Federal Court  Cour fédérale

Date: 20221109

Docket: IMM-6380-21

Citation: 2022 FC 1525

Toronto, Ontario, November 9, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

X SAMI-ULLAH (AKA FNU SAMI-ULLAH)

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision [Decision] of the Refugee Appeal Division [RAD], dated August 18, 2021. The Decision upheld the Refugee Protection Division [RPD] in finding the Applicant is neither a Convention refugee nor a person in need of protection based on an internal flight alternative [IFA] in Hyderabad or Islamabad, Pakistan. For the reasons that follow, this judicial review will be dismissed.

II. Background

[2] The Applicant is a citizen of Pakistan and resided in Sialkot, in the Punjab province of Pakistan. He is a Shia Muslim who fears persecution from an extremist group, Tehreek-e-Taliban Pakistan [TTP], based on his religion and his refusal to pay extortion demands.

[3] The Applicant worked and resided in China from 2007 to 2018, returning to Pakistan periodically. From 2015 to 2018, the Applicant received various threats, demanding money and threatening his family. In 2017, the Applicant received another warning from a person who knew he had traveled to the United States.

[4] In June 2018, the Applicant and his family moved to a new house in Sialkot. While at this house, strangers fired guns into the air outside the house. The Applicant and his family moved to a third home on the outskirts of Sialkot. Neighbours reported strangers looking for the Applicant, who then removed his children from the local school.

[5] The Applicant returned to China in September 2018. He traveled from China to the United States, then to Canada in November 2018, where he made his refugee claim.

III. Decision under Review

[6] The RAD agreed with the RPD that the Applicant was not a Convention refugee or a person in need of protection, as there was a valid IFA in Pakistan. Under the first prong of the IFA test, the RAD found the Applicant had not established the TTP had the means and ability to

locate him in either of the proposed IFAs, Hyderabad or Islamabad. Although the Applicant did not make submissions on the second prong of the test, the RAD found it would not be objectively unreasonable for the Applicant to relocate.

[7] The RAD held the physical size of the IFA and the distance from Sialkot were factors to consider in a contextual approach to assessing the viability of an IFA. The RAD found the RPD did not err in considering the proposed IFAs would provide some anonymity for the Applicant, based on their size and distance from Sialkot.

[8] The RAD rejected the Applicant's argument that the mere presence of the TTP within the province where the proposed IFA is located, shows the group has the ability and means to track the Applicant. The RAD held there was no evidence in the National Documentation Package [NDP] to support this proposition.

[9] Further, the RAD rejected the Applicant's submission that because the TTP had found the Applicant twice in Sialkot, the group had the means and interest to track him long-term. The RAD found the Applicant was not in hiding in Sialkot and that there was no evidence the TTP would be able to track him three years later, to a different city – whether Hyderabad or Islamabad – both hundreds of kilometres away. The RAD also found there was insufficient evidence to prove the TTP were the party who contacted his brother in July 2018 or approached his wife in July 2019.

[10] The RAD held the RPD correctly found there was no evidence provided to establish the police or law enforcement were working with the TTP in seeking to harm the Applicant. The RAD held there was insufficient evidence to demonstrate the police told the TTP about the Applicant's report of the 2016 extortion request, or that the police would provide the TTP access to the tenant registration system to find the Applicant if he relocated to one of the proposed IFAs.

[11] The RAD also found the Applicant's profile would not motivate the TTP to track him. The RAD found the RPD did not err in considering the Applicant's perceived wealth. There was no evidence the TTP would know the Applicant had returned to Pakistan if he relocated to one of the proposed IFAs. The RAD agreed with the RPD there was limited information in the NDP that the TTP engaged in long-term tracking and locating of individuals with a similar profile as the Applicant. The RAD found that by donating to his Imam Bargah, the Applicant's profile had not been raised so much that he would remain a target.

[12] The RAD also concluded the RPD had not erred in finding the Applicant could live in relative safety as a Shia Muslim in one of the proposed IFAs. The RAD referred to the NDP, dated April 2021, which indicated that while Shia Muslims face sectarian violence in Pakistan, such violence is decreasing year over year. The RAD found that although sectarian violence affected all Shia Muslims in Pakistan, the Applicant's personal circumstances did not warrant protection.

IV. Issues and Analysis

[13] The Applicant submits the RAD made reviewable errors by failing to properly assess the profile of the Applicant in light of the circumstances that befell him in his native Pakistan. The Applicant also asserts the RAD failed to consider central evidence that was before it, which contradicted its conclusions. Finally, in coming to these conclusions, the Applicant asserts the Decision is contrary to recent jurisprudence and decisions both from the RAD, as well as from this Court.

[14] The parties submit, and I agree, the standard of review for each of the three issues is reasonableness, as outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. I will discuss each of the three issues in turn.

