

Federal Court



Cour fédérale

Date: 20230908

Docket: IMM-3482-22

Citation: 2023 FC 1216

Ottawa, Ontario, September 8, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**GURMEET KUMAR MADAAN
GEETA MADAAN
SHAGUN MADAAN (THROUGH LITIGATION
GUARDIAN, GURMEET KUMAR MADAAN)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by the Refugee Appeal Division (“RAD”) dated March 21, 2022, confirming a decision by the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of protection

pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The RAD found the determinative issue to be the availability of internal flight alternatives (“IFA”) in Delhi, Mumbai, Kolkata and Bangalore, India.

[2] The Applicants submit that the RAD unreasonably assessed the evidentiary record and the availability of an IFA, rendering the decision unreasonable.

[3] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. The Applicants

[4] Gurmeet Kumar Madaan (the “Principal Applicant”), his wife, Geeta Madaan (the “Associate Applicant”), and their daughter (the “Minor Applicant”) are citizens of India. The Principal and Associate Applicants have two other children, who reside with relatives in India.

[5] The Principal Applicant claims that he assisted his father in running his general store in Bhunna Village, in the state of Haryana, India. As his father aged and needed more help with the store, the Principal Applicant hired a worker from a nearby village, Balbir Singh (Mr. “Singh”). Mr. Singh would allegedly take care of the business when the Principal Applicant was away.

[6] The Principal Applicant allegedly learned that Mr. Singh was using the general store as a meeting place for his acquaintances during the Principal Applicant's absences. The Principal Applicant allegedly told Mr. Singh to stop inviting his friends to meet him at the shop. Mr. Singh stopped working at the general store in December 2015.

[7] The Principal Applicant claims that on February 24, 2016, local police officers searched his home and arrested him. At the police station, the officers questioned the Principal Applicant about Mr. Singh and labelled Mr. Singh as a militant. The Principal Applicant claims that the police tortured him, all the while questioning him about Mr. Singh's whereabouts, activities, and acquaintances. The police officers accused the Principal Applicant of aiding militants by providing them with shelter, financial aid, and a meeting place.

[8] The Principal Applicant alleges that the police released him after four days, on February 28, 2016. He claims that his family paid the police 80,000 Rupees in bribe money to secure his release, and the police released him on the condition that he find Mr. Singh and report to the police every month with information about the militants. The Principal Applicant claims that police officers visited the general store two times after his release.

[9] The Principal Applicant claims that when the time came to report to the police with information about the militants, as per his release conditions, he had no new information and was afraid for his safety. He claims that on March 28, 2016, the police again raided his home. The Principal Applicant claims that he was not home at the time and the police physically abused and

threatened his family members. The police allegedly told his family members that if they did not present the Principal Applicant to the station, they would be killed.

[10] While in hiding in the village of Alampur in Agra, the Principal Applicant learned that his father had passed away, on April 7, 2016, as a result of the injuries he sustained in the alleged police attack in March 2016. The Principal Applicant claims that he did not attend his father's last rites, out of fear of persecution at the hands of the police. He claims that his mother passed away on July 10, 2016, and he was also unable to attend her last rites.

[11] The Applicants claim that on July 20, 2016, just two days after the Associate Applicant consulted a lawyer about their issues with the police, the Associate Applicant was arrested and taken to the police station, where she was allegedly abused, threatened, and raped by officers. The Associate Applicant allegedly disclosed the Principal Applicant's location to the police, after which officers searched for the Principal Applicant in Alampur. The Principal Applicant claims that he fled before they could find him because he was informed of his wife's arrest. The Associate Applicant was released two days after her arrest, on July 22, 2016, after village council members and neighbours bribed the police.

[12] The Principal Applicant allegedly went into hiding in Delhi with the help of the agent. The Associate and Minor Applicants later joined him, and the Applicants remained in hiding. The agent allegedly arranged Canadian visas and travel to Canada for the Principal and Associate Applicants, and their youngest child, who left India in October 2016. The Principal and Associate Applicants' two older children remained in India and stayed with relatives.

[13] In February 2018, the Applicants made claims for refugee protection, on the basis of their fear of persecution at the hands of the Indian police.

B. *RPD Decision*

[14] In a decision dated October 14, 2021, the RPD rejected the Applicants' claims and found that they are neither Convention refugees nor persons in need of protection. The RPD found the determinative issue to be the availability of IFAs in Delhi, Mumbai, Kolkata and Bangalore.

[15] The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration) (C.A.)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367).

[16] On the first prong, the RPD found that the evidence on the record failed to establish that the police in the Applicants' village would be motivated to pursue them in the proposed IFAs. The RPD found that the evidence demonstrated the police's motivations as being financial, given that they released both the Principal and Associate Applicants' from custody after the payment of bribes, and not the pursuit of a suspected militant. The RPD further noted that the Applicants failed to provide information of any attempts by the police to search for them after their arrival in Canada. The RPD concluded that there is no evidence to show that the police would continue to

pursue the Applicants five years after their departure from India for the purposes of extortion, nor that the police in any of the proposed IFAs would participate in this extortion scheme.

