

Federal Court



Cour fédérale

Date: 20220606

Docket: IMM-3627-21

Citation: 2022 FC 825

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 6, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

SHEKHAR MARRI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Shekhar Marri, is a citizen of India from the state of Telangana who entered Canada on a visitor's visa, leaving behind his wife and three children. He made a refugee protection claim in Canada on the grounds that he fears extortion by construction contractors and the leader of the National Congress Party. The Refugee Protection Division [RPD] rejected his

refugee protection claim after concluding that Mr. Marri had a viable internal flight alternative [IFA] in Mumbai. The Refugee Appeal Division [RAD] confirmed the RPD's decision.

Mr. Marri is applying for judicial review of the RAD's decision, dated April 7, 2021, arguing that the RAD ignored evidence from the National Documentation Package [NDP] that contradicts its finding and erred in applying the two-prong test for establishing an IFA.

[2] For the following reasons, I am of the opinion that the application for judicial review should be dismissed.

II. Background

[3] Mr. Marri was born in the state of Telangana to a family involved in politics; his father was a prominent supporter of the Indian political party Bharatiya Janata Party. Mr. Marri has also been involved in politics by supporting and volunteering for Telangana Rashtra Samithi [TRS], the ruling party of the state of Telangana.

[4] Mr. Marri worked as a fisherman for twenty years until he started his own construction company in 2014 that operated in the towns of Timmapur, Manakondur and Kothapalli. He says his company was successful because he built low-cost houses designed for middle-class people and because he competed with other contractors whose prices were higher and materials of lower quality. Because he was a new contractor in the area, established contractors with ties to the National Congress Party began to intimidate him. He claimed that a friend of his who also had a construction company was forced to move to another city after he refused to pay a proportion of the money he was getting from his contracts. The contractors allegedly tracked down his friend

and notified the police, who were also involved in a bribery scheme, to lay charges against him. His friend was jailed and then released, but was murdered three months later. Mr. Marri says he was also intimidated by members of the National Congress Party for his involvement with the TRS and that they tried to get money from him.

[5] According to Mr. Marri, on October 17, 2018, two armed men forcibly took him to a forest area where the local leader of the National Congress Party demanded that he hand over 600,000 rupees. When he refused to hand over the money, the men allegedly beat him until he lost consciousness and left him to fend for himself until passersby took him to a medical clinic where he received treatment. Mr. Marri stated that he filed a complaint with the police, but that they did not act on his complaint because he had no witnesses to corroborate his story. He stated that the doctor who treated him refused to testify on his behalf because he was afraid that his testimony would lead to repercussions from members of the National Congress Party.

[6] The next day, Mr. Marri reportedly received an anonymous letter threatening him with repercussions for his attempted complaint to the police and his refusal to pay the money demanded of him. Frightened, Mr. Marri confided in the president of the TRS, who warned Mr. Marri that the people threatening him were very influential in their region and that they never spare their targets.

[7] Mr. Marri's father convinced him to leave India before he was killed. He applied for a visitor's visa on October 25, 2018, which was issued on November 6, 2018. Mr. Marri left India on January 31, 2019. On February 2, 2019, at Toronto Pearson Airport, an officer found that

Mr. Marri was inadmissible and not allowed to enter Canada because he intended to remain in Canada indefinitely. A Minister's delegate issued a removal order against Mr. Marri, and the latter stated his desire to make a refugee protection claim.

[8] In a decision dated March 6, 2020, the RPD found that Mr. Marri had a viable IFA in Mumbai. The RPD applied the two-prong analysis set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*]. On the first prong of the test, the RPD was not satisfied on a balance of probabilities that there was a serious possibility that the agents of persecution would be able to trace Mr. Marri to Mumbai. Before the RPD, Mr. Marri testified that he feared that the agents of persecution would find him in Mumbai using the information associated with his national identification card [Aadhaar]. The RPD found that the objective evidence in the NDP contradicted this belief and that, even if the agents of persecution had access to the Aadhaar database, the evidence did not establish that the information associated with the Aadhaar card would help locate an individual. The RPD was also not convinced that there were other means that the agents of persecution could use to locate Mr. Marri in Mumbai.