A. *The RAD did not fail to reasonably address or assess the Applicant's profile*

[15] The Applicant alleges the RAD failed to take into account his profile as a Shia man who had been threatened by the TTP, and who had twice attempted to evade his persecutors without success. The Applicant had moved inside his city of Sialkot, and to the outskirts of it, noting that his family, too, were impacted.

[16] I cannot agree. The RAD clearly addressed the Applicant's complete profile, including his religious identity, work and travel outside of the country, and visit to the United States, all in light of the alleged cooperation between the police and the TTP, and against the backdrop of his and his family's experiences in and around Sialkot with the TTP.

[17] The RAD ultimately weighed all these subjective factors impacting the Applicant's ability to relocate to the IFAs identified by the RPD, and to live safely in them. The RAD reasonably concluded, based on all the documentation and testimony provided, there was insufficient evidence to find otherwise. The 20-page decision also considered in detail both the past and current situation vis-à-vis his wife and children, who continued to live in safety. The children continued to attend school. They had never been harmed prior to or in the years since the Applicant was extorted.

[18] Regarding the prospective IFAs, in light of his profile, the RAD disagreed there was evidence to suggest that even if the TTP was still interested in him after all these years, that they would have the interest or ability to pursue him in either of the two large cities hundreds of kilometers away. The RAD also disagreed there was evidence the TTP would be able to trace the Applicant through access the tenant registration system, or through potential use of social media. The RAD also noted, in any event, there is no fundamental right to the use of social media, and the Applicant could take privacy precautions should he nonetheless decide to use social media.

[19] I find none of the RAD's analysis to be lacking, let alone to have fallen into error. Rather, the Applicant simply disagrees with the outcome, and the manner in which the RAD weighed the evidence, which leads to the second basis of error asserted by the Applicant – that of failing to address central evidence.

B. *The RAD did not fail to reasonably address or assess central evidence*

[20] The Applicant contends the RAD overlooked central evidence, regarding the ongoing risk to the Applicant in the IFAs, given that he has been targeted by the TTP, their broad reach across Pakistan, and their ties to other terrorist organizations.

[21] Once again, I find the RAD's analysis to have been comprehensive on this point, and taken into account the most updated NDP. The RAD cited balanced views from various leading articles published a short time before the hearing from around the world on the current situation in Pakistan vis-à-vis the TTP and linked terrorist groups. These articles include credible international humanitarian and government sources, such as the United Nations High Commission for Refugees, the European Asylum Support Office, the United States Department of State, the United Kingdom's Home Office, Australia's Department of Foreign Affairs, as well as several of the Immigration and Refugee Board's Response to Information Requests, and various well-known non-governmental organizations and reputable media sources.

[22] I do not find the RAD overlooked evidence. The RAD acknowledged there were risks emanating from the TTP and similar terrorist organizations in Pakistan, but noted that attacks in recent years have been more notable in the Sindh province, with much the activity focused in Karachi and even there, the situation has shown improvement in recent years.

[23] The case law of this Court, and *Vavilov*¸ is clear that the RAD need not mention every document provided. Here, the RAD cites the same Response to Information Request the

Applicant alleges was not considered in the Decision. I give no credence to the argument that the RAD failed to consider relevant country condition evidence. Indeed, the record and documents numbered hundreds of pages. I note the links cited in the then-current and earlier NDPs put before the RAD numbered hundreds more pages. In its Reasons, the RAD quoted extensively from a wide source of documents that cited the risks present and atrocities committed by the impugned organization in Pakistan. However, the RAD reasonably concluded as follows, in my view adequately capturing the documents it could not and did not need to specifically reference (with citations to various reports, even within this concluding paragraph, omitted):

> A number of the articles provided by the Appellant do provide compelling or specific support for his allegations. Some of the articles provide a general background or historical perspective of the sectarian violence. A number of articles refer to recent incidents in Karachi or issues pertaining to the overall policing issues within Pakistan. I find these articles do not provide compelling evidence to establish that the Appellant faces a serious possibility of persecution in the proposed IFAs.

C. *Jurisprudence was not overlooked*

[24] The Applicant cited 12 RAD decisions, dating from 2016 through 2021, that consider issues including conditions for Shia Muslims in Pakistan, the reach of the TTP in Pakistan, the lack of an IFA for person persecuted by the TTP in Pakistan, and the links between extremist groups and police or military intelligence in Pakistan. These cases overturned RPD decisions for Shia Muslims from Pakistan.

[25] I have both procedural and substantive concerns with the approach taken by the Applicant, both of which lead me to the conclusion the Decision here was reasonable, without having arrived at the same outcome as these prior decisions.

[26] To begin, while I appreciate that Applicant's counsel changed from the RPD to the RAD and then once again at this judicial review, I note in appealing the RPD decision, these various RAD precedents were not raised. This Court has pointed out on many occasions that arguments should be raised before the RAD in order to form a basis of judicial review (*Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at para 10) and that prior cases are not evidence (*Mansour v Canada (Citizenship and Immigration)*, 2022 FC 846 at para 26).

[27] In terms of the substantive content of the argument, such that this Court should adhere to the outcomes of those cases based on the country conditions that the Applicant cited, I indeed acknowledge there have been numerous RAD appeals overturning RPD decisions regarding IFAs for Shias under threat in Pakistan, including the two cities that were proposed in this case.

[28] However, I also note that there have also been numerous decisions which counsel did not present to the Court, in which these same IFAs for Shia Muslims have been upheld both by the RAD, as well this Court including cases such as *Nawaz v Canada (Citizenship and Immigration)*, 2022 FC 306, *Ui Haq v Canada (Citizenship and Immigration)*, 2022 FC 95, and *Shah v Canada (Citizenship and Immigration)*, 2022 FC 729.

[29] Thus, there is no unanimous canvass depicted by the jurisprudence – whether coming from the Court or the tribunals – regarding the plight of Shia claimants that have been targeted by the TTP or related groups in Pakistan.

[30] Furthermore, it is important to note that immigration cases, like any administrative decision, are heavily fact dependent. As *Vavilov* instructs, "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review… The fact that the contextual constraints operating on an administrative decision maker may vary from one decision to another does not pose a problem for the reasonableness standard, because each decision must be both justified by the administrative body and evaluated by reviewing courts in relation to its own particular context" (*Vavilov* at para 90).

[31] Given that all refugee claims arise out of uniquely personal circumstances, they must always be assessed in their particular contexts. When a decision-maker fails to do so by overlooking key evidence, erring in the factual foundation, or in applying those facts to the law - to name three reviewable errors sometimes made by decision-makers - the decision will be unreasonable. This Court recently confirmed, in *Qayyem v Canada (Citizenship and Immigration)*, 2020 FC 601 at paragraph 20, that Canadian administrative law does not recognize inconsistency in a tribunal's decisions as a stand-alone ground of review.

[32] What is therefore important, and must be top-of-mind in the review of any review of an administrative decision, is the assessment of the "decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body" (*Vavilov* at para 94).

[33] Many of the cases relied on by the Applicant, including *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93, raised facts that were not present in this case (there, with respect to the applicant having Canadian born children). The same can be said for *Abbas v Canada (Citizenship and Immigration)*, 2019 FC 1576 [*Abbas*], which the Applicant also cites, but which also focused on the vulnerability relating to family members (in that instance, those already living in the proposed IFA). I note *Abbas* was put to the RAD, and the RAD expressly considered and distinguished it in its reasons.

[34] Yet other cases the Applicant relies on for country conditions took place at a different time, quite apart from their different circumstances (namely *Jafri v Canada (Citizenship and Immigration)*, 2016 FC 736; *Shabbir v Canada (Minister of Citizenship and Immigration)*, 2004 FC 480; and *Khan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1773).

[35] Finally, I note that the Applicant relies on *Vavilov* at paragraphs 129-132 and *Brown v Canada (Citizenship and Immigration*), 2020 FCA 130 at paragraph 134 [*Brown*] for the proposition that the RAD departed from its own jurisprudence. I note two problems with this argument. First, *Brown* was in the context of prior immigration detention decisions involving the same applicant, not consistency between applicants from the same country. Paragraph 133 of *Brown* states:

> Members of the ID are obligated, under their oath and by law, to consider the circumstances of the particular individual whose detention or liberty is in issue in a fair and open-minded way. Each member is required to undertake their own independent assessment of the case for and the case against detention.
>
> [Emphasis added]

[36] Second, I note that Applicant's counsel raised this argument recently in *Vanam v Canada (Citizenship and Immigration)*, 2022 FC 1457. I agree and adopt the reasons of Justice Furlanetto at paragraph 23, where she stated "the prior IFA decisions cited by the Applicants are distinguishable and are not the type of decisions imposing a "justificatory burden" on the RAD to explain a departure from its previous decisions: *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 at para 134."

[37] As noted at the hearing, Applicant's counsel did admirably given the circumstances, and he is to be recognized for the efforts on behalf of the Applicant, despite the outcome.

V. Conclusion

[38] I find the RAD's Decision – that the Applicant failed to establish, on the individual facts of his case, that he is a Convention refugee or a person in need of protection – reasonable, based on all the facts and evidence presented to the RAD, and the RPD at first instance. The Applicant also has failed to convince the Court that past cases of this Court and at the RAD reflect reviewable errors in his case. For the reasons explained above, this argument cannot succeed. Accordingly, the application is dismissed.

JUDGMENT in IMM-6380-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No questions for certification were argued and I agree that none arise.
3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6380-21
STYLE OF CAUSE:	X SAMI-ULLAH (AKA FNU SAMI-ULLAH) v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 7, 2022
JUDGMENT AND REASONS:	DINER J.
DATED:	NOVEMBER 9, 2022

APPEARANCES:

Yasin Ahmed Razak,	FOR THE APPLICANT
Catherine Vasilaros	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Razak Law Barrister, Solicitor & Notary Public Etobicoke, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT