

Federal Court



Cour fédérale

Date: 20221021

Docket: IMM-1277-21

Citation: 2022 FC 1440

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 21, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**VIKAS KUMAR
ASHU DEVI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Decision [RAD] dated February 10, 2021, confirming the decision by the Refugee Protection Division [RPD] determining that the applicants are not Convention refugees or persons in need of

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD's decision is based on the applicants' internal flight alternative [IFA] in India, their country of origin.

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

II. Facts

[4] The female applicant, Ashu Devi, and her spouse, Vikas Kumar, are citizens of India. They say they fear being killed by Abhay Singh Choutala, the son of an influential politician in India, after the female applicant revealed Mr. Choutala's involvement in crimes, including the kidnapping, rape and murder of a young woman in 2016.

[5] After learning of that crime, the female applicant joined the social group Jeevan Jyotti, whose mission is to defend women and girls who are victims of violence. The female applicant accompanied the parents of the young victim during the police proceedings. As a result of those actions, she was the target of threats and an attack by four men against the applicants on September 27, 2017. The applicants then sought refuge in Jalandhar but were victims of another attack there on January 4, 2018. They decided to leave India to claim refugee protection in Canada.

[6] The applicants allege that, since their arrival in Canada, members of the male applicant's family have been threatened by people looking for them.

[7] On February 18, 2020, the RPD rejected the applicant's claims on the basis that they have an IFA in the cities of Bhopal in the state of Madhya Pradesh, and Hyderabad, in Andhra Pradesh. The RPD found the applicants to be credible with respect to certain allegations, but not credible with respect to others, such as the female applicant's involvement with Jeevan Jyotti, a non-governmental organization dedicated to the protection of women's rights, and the problems faced by the members of her family in 2018.

[8] The applicants challenged the RPD's conclusions in their appeal to the RAD, stressing that they would face a serious risk of persecution if they were to return to India.

[9] For its part, the RAD found all the applicants' allegations to be credible. However, it confirmed the RPD's conclusion that they had an IFA in the proposed cities.

[10] The RAD first found that the RPD had erred in concluding that the allegation that the female applicant had worked with Jeevan Jyotti was not credible. The RAD found that allegation to be credible, and that the female applicant's involvement in the fight for women's rights, in the cultural circumstances of India, could be considered the expression of her political opinions. Therefore, the female applicant had to establish a serious possibility of persecution because of her political opinion, or more specifically her work with organizations that fight for the rights of women who are victims of violence.

[11] The RAD concluded that the female applicant had not met that burden, as she was targeted by Mr. Choutala in relation to the specific case of the young victim, not because of her work. According to the RAD, the female applicant's fear [TRANSLATION] "is not the direct result of [her] work as a social worker raising public awareness about women's rights but because [she had] informed the police about the possible suspect in the crimes committed against the young woman".

[12] The RAD reached that conclusion for the following reasons:

- a) When the female applicant was asked by the RPD to indicate if her colleagues in the organization Jeevan Jyotti had faced any problems, she replied that they had not.
- b) The female applicant explained that she was afraid to return to India because she feared being killed by Mr. Choutala, as she knew that he was a suspect in the murder of the young girl, because she had learned in her work that a witness had seen the victim getting into his car.
- c) In her Basis of Claim form, the female applicant did not indicate any incidents between 2014 and 2016 in relation to her past work with the organization Asha Social Welfare, an organization that also fights to defend women's rights.

- d) Apart from the allegations of threats and assaults in relation to the case of the young murder victim, in which Mr. Choutala is apparently the suspect, the female applicant did not allege that she had faced any threats or had been the victim of violence in relation to her activities.

- e) The National Documentation Packages (NDPs) on India do not indicate that members of organizations that fight for women's rights are [TRANSLATION] "systematically" targets of violence in their work because of their social engagement or political opinion.

[13] The RAD relied on those same reasons set out in the paragraph above in rejecting the applicants' argument that they could not relocate to the proposed IFAs because the applicant would continue to work with those organizations.

III. Analysis

A. *Breach of procedural fairness*

[14] The female applicant accuses the RAD of breaching its duty of procedural fairness because the applicants were not summoned to a hearing to determine whether the female applicant had been a victim of other acts of persecution in the course of her work. That argument is without merit.

[15] In this case, in their appeal before the RAD, the applicants did not submit any new evidence within the meaning of subsection 110(4) of the IRPA. In addition, they did not comply with subparagraph 3(3)(g)(ii) of the *Refugee Appeals Division Rules*, SOR/2012-257 [Rules] by including, in their memorandum, full and detailed submissions on how the new evidence submitted would comply with the requirements of subsection 110(4) of the IRPA. They also did not comply with subparagraph 3(3)(g)(v) of the Rules by indicating in their memorandum the grounds on which the RAD should hold a hearing under subsection 110(6) of the IRPA. The RAD was therefore not required to summon the applicants to a hearing.

[16] It must be noted that the purpose of an appeal before the RAD is not to offer a refugee protection claimant a second chance to present evidence to correct weaknesses raised by the RPD. As decided by the Federal Court of Appeal, an appeal to the RAD is not an opportunity to complete a deficient record submitted to the RPD (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 54).