[9] In addition, Mr. Marri told the RPD of recent events that make him fear that the agents of persecution will target his family in order to obtain information about his location in India. He stated that one of his daughters was recently approached by an unknown person who asked her where he was and threatened to kidnap her if she did not disclose the information. His wife was also allegedly threatened. However, the RPD rejected Mr. Marri's testimony to this effect because he did not amend his Basis of Claim Form when he had the opportunity to do so and

could have asked to amend his wife's affidavit to add this crucial information. Mr. Marri also disclosed that he was located by the agents of persecution during a trip to Mumbai, but the RPD was not convinced that a trip to Mumbai actually occurred since he failed to include this information on his Basis of Claim Form and the information he shared about this trip was contradictory, confusing, and inconsistent. Finally, Mr. Marri stated that his father's death on November 24, 2019, demonstrates that the agents of persecution intend to target him and his family. However, the RPD was not convinced that Mr. Marri's father was a victim of murder, much less a murder perpetrated by the agents of persecution, as the documentary evidence Mr. Marri filed, a photograph of a wrecked car and his father's body and a newspaper article, did not support this conclusion.

[10] Regarding the second prong of the test, the RPD found that, on a balance of probabilities, it was not unreasonable for Mr. Marri, in all the circumstances, to seek refuge in Mumbai. The RPD considered the objective documentary evidence in the NDP, the size of the city of Mumbai and its distance from the state of Telangana, the applicant's work experience and ability to support himself despite his modest level of education, and the fact that he has already travelled and demonstrated that he is able to adapt to a significant change in life.

[11] Before the RAD, Mr. Marri submitted as new evidence a copy of his father's death certificate issued on February 1, three days before the RPD hearing, and a response to information request from the Immigration and Refugee Board. The RAD refused to admit the death certificate because the document did not meet the requirements of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27; Mr. Marri failed to show that the

certificate could not reasonably have been submitted to the RPD before it made its decision. The RAD also found that it was not necessary to admit the Immigration and Refugee Board's response to information request since it was in the NDP, which is presumed to have already been entered into evidence.

[12] The RAD found that, although some of the RPD's reasoning was poorly fleshed out, its conclusions were nevertheless correct. The RAD agreed with the RPD's conclusion that Mr. Marri had a viable IFA in Mumbai. Mr. Marri's arguments were primarily directed at the RPD's analysis of whether the agents of persecution could trace Mr. Marri using the Aadhaar card. The RAD concluded that the RPD had erred in part in its analysis by determining that the objective documentary evidence did not establish that the information associated with the Aadhaar card would allow for the location of an individual. Rather, the RAD concluded that the cardholder's address was part of the information associated with the Aadhaar card and that this information is the only information that is relevant when someone wants to trace an individual. However, the RAD concluded that it was unlikely that the agents of persecution would be able to obtain the necessary information, such as his Aadhaar card number, to locate Mr. Marri in the Aadhaar database.

[13] Finally, after noting that Mr. Marri had not presented any arguments to challenge the RPD's other findings, the RAD conducted its own analysis and concluded that it agreed with the RPD's findings on both prongs of the *Rasaratnam* test.

III. Issue and standard of review

[14] In this judicial review, Mr. Marri does not raise the RAD's refusal to accept his father's death certificate as new evidence. Thus, this application for judicial review raises only one question: is the RAD's decision reasonable?

[15] The parties are of the view, and I agree, that the standard of review applicable to a review of an RAD decision regarding an IFA is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The Court's role is therefore to determine whether the decision is reasonable as a whole, that is, whether the decision is based on "an internally coherent and rational chain of analysis" and whether the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 83–87).

IV. Refugee Appeal Division decision is reasonable

[16] Under the two-prong analysis established by the Federal Court of Appeal in *Rasaratnam*, to determine whether an IFA is viable for a refugee protection claimant, the RAD must be satisfied, on a balance of probabilities: (1) that there is no serious risk of persecution to the claimant in the part of the country where it believes an IFA exists; and (2) that it is not unreasonable, given the totality of the circumstances, including the applicant's personal circumstances, for the applicant to relocate there (*Rasaratnam* at pp 709–11).