[17] With respect to the police's means to locate the Applicants in the proposed IFAs, the RPD noted that the Applicants' testimony that finding accommodation in a new location would require presenting their national identification card (the "Aadhaar card"), which would trigger a verification process and allow their whereabouts to be discovered by the police in their village. The RPD referenced the National Documentation Package ("NDP") for India, noting that there are laws preventing the use of the Aadhaar card biometric data for criminal investigations, and there is no legal access to Aadhaar card data in any police database. The RPD found that the use of the Aadhaar card does not in and of itself establish that the police would be able to locate the Applicants in the proposed IFAs.

[18] The RPD noted that although the tenant verification process typically requires a criminal background check, the NDP indicates that in practice, landlords do not routinely conduct tenant verification, and police services are often ill-equipped to complete this process. The RPD therefore found no evidence that the Applicants were charged with a crime or were in the criminal database such that the tenant verification process would result in interstate communication between police services. The RPD further found that on the basis of the objective evidence, India does not have a central criminal database that could be used to locate the Applicants in the IFAs and while the Crime and Criminal Tracking Network and Systems ("CCTNS") aims to establish such a nationwide network, there remains considerable difference between states that makes it difficult to locate people throughout India using the CCTNS.

Noting that both the Principal and Associate Applicants were released from custody upon the payment of a bribe, suggesting that their arrests were extrajudicial, the RPD found the objective evidence to indicate that extrajudicial arrests are not recorded in the CCTNS.

[19] On the second prong of the IFA test, the RPD considered the Applicants' testimony regarding difficulties they would face upon relocating to the IFAs in terms of employment, differences in language and culture, and general insecurity and criminality. The RPD found that these factors did not meet the high threshold for a finding that relocation to any of the proposed IFAs would be unreasonable in the Applicants' circumstances. Even if the Associate Applicant is not able to work in India, the Principal Applicant's education, business skills, and employment in Canada demonstrate that he would be able to find employment and support his family. The RPD also found that the Applicants did not provide specific evidence of cultural or language differences in the proposed IFAs such that the resulting hardship would render relocation unreasonable, and failed to advance evidence to demonstrate that they would face a heightened risk of violence or criminality in the proposed IFAs.

[20] For these reasons, the RPD found that the Applicants are not Convention refugees nor persons in need of protection as per sections 96 and 97 of *IRPA*.

C. *Decision under Review*

[21] In a decision dated March 21, 2022, the RAD dismissed the Applicants' appeal and upheld the finding that the Applicants are not Convention refugees nor persons in need of protection, on the basis that they have viable IFAs.

[22] At the first prong of the IFA test, the RAD noted that police services in India are organized by state and the alleged agent of persecution is the Haryana police. The RAD found insufficient evidence to demonstrate that the Haryana police have the means or motivation to pursue the Applicants in the proposed IFAs. The police's interest in the Applicants appears to be for the purpose of locating Mr. Singh and not on the basis of concerns that the Principal Applicant is involved in militant activities. Given the NDP evidence demonstrating that police may make interstate efforts to trace individuals in cases of terrorism, the RAD found that this does not apply to the Principal Applicant.

[23] On appeal, the Applicants submitted that the RPD erred in its assessment of the police's motivation to pursue them and that the police demonstrated this motivation through their visits to the Applicants' relatives' homes in Uttar Pradesh and Haryana after they left India. However, the RAD found insufficient credible evidence to establish that these visits occurred and that the police inquired about the Applicants' whereabouts since they left India.

[24] Regarding the police's means to locate the Applicants in the proposed IFAs, the RAD noted NDP evidence stating that there is generally little interstate communication between police services in India and that police stations across the country are virtually disconnected from one another in terms of criminal tracking and data storage. The RAD further noted that although the Applicants allege that the police was able to locate the Principal Applicant in Uttar Pradesh when he was hiding there, they did so because the Associate Applicant allegedly disclosed his location to the police. The RAD found that the police would no longer be able to locate the Principal Applicant through the Associate Applicant.

[25] The RAD also found insufficient evidence that the Applicants were entered into the CCTNS such that they could be tracked to the proposed IFAs, despite the evidence that they gave their signatures, photographs, and fingerprints upon their arrest. The RAD found that there was no warrant, First Information Report, or charges against the Applicants, suggesting that their detention was extrajudicial and therefore would not be recorded in the CCTNS. The RAD noted NDP evidence stating that no official records of unofficial arrests are made, including in the CCTNS, that the National Crime Record Bureau does not collect data on preventative detentions, and that information on “persons of interest” is also not recorded in the CCTNS. The RAD found that the other instances in which the police might track and locate persons if interests do not apply to the Applicants’ circumstances or allegations.

