by the Applicant, and the statement concerning the police as an agent of persecution was made in that context. While the wording of the RAD could have been clearer in terms of specifying that the police in the IFAs were not his agents of persecution, I do not find that it rises to the level of a reviewable error. Rather, I find that the Applicant is engaging in a "line-by-line treasure hunt for error" with respect to the RAD's findings as to the Applicant's safety in the proposed IFAs and the tenant registration system.

B. *Whether the RAD Minimized and Overlooked Key Evidence in its IFA Assessment*

[18] The RAD considered the Applicant's profile as a Sunni to Shia convert who attempted to purchase land to provide to the Imambargah. The RAD found that having reviewed the evidence, the Applicant was not a high-profile Shia. The RAD stated 96% of Pakistan's 207 million population are Muslim, of which 80-85% are Sunni and 15-20% are Shia. This translates to approximately 30-40 million Shia Muslims in Pakistan. The RAD acknowledged that there may be some sectarian violence against Shia in Pakistan, but it has reduced over time and was not directed against all Shia generally. The RAD found that the Applicant was neither a religious leader, a journalist, a teacher, a doctor or a Shia activist, or part of certain communities targeted by sectarian violence such as the Hazara or Ismaili's. The RAD determined that Shia are represented in all walks of life and Shia and Sunni are integrated in cities such as Islamabad and Karachi. Ultimately, the RAD found there was nothing in the Applicant's profile to suggest that he would be targeted in the proposed IFAs.

[19] The Applicant submits that the RAD minimized and overlooked key pieces of evidence in assessing whether the Applicant was likely to suffer persecution in the proposed IFAs, and in particular, the Applicant's high-profile, and the wide spectrum of Shia who are targeted with sectarian violence in Pakistan. The Applicant relies on a letter from his Imam in Gujrat dated 2015, stating that he is well known in the area, participates in programs, and his family is a respectable Shia family and well reputed.



[20] The Respondent submits that the Applicant is simply a truck driver, not an activist or a religious leader, and is not a high-profile Shia. The Respondent points to the fact that the Applicant was living and working in the United Arab Emirates as a truck driver from 1995 to April 2018, and returned to Gujrat for a month before leaving for the United States and Canada in May 2018. The Respondent submits that the evidence does not establish that the Applicant is a high-profile person who was likely to suffer persecution if he moved to Islamabad or Karachi. The Respondent further submits that the RAD reasonably concluded, after considering the evidence, that the Applicant, as is the case with millions of Pakistanis, would not be targeted and persecuted for the sole reason of being Shia in the proposed IFAs.

[21] As to the position of Shia Muslims generally, both parties relied on various extracts from the National Documentation Package [NDP] to support their positions. The Applicant submitted that it was unreasonable for the RAD to not have discussed the evidence contrary to the RAD's findings in the NDP, thus creating an inference that it was overlooked. The Respondent submitted there was ample evidence to support the RAD's findings, which were reasonable.

[22] Given the evidence on the record of the Applicant's profile, notably that he is a truck driver, a Shia convert, and is involved with the Imambargah in Gujrat, I am not persuaded that the RAD erred. The RAD took these factors into account, along with the materials in the NDP, and as such the Applicant's submissions on this point amount to a request to re-weigh the evidence considered by the RAD, which I decline to do.

[23] I now turn to the RAD's consideration of the materials in the NDP as to the position of Shia Muslims and sectarian violence. I have considered the extracts cited to me by the Applicant and the Respondent. The fact that the NDP evidence considered by the RAD regarding the sectarian violence involving Shia Muslims may be open to more than one interpretation does not mean that the RAD's interpretation was unreasonable, and I am not persuaded that it was. Again, I find this to be an impermissible request to re-weigh the evidence.

C. *The Applicant's Explanation for the Lack of Ongoing Threats*

[24] The RAD noted that the Applicant's testimony is that his encounters with the police and the SSP were limited to Gujrat, Punjab in 2018, and found there was no evidence that the SSP were motivated to find him:

[15] There is no evidence that the SSP continue to search for the appellant either in Gujarat [*sic*], Punjab or in any other place in Pakistan. The appellant did not state that the SSP visit his family or his wife's family to ascertain his whereabouts. There is no evidence that they are aware that the appellant has left the country.

[16] Therefore, the appellant's statement that they are motivated to locate him throughout the country is speculative. His own evidence is devoid of this motivation on the part of his persecutors.

[25] The Applicant alleges that the RAD erred because the Applicant had testified that his wife and children were hiding in Pakistan at a friend's farmhouse and never left their hiding spot: "They're in hiding. Nobody knows about them, that they are living at – at this – this house". The Applicant alleges that because his family never leaves this farmhouse, it was a reasonable explanation as to why threats were not received. Thus, in the Applicant's view, the RAD erred by rejecting his reasonable explanation without commenting or explicitly addressing it.

[26] The Respondent submits that there is no evidence that the Applicant's family has been threatened, despite the fact that they continue to live in the same city, Gujrat. The Respondent notes the Applicant's testimony that his wife and children are hiding in a farmhouse in Gujrat as an explanation as to why they have not received threats. However, the Respondent also notes: (i) the affidavit from the Applicant's father, dated more than a year and a half after the Applicant left, stating that the Applicant's wife and four children live with him in Gujrat, rather than at a friend's farmhouse; and (ii) that the Applicant's wife, children, father and seven (7) siblings all live in Gujrat. The Respondent argues that it was thus reasonable for the RAD to note the lack of evidence that anyone had tried to contact the Applicant's family members, who all live in the same city, and conclude that there was no evidence that the Applicant's persecutors were motivated to locate him.

[27] Having considered the evidence before the RAD, and the facts and the law, I am not persuaded that the RAD erred. Furthermore, while in the present judicial review, the Applicant highlighted his explanation in his testimony that his wife and children were in hiding at a farmhouse, this was not raised as an argument before the RAD in his submissions dated October 13, 2020. The record stated that all the Applicant's family members, 13 of them, lived in Gujrat. The affidavit evidence of the Applicant's father, dated December 2019, stated that the Applicant's wife and children lived with the father. Contrary to the foregoing, the Applicant's testimony in August 2020 before the RPD stated that no one had contacted his family and that his wife and children were in hiding at a friend's farmhouse since April 26, 2018. Also contrary to the foregoing, the Applicant's submissions during the hearing before this Court was that until December 2019, the Applicant's wife and children lived with his father, and then sometime

thereafter moved to the farmhouse. There is thus some confusion in the record as to when the Applicant's wife and children were living with the Applicant's father in Gujrat, and when they were living at his friend's farmhouse in Gujrat.

[28] I find it was open to the RAD, based on the record, to conclude that there was no evidence that the SSP continue to search for the Applicant. Given the evidence and the submissions that were before the RAD, I do not find it unreasonable for the RAD to have not expressly analysed the portion of the Applicant's testimony concerning his wife and children residing in his friend's farmhouse. I find that the RAD's reasons here demonstrate, on the whole, "an internally coherent and rational chain of analysis in relation to the facts" that "add up" and, thus, are deserving of deference (*Vavilov* at paras 85, 104).

#### IV. Conclusion

[29] For the foregoing reasons, this judicial review is dismissed. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

**JUDGMENT in file IMM-3346-21**

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

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

"Vanessa Rochester"

---

Judge

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

**DOCKET:** IMM-3346-21

**STYLE OF CAUSE:** FAYYAZ HAIDER SHAH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 3, 2022

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** MAY 17, 2022

**APPEARANCES:**

Me Hana Marku FOR THE APPLICANT

Me Anne-Renée Touchette FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Hana Marku FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Montréal, Quebec