[17] Mr. Marri argues that since the RAD concluded that the Aadhaar card contained information crucial to locating him, such as his address, it was unreasonable for the RAD to conclude that the agents of persecution would not be able to find him in Mumbai. He argues that

the agents of persecution would not need any additional information to find him. In addition, according to the NDP, the media in India have reported possible problems with the Aadhaar system, such as identity theft and privacy violations. He also argues that it would be unreasonable for him to take refuge in Mumbai [TRANSLATION] “given all the evidence he provided at the hearing” and that the RAD did not consider the difficulties he would face if he were to take refuge in Mumbai as a Sikh person outside the state of Punjab, which contradicts the RAD’s conclusion on the second prong of the analysis (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 (FC) at para 17).

[18] I cannot accept Mr. Marri’s arguments. The RAD has conducted an exhaustive and detailed analysis of both prongs of the test and Mr. Marri has simply failed to provide any real and concrete evidence to refute the existence of a viable IFA in Mumbai. Mr. Marri’s statement that he believes the agents of persecution would have the means to track him in Mumbai through the Aadhaar database is not supported by any evidence in the record. The RAD concluded that the Aadhaar card would contain the information necessary to track an individual, namely his or her residential address, but that it was unlikely that the agents of persecution would have access to that data. I was not convinced that such a conclusion was unreasonable.

[19] Before me, Mr. Marri argued that in its analysis, the RAD failed to consider that individuals in the government are corrupt and would aid and abet the efforts of the agents of persecution to locate him. I disagree. The RAD specifically addressed the possibility that the agents of persecution would use corrupt individuals to locate Mr. Marri, but ultimately found that

this possibility was not serious given the legal and practical constraints involved. I see nothing unreasonable in such a conclusion.

[20] The Court's role is not to reweigh and re-evaluate evidence (*Vavilov* at para 125) and Mr. Marri has not brought to the Court's attention any evidence that would contradict the conclusion that the agents of persecution do not have access to Aadhaar-related data.

[21] Finally, Mr. Marri argues that the RAD failed to conduct an independent analysis of the RPD's decision because it determined that Mr. Marri had not presented arguments for the following issues: the possibility that the agents of persecution were tracking Mr. Marri with technology other than Aadhaar, the possibility of finding him through the members of his family, the death of his father, who was allegedly murdered by the agents of persecution, Mr. Marri's previous trip to Mumbai during which he was allegedly asked to leave by the landlord of the apartment where he was staying because of problems he was experiencing, and the second prong of the RPD's analysis, namely whether it would be reasonable for him to seek refuge in Mumbai. Thus, according to Mr. Marri, the RAD did not truly act as an appeal tribunal (*Ali v Canada (Citizenship and Immigration)*, 2016 FC 396 at para 4 [*Ali*]).

[22] While an appeal to the RAD is not a true *de novo* process, the RAD is required to conduct its own analysis of the record to decide whether the RPD did in fact commit the error alleged by the appellant (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103). As a practical matter, "there must be some minimal discussion in the RAD's reasons of the errors raised by an appellant and their respective merit" (*Ali* at para 4). However, the mere fact that the

RAD agrees with the RPD's findings does not necessarily mean that no independent analysis has been conducted (*Ademi v Canada (Citizenship and Immigration)*, 2021 FC 366 at para 28). In this case, the RAD raised the issues, noted that Mr. Marri made no submissions on them and concluded that the RPD's findings on those issues were correct. I am of the view that, while noting that Mr. Marri did not make any submissions on these issues, the RAD conducted an independent analysis for each of these issues, highlighting the passages and conclusions of the RPD decision that it considered relevant.

V. Conclusion

[23] I find nothing unreasonable in the RAD's decision, and therefore dismiss the application for judicial review.

JUDGMENT in IMM-3627-21

THIS COURT'S JUDGMENT is as follows:

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

“Peter G. Pamel”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3627-21

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