[26] Considering the Applicants’ testimony that the paper-based tenant verification procedure would result in the Haryana police being able to track them, the RAD referenced the NDP evidence stating that police compliance with tenant verification procedures are lacking and that the process contains gaps in implementation.

[27] With respect to the second prong of the IFA test, the RAD acknowledged the Applicants’ testimony that they do not have a support system in the proposed IFAs, do not speak the local languages, are not fluent in English, and that the Principal Applicant has a low education and insufficient funds to set up a new business or find accommodation upon relocation. The RAD found limited evidence demonstrating that the hardships faced upon relocation render relocation unreasonable and meet the high threshold at the second prong of the IFA test. The RAD

ultimately found that relocation to any of the proposed IFAs would not be objectively unreasonable in the Applicants' circumstances.

[28] On appeal, the Applicants further submitted that the RPD overlooked NDP evidence demonstrating that the human rights situation in terms of the police is poor. The RAD acknowledged this evidence, but ultimately found that since the Applicants appear to point to this evidence to suggest that state protection is not available to them in India, this is not relevant because the viable IFAs are determinative of the appeal. The RAD accepted that Haryana police may disregard human rights, but concluded that this does not affect its finding that the Applicants did not establish that the Haryana police would have the means or motivation to pursue them in any of the proposed IFAs, under the first element of the IFA test.

[29] For these reasons, the RAD found that the Applicants would not face a serious possibility of persecution or a risk to their lives in the proposed IFAs, and that relocation to the IFAs would not be unreasonable in their circumstances. The RAD therefore dismissed the Applicants' appeal and found that they are neither Convention refugees nor persons in need of protection.

III. Issue and Standard of Review

[30] This application raises the sole issue of whether the RAD's decision is reasonable. While the Applicants' written materials briefly assert that the RAD also breached procedural fairness, the submissions to that effect are cursory and lack merit in this case. I will therefore focus on the reasonableness issue.

[31] The standard of review is not in dispute. The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[32] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[33] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[34] Although the Applicants raise several reviewable errors in the RAD's decision, the essence of these allegations is that the RAD failed to properly assess the Applicants' evidentiary record and conducted an unreasonable assessment of the IFA test in light of the Applicants' circumstances. In my view, the Applicants have not raised a reviewable error in the RAD's decision that warrants this Court's intervention.

[35] The Applicants submit that the RAD ignored central evidence that supports the finding that they could not reasonably relocate to any of the proposed IFA locations, and would face a risk at the hands of the police if they did so. The Applicants reiterate several of the arguments put before the RAD to support this position, namely that the Principal Applicant has a low education and would therefore face hardship in finding employment; that the Applicants could be tracked to the IFAs through the tenant verification system; and differences in culture and language would be a barrier to their relocation.

[36] The Applicants further submit that the RAD made several unreasonable assumptions about the agent of persecution that did not account for the evidentiary record, including that the police would not make interstate efforts to pursue the Principal Applicant because he does not fit the profile of someone who is typically pursued across states, that the CCTNS lacks effectiveness as a tool to track individuals across the country, and that the police could not reasonably know that the Applicants have returned to India.

[37] The Respondent submits that the RAD properly conducted an independent assessment of the evidence, and that the Applicants have not shown that the RAD's overall assessment was unreasonable. The Respondent submits that in assessing the IFA issue, the RAD's reasons reveal a thorough analysis of each prong of the IFA test, in light of the Applicants' testimony and evidence. The Respondent notes that the RAD must consider whether the Applicants' evidence sufficiently demonstrates that the agent of persecution has the interest, motivation, means, or resources to pursue them in the proposed IFAs, and the Applicants bear the onus to provide sufficient evidence to that effect. The Respondent submits that the RAD reasonably found that the Applicants failed to meet this evidentiary burden at both prongs of the IFA test.

[38] At the outset, I note that a bulk of the Applicants' submissions appear to challenge the RAD's weighing of the evidentiary record. Under the guise of the allegation that the RAD ignored central evidence, the Applicants' submissions actually amount to a request that this Court reassess this evidence to arrive at a different conclusion. However, this is not the Court's role on reasonableness review (*Vavilov* at para 125).

[39] The Applicants' written material also alleged a variety of errors, some briefly explained and other unsupported by references to the decision or record that cannot holistically be addressed in this decision. Many of the Applicants' submissions challenging the RAD's assessment of the IFA issue are reiterations of the submissions made before the RAD on appeal. The Applicants' submissions engage in a "line-by-line treasure hunt for error" in the RAD's reasons and appear to request that this Court do the same on review (*Vavilov* at para 102). This is also not this Court's role on review.

[40] Ultimately, I agree with the Respondent that the RAD's reasons reveal a justified, transparent and intelligible assessment of the Applicants' claims, in light of the evidentiary record and factual constraints (*Vavilov