

Federal Court



Cour fédérale

**Date: 20230323**

**Docket: IMM-2480-22**

**Citation: 2023 FC 405**

**Ottawa, Ontario, March 23, 2023**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**NAEEM MUHAMMAD  
FAHAD NAEEM  
SUMAIRA MUHAMMAD NAEEM  
MUHAMMAD RIYAN  
DANISH NAEEM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Court is reviewing a decision of the Refugee Appeal Division [RAD]. For the reasons that follow, this application is allowed and the matter referred back to the RAD for determination by a different Member.

[2] The Applicants are citizens of Pakistan who fear harm in Pakistan at the hands of the Principal Applicant's brother, Saleem.

[3] In 2013, the Principal Applicant and his brother had a dispute over business interests and property. Saleem threatened to kill the Principal Applicant. The Principal Applicant left for the United States but returned in 2014 seeking a reconciliation with his brother. Saleem physically attacked the Principal Applicant who had to be hospitalized for two days. When released he returned to the United States to be with his family. They overstayed their visas and crossed into Canada in July 2019 where they sought refugee protection.

[4] The Refugee Protection Division [RPD] rejected their claims, finding that the Principal Applicant "has not been a credible or trustworthy witness." As it made that finding, the RPD did not consider the issue of Internal Flight Alternative [IFA].

[5] The RAD found that the RPD erred in its credibility assessment and found the Applicants to be credible. The RAD permitted the Applicants and the Minister to make additional submissions on the IFA issue. The Applicants asked the RAD to refer the IFA issue back to the RPD for determination. The RAD refused to do so and made its own determination of a viable IFA.

[6] At the commencement of the hearing, counsel for the Applicants informed the Court that he wished to raise a new issue; namely, whether the RAD erred in refusing to refer the IFA issue back to the RPD. Counsel for the Respondent objected and given that this fact was known to the

Applicants for over one year as it is referenced in the reasons of the RAD, and given that the issue had not been raised previously, the Court refused the request to expand the grounds of review.

[7] The Applicants note in their memorandum that it is not clear from the decision whether the RAD proposed as an IFA only Hyderabad or both Karachi and Hyderabad. In paragraphs 6 and 19 of the decision the Member asserts that the IFA is Hyderabad, while in paragraph 7 he mentions both Karachi and Hyderabad. It is submitted that the decision is unintelligible in this regard and this alone is a sufficient basis to set the decision aside.

[8] I do not agree. It is clear that before the RPD both Karachi and Hyderabad were raised as possible IFA locations. However, the RAD's focus was clearly on Hyderabad. The additional inclusion of Karachi at one place in the reasons does not result in an unintelligible decision.

[9] The RAD applied the proper two-prong test in examining whether there was an IFA available to this family: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA).

[10] The RAD first asked whether, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA. Second, it asked whether the conditions in the proposed IFA are such that it is not unreasonable for the claimant to relocate to the IFA.

[11] I agree with the Applicants that in turning to the first prong of the test, the RAD accepted that the brother of the Principal Applicant is motivated to pursue the Applicants due to being dishonoured by involving family members in a property dispute. As they note, the Member refers to the “credible narrative” in this regard. The focus of the Member’s analysis is on the means of the brother to locate the family in the proposed IFA.

[12] The Applicants advanced several ways in which the brother could find the Applicants in the IFA. In the Court’s view, the most compelling was through family members. In this regard, the Member writes:

The Principal Appellant testified that he thinks Saleem would come to know their location through family members or when the kids go to school. The Principal Appellant testified that he maintains communication with other family members, such as his sisters, by phone just to say hello. The Appellants have not provided any evidence that Saleem is using family members to search for the Appellants. [emphasis added]

[13] In my view, it is unreasonable for the Member to expect the Applicants to provide evidence that Saleem is using family members to search for the Applicants. The proper question to be asked was whether it is more likely than not that Saleem will learn of their IFA location through family members. The failure to address the proper question renders the decision unreasonable.

[14] It is established that the Principal Applicant keeps in contact with his sister in Pakistan. She cannot be required or expected to hide their whereabouts from Saleem, her brother. It has been observed that a location is not a true IFA if one must live in hiding: *AB v Canada (Minister*

*of Employment and Immigration*), 2020 FC 915 at para 20. Similarly, it cannot be said that a location is a reasonable IFA if one must hide from family where one is living.

[15] On the second prong of the test, the Applicants submit that the analysis was unreasonable because the Member did not consider the fact that the Principal Applicant has lived most of his life in Saudi Arabia and that two of the couple's children were born in the United Arab Emirates and have never lived in Pakistan. Additionally, the country condition evidence shows that there is an extremely high rate of unemployment and a housing shortage in the IFA. They submit that "the Member's analysis of the reasonableness of the IFA is scant."

[16] In response, the Minister points to the decision in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FCR 164 at para 15, where when speaking of the reasonableness or not of the claimant seeking out the IFA, the Court of Appeal writes that the unreasonableness test "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area."

[17] However, this statement must be read in the full context of that decision wherein the Court of Appeal accepts that the "test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved." And the conclusion that "if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so." [emphasis added]

[18] What is lacking in the RAD's analysis is any consideration of whether the conditions in the proposed IFA are so severe in terms of employment, housing, and other necessary amenities, that this family can be said to be jeopardizing their lives in moving there. The failure to address the evidence renders the decision unreasonable.

[19] For these reasons, the matter must be referred back to the RAD.

[20] No question was proposed for certification.

**JUDGMENT in IMM-2480-22**

**THIS COURT'S JUDGMENT is that** this application is allowed, the decision under review is set aside, the application is referred back to a different Member of the Refugee Appeal Division for decision, and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2480-22

**STYLE OF CAUSE:** NAEEM MUHAMMAD, FAHAD NAEEM, SUMAIRA MUHAMMAD NAEEM, MUHAMMAD RIYAN, DANISH NAEEM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 22, 2023

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MARCH 23, 2023

**APPEARANCES:**

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