[17] The applicants claim that the RAD again breached procedural fairness, stating that the objective documentary evidence in the NDP on India on which the RAD based paragraph 17 of its reasons was not in evidence before the RPD. The RAD decision is therefore based on grounds that the applicants were unable to address. That ground is without merit.

[18] The RAD is required to share the version of the NDP that it uses if the following two factors are present: (1) the version of the NDP on which the RAD bases its decision was not available or publicly accessible when the refugee protection claimant perfected the appeal and

presented the submissions, and (2) the most recent information in that version of the NDP is sufficiently different, new and important, and indicates a change in the general situation in the country in question. However, claimants must establish the alleged error and must therefore demonstrate that the factors indicated above are present, which was not done.

[19] In any event, the applicants perfected their appeal on or about October 2, 2020. The most recent NDP on India at the time of the RAD's decision dated from July 17, 2020. The NDP was therefore available and accessible when the applicants perfected their appeal.

[20] For these reasons, the applicants therefore did not demonstrate a breach of procedural fairness.

B. *Reasonableness of decision*

[21] The applicants claim that the RAD's conclusion about the IFA is unreasonable.

[22] The applicable standard of review is that of reasonableness (*Durojaye v Canada (Citizenship and Immigration)*, 2020 FC 700 at para 6). Thus, according to that standard, the burden is on the party challenging the decision to show that it is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at para 100).

[23] Having considered the evidence as a whole, the RAD concluded that the applicants had not established that there was a serious risk of persecution in the proposed IFAs if they were to return to India.

[24] It should be remembered that the IFA issue is essential to establishing whether a person is a Convention refugee or a person in need of protection. International protection is only provided if the refugee protection claimant's country of citizenship cannot ensure adequate protection anywhere in the country.

[25] A two-pronged test for determining whether there is an IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA):

1. The panel must be satisfied, on a balance of probabilities, that there is no serious possibility that the claimant would be persecuted in the region of the proposed IFA.
2. The conditions in that region must be such that it is not unreasonable, given all of the circumstances, for the claimant to seek refuge there.

[26] It is settled law that, in matters of IFAs, the burden of proof is on the claimant. In this case, the applicants did not discharge their burden of proof in relation to the two prongs of the test. Let me explain.

[27] For the first prong of the test, the RAD found that the applicants had not met that prong in that they did not establish on a balance of probabilities that there was a serious possibility of being persecuted in the regions of the proposed IFA.

[28] The applicants did not challenge the RAD's conclusions that Mr. Choutala had no interest or ability to find them in the suggested IFAs. Those conclusions must therefore be accepted as true.

[29] The RAD also accepted the female applicant's allegation that she worked with the organization Jeevan Jyotti and that her involvement in the fight for women's rights, in the cultural circumstances of India, could be considered the expression of her political opinions.

[30] The RAD concluded that the female applicant was targeted by Mr. Choutala in relation to the specific case of the young victim, not because of her role as a social worker raising public awareness about women's rights. In my view, the RAD could reasonably draw this conclusion based on the evidence on record, and there is no need to intervene in this respect.

[31] In her affidavit in support of the application for judicial review, the female applicant stated that the RPD had never asked about the problems she allegedly faced because of her work between 2014 and 2016 and asserted that she was [TRANSLATION] "insulted, attacked and threatened". However, the evidentiary record before this Court on judicial review is generally restricted to the evidentiary record that was before the panel. In other words, evidence that was not before the RPD and that goes to the merits of the matter before the RAD is not admissible in an application for judicial review in this Court. Once the IFA issue was raised by the RPD, it was up to the applicants to establish that they would be in danger once in the IFA or that it would be unreasonable for them to move there. The RAD cannot be accused of failing to consider factors or evidence that was not before it.

[32] The RAD also concluded that the applicants did not establish that, if they were to return to India, they would face a serious possibility of persecution in the cities proposed as IFAs if the female applicant were to continue working to raise awareness of women's rights, thus dismissing their arguments that they could not relocate to the suggested IIFAs because the female applicant would continue to work with those organizations.

[33] On the evidence before the RPD, these conclusions are entirely reasonable. In my view, they are unassailable.

[34] With respect to the second prong of the test, the applicants had to demonstrate, with real and concrete evidence, the existence of conditions that would put their lives and safety at risk if they were to relocate to the proposed IFAs. The RPD found that the applicants had not met that burden of proof. The RAD noted that the applicants had not challenged that conclusion and, after analyzing the RPD's conclusion on that prong and the evidence on record, the RAD concluded that the RPD had not erred. Given that the applicants did not challenge that conclusion by the RAD on this prong, that conclusion must be accepted as proven.

[35] The applicants did not demonstrate that the decision was tainted by a reviewable error, as it was, rather, well structured and well reasoned.

[36] For these reasons, the application for judicial review is dismissed.

[37] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-1277-21

THIS COURT'S JUDGMENT is as follows:

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

“Roger R. Lafrenière”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1277-21

STYLE OF CAUSE: VIKAS KUMAR AND ASHU DEVI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 12, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 21, 2022

APPEARANCES:

Manuel Centurion FOR THE APPLICANTS

Yaël Levy FOR THE RESPONDENT

SOLICITORS OF RECORD:

Manuel Centurion, Counsel FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec