

Federal Court



Cour fédérale

Date: 20220718

Docket: IMM-251-21

Citation: 2022 FC 1057

Ottawa, Ontario, July 18, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

AWAIS UR REHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a Refugee Appeal Division (RAD) decision dated December 18, 2020, which confirmed a decision by the Refugee Protection Division (RPD) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c27.

[2] The Applicant is a citizen of Pakistan who fears persecution as a Shia Muslim. The Applicant states the persecutors are an extremist Sunni militant group, Lashkar-e-Jhangvi (“LeJ”), the Pakistani police and the extremist relatives of the Sunni woman, Fouzia, with whom he had a secret romantic relationship.

[3] For the reasons that follow, this application is granted as the RAD failed to conduct their own independent analysis of the Applicant’s claim.

II. **Background facts**

[4] The Applicant, who is from a prominent Shia family, met Fouzia in early 2017.

[5] Eventually Fouzia told the Applicant that her father and brothers were very active politically and that she was related to a member of the National Assembly and the Pakistan Muslim league Nawaz and the former Minister of State for Parliamentary Affairs.

[6] In July 2017, the Applicant and his brother were attacked by Fouzia’s brother, Sajid, and three of his friends. The Applicant reported this incident to the police, but refused to file a report because Sajid’s uncle (Muhsin) was too politically powerful to take action against him.

[7] On October 18, 2017, the Applicant was arrested by the police for sexual harassment. He was beaten and told he had no right to pursue a relationship with a Sunni. He learned at the police station that Muhsin had ordered his arrest. The Applicant was released on October 21, 2017.

[8] In December 2017, Fouzia fled from her cousin's wedding and she and the Applicant moved together to Gujranwala. Fouzia's family went to the Applicant's mother's house where they beat the Applicant's brother, threatened the lives of his family and said they would kill the Applicant because he had dishonoured them.

[9] Sunni extremists in the area learned that the Applicant had been living with a Sunni woman outside of marriage. On January 4, 2018, they went to the Applicant's home and spoke with his brother. They said they were from LeJ and were going to kill the Applicant for engaging in an illegal activity.

[10] On January 10, 2018, the Applicant was attacked by Fouzia's three brothers while on his way home. He fled and lodged a complaint with the police who did not assist him.

[11] Having received a study permit on August 28, 2018, the Applicant left Pakistan and arrived in Canada on September 14, 2018. He made a claim for refugee protection on December 3, 2018.

III. The Decision

[12] The RAD found the determinative issue on appeal was whether the Applicant had an Internal Flight Alternative (IFA) in Pakistan.

[13] The RAD laid out the legal test for determining whether there is a viable IFA: (1) that there is no serious possibility the Applicant will be persecuted or, on a balance of probabilities,

incur a section 97 risk in the IFA location; and, (2) it would not be unreasonable to seek refuge there in the IFA location.

[14] The RAD determined that the RPD was correct that Hyderabad was an IFA for the Applicant under each prong of the test. In support of making that determination the RAD set out, in point form, seven findings made by the RPD supporting the IFA location. The RAD found the RPD was correct in determining that Hyderabad was a reasonable IFA.

[15] The RAD found the Applicant had not established, on a balance of probabilities, that he would be located in Hyderabad through the police, Mushin, the LeJ or the tenant registration system.

IV. **Issue and Standard of Review**

[16] The only issue is whether the Decision is reasonable.

[17] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 23 [*Vavilov*].

While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[18] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The

role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[19] To set a decision aside, a reviewing court must be satisfied 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

V. Analysis

[20] I find the determinative issue in this application is the RAD's treatment of the Applicant's risk of being found in Hyderabad through the tenant registration system.

[21] The RAD's entire analysis of the tenant registration system risk is found in two paragraphs:

[30] The RPD also considered the Appellant's testimony regarding the tenant registration system. At the hearing, the RPD asked the Appellant whether he could relocate to avoid his agents of persecution, to which he responded that he would be located through the tenant registration system. The RPD considered the Appellant's testimony and the documentary evidence and found that the Appellant had not established, on a balance of probabilities, that he would be located through the tenant registration system.

[31] Considering the foregoing, I find that the RPD properly considered the Appellant's evidence and specific risks. The above-noted findings are correct and based on the evidence in the record.

[22] As is readily apparent, the RAD failed to conduct an independent assessment of the Applicant's risk of being located in the IFA and it did not explain why the RPD finding was correct.

[23] As previously stated, the focus of reasonableness review is to be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome: *Vavilov* at para 83.

[24] Unfortunately, on the critical issue of risk to the Applicant in the IFA, the RAD displayed no reasoning process. The RAD did not explain how or why it came to the conclusion it did. Saying that the RPD was correct "based on the evidence in the record" is not an independent reasoning process or analysis. It is a phrase that is devoid of both transparency and any useful analytical information.

[25] I find the lack of independent analysis by the RAD and the absence of reasons by the RAD on this critical issue is a sufficiently serious shortcoming such that the Decision cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. As it speaks directly to the safety of the Applicant in the IFA, I also find that this shortcoming is much more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[26] I find for the reasons set out above that the Decision is unreasonable. It must be sent back for redetermination by a different member of the RAD.

[27] No serious question of general importance was posed by the parties and I find that none exists on these facts.

JUDGMENT in IMM-251-21

THIS COURT'S JUDGMENT is that:

1. The application is granted and the Decision is set aside.
2. The matter is remitted for redetermination by a different member of the RAD.
3. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Michael Korman FOR THE APPLICANT

Sally Thomas FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman & Korman LLP FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario