

Federal Court



Cour fédérale

Date: 20230314

Docket: IMM-1922-22

Citation: 2023 FC 338

Ottawa, Ontario, March 14, 2023

PRESENT: Madam Justice Walker

BETWEEN:

CHIDAMBARAM SUBBAIYA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of India, seeks judicial review of a February 2, 2022 decision of the Refugee Appeal Division (RAD) confirming the refusal of his refugee claim by the Refugee Protection Division (RPD). The RAD found that the Applicant has a viable internal flight alternative (IFA) in Delhi and concluded that he 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 (*IRPA*).

[2] For the reasons that follow, I find that the Applicant has not demonstrated that the RAD's IFA analysis is unreasonable. Accordingly, I will dismiss this application for judicial review.

I. Background

[3] The Applicant fears being falsely accused of trafficking in narcotics and targeted for extortion by a police inspector and a naval officer.

[4] The events precipitating the Applicant's departure from India began after he started a fishing business in 2018 in Mallipattinam, a coastal village in the state of Tamil Nadu. In mid-2019, the Applicant assisted a Sri Lankan boat in distress and was then stopped by a Navy patrol boat. A naval officer boarded the Applicant's boat, demanded a bribe and threatened him with seizure of his boat and a charge of drug trafficking should he fail to pay. Subsequently, the naval officer and a police inspector came to the Applicant's home to demand money. They threatened him with physical harm and with damage to his fishing equipment. The police inspector also stated that he would pursue false charges for trafficking unless the Applicant paid a much larger bribe. The Applicant paid the money and the police inspector told him to leave the area and, preferably, the country.

[5] The Applicant left India and came to Canada on February 20, 2020.

[6] The Applicant's refugee claim was refused by the RPD on September 7, 2021. The RPD stated that the claim did not involve a Convention ground (nexus) and focused its assessment on

subsection 97(1) of the *IRPA*. The RPD found significant inconsistencies and omissions in the Applicant's evidence and concluded that he had not established his core allegations.

[7] On appeal to the RAD, the Applicant argued that the RPD breached his right to procedural fairness by failing to raise nexus as an issue. He also argued that the RPD improperly focused on minor credibility issues in his evidence and disregarded the substance of his claim.

II. Decision under review

[8] The RAD agreed with the Applicant that the RPD should have stated that nexus was in play but determined that it was able to remedy any breach of procedural fairness in the RPD's process. The RAD considered the Applicant's submissions regarding nexus but found no merit in his assertion that the police had attributed a political opinion to him on the basis of their accusation of illegal activity.

[9] The RAD also agreed with the Applicant that the RPD's assessment of certain inconsistencies in his evidence unduly focused on minor issues and that the RPD erred in drawing negative inferences from those aspects of his testimony. However, the RAD confirmed the RPD's finding that the Applicant's allegations of continued threats after his departure from India are not credible. This finding was critical to the RAD's assessment of the Applicant's forward-looking risk and to its IFA analysis.

[10] The RAD alerted the parties that it would consider whether a viable IFA exists for the Applicant in Delhi. After review of the Applicant's submissions, the RAD found he had failed to

discharge his burden of establishing either that he faces a subsection 97(1) risk in the proposed IFA or that it would be unreasonable in all the circumstances for him to relocate there. The RAD therefore concluded that Delhi is a viable IFA for the Applicant and dismissed the appeal.

III. Analysis

[11] The RAD's reasons and conclusions regarding the availability of an IFA in India for the Applicant are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[12] In determining whether a viable IFA exists for a refugee claimant, the RAD must be satisfied that (1) the claimant will not be subject to a serious possibility of persecution or to a section 97 danger or risk in the proposed IFA; and (2) in all the circumstances, including the particular circumstances of the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 595–597). Once the possibility of an IFA is raised, the claimant bears the onus of establishing that they do not have a viable IFA (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1333 at para 16).

[13] The RAD's conclusion that the Applicant has not established a serious possibility of danger or risk in the proposed IFA rests primarily on the absence of evidence of any motivation

on the part of his agents of persecution to find him. The Applicant submits that there are two errors in the RAD's conclusion.

[14] The Applicant first submits that the inconsistencies between his testimony, the evidence in his amended Basis of Claim (BOC) form, and his wife's declaration regarding the date and frequencies of the police officer's searches for him, are minor. The fact remains that the officer did visit his home after he left India. The Applicant argues that the RAD erred in rejecting in its entirety his evidence of a continuing search.

[15] The Applicant's argument is not persuasive.

[16] Two weeks prior to the RPD hearing, the Applicant filed an amendment to his BOC indicating that the police had been to his home in India to search for him on two occasions (December 2019 and March 2020). He also provided a declaration from his wife confirming the two incidents. In contrast, the Applicant testified that his wife had informed him that the police had been coming to his home every month and that the last search had occurred three months prior to the RPD hearing on August 10, 2021.

[17] I find that it was open to the RAD to conclude that the discrepancies between the Applicant's own testimony on the one hand, and his amended BOC and wife's declaration on the other, are significant. The Applicant's amendment to his BOC and his wife's declaration were provided only two weeks prior to the RPD hearing during which he directly contradicted her

declaration, testifying that she had informed him not of two dated searches but of monthly searches that continued well into 2021.

[18] I also find that the RAD did not err in concluding that the scope of the inconsistencies calls into question the truthfulness of the evidence and the existence of any search after the Applicant's departure from India. The presumption of truthfulness of a claimant's testimony can be, and was, rebutted by material inconsistencies and omissions in the evidence considered as a whole (*Warrich v Canada (Citizenship and Immigration)*, 2022 FC 76 at para 32). The RAD considered the Applicant's explanation for the inconsistencies but concluded that it was not reasonable. The Applicant's statement that his wife may have been afraid to mention monthly visits was not consistent with the detailed nature of her declaration and did not explain why she was not afraid to mention the two incidents. The Applicant's argument on judicial review that the evidence establishes some form of ongoing search ignores the RAD's conclusion that the evidence was so flawed that it did not credibly establish any continued search.

[19] Second, the Applicant submits that the RAD's assessment of the existing charge against him is unreasonable. He argues that the RAD overlooked his testimony that a false charge had been filed, regardless of his payment of the bribe. The Applicant states that he has no way of confirming whether the charge is being pursued and that the RAD unreasonably speculated that the police and prosecutors had not proceeded with his case.

[20] The onus is on a refugee claimant to establish, on a balance of probabilities, the continuing interest and ability of their agents of persecution to track them in their country of

origin. In this case, the RAD reasonably found that the Applicant failed to present sufficient evidence to establish either the existence of a formal charge or, if a charge exists, that his personal information has been entered into a national police database. The RAD also found that the Applicant had not provided evidence that any case or charge against him is being pursued.

[21] The Applicant's own testimony suggested that the police had no interest in him as he had paid the bribe. The Applicant stated that, since he had paid the money, "they are not continuing with" the false charge. I find that the RAD reasonably concluded that this testimony constitutes a clear indication that the police have not proceeded with the case because they have no motivation to do so.

[22] In response to the Applicant's claim that he could be traced anywhere in India because of the false charge, the RAD noted that he had provided no documentation that a case had been filed. The RAD also reviewed the status of the Crime and Criminal Tracking Network and Systems (CCTNS) in India but stated that it has not been fully implemented and that, in any event, the Applicant had not established that his information has been entered into the system. The evidence did not indicate that a First Information Report or any other record of the Applicant has been documented by the police or entered into any database. I find that the RAD's conclusion is justified on the evidence before it.

[23] The Applicant argues that the RAD misconstrued his evidence and that there is a difference between filing a case and its pursuit. However, the RAD's findings are based on an insufficiency of evidence. The panel was not required to accept the Applicant's speculation that

the case may be proceeding where the evidence strongly indicates no reason for the police to pursue any false charge. The same is true of his argument that the mere fact he was a witness to extortion by the police means he will never be safe. The possibility of an existing charge in a national database does not establish the ability of his agents of persecution to find him in Delhi.

[24] Turning to the second prong of the IFA test, the Applicant submits that the RAD adopted an unduly strict approach in its assessment of his ability to relocate to Delhi. He argues that the RAD's reliance on his academic credentials fails to consider the difficulties he would encounter in accessing government and public services in Delhi. The Applicant states that he would not have any support in Delhi which would necessarily cause him hardship.

[25] The RAD correctly stated that a refugee claimant must meet a very high threshold to prove the unreasonableness of a proposed IFA. To do so requires actual and concrete evidence proving that there are conditions that would jeopardize their life and safety in travelling or temporarily relocating to the safe area (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15; *A.B. v Canada (Citizenship and Immigration)*, 2021 FC 90 at para 40).

[26] The RAD found that relocation to Delhi would not be objectively unreasonable or unduly harsh for the Applicant under the circumstances, noting the high threshold in the jurisprudence required to satisfy the second prong of the IFA test. The RAD accepted that the Applicant is Tamil and does not speak Hindi but found that the challenges facing Tamils in relocating outside of Tamil Nadu depend on the particular individual's socio-economic status. Here, the Applicant

holds a Bachelor of Commerce degree and had been able to successfully relocate to Dubai for 10 years, working as a cleaning supervisor at the airport. He also has experience operating his own farm and fishing business. The RAD found that these factors demonstrate that the Applicant has the skills and experience necessary to successfully relocate. The challenges he would face in Delhi would not be unreasonable solely due to his Tamil background and linguistic limitations.

[27] I find that the Applicant's arguments contesting the RAD's assessment of the second prong of the IFA test do not address the absence of objective evidence of serious hardship he would face in relocating to Delhi. The RAD addressed the evidence in the record and arguments presented on appeal. The panel clearly explained its reasons for concluding that the Applicant's ethnicity and his inability to speak Hindi will not subject him to hardship in Delhi that would pose a threat to his life or safety. The Applicant's disagreement with the RAD's assessment is a request that the Court reweigh the evidence.

IV. Conclusion

[28] In summary, the RAD's finding of a viable IFA for the Applicant in Delhi, India is reasonable in light of the evidence and the accepted test for a viable IFA. Its analysis is clear and comprehensive and is justified on the evidence. I am not persuaded by the Applicant's arguments and find no error in the RAD's assessment of the means and motivation of the police and the naval officer to locate him in Delhi that warrants the Court's intervention. Further, the Applicant has raised no reviewable error in the RAD's analysis of the second prong of the test for a viable IFA. As a result, the application will be dismissed.

[29] No question for certification was proposed by the parties and none arises in this case.

[30] The proper Respondent in this matter is the Minister of Citizenship and Immigration and the style of cause is amended accordingly (paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 and subsection 4(1) of the *IRPA*).

JUDGMENT IN IMM-1922-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. The style of cause is amended to designate the Minister of Citizenship and Immigration as the Respondent.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1922-22

STYLE OF CAUSE: CHIDAMBARAM SUBBAIYA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 6, 2023

JUDGMENT AND REASONS: WALKER J.

DATED: MARCH 14, 2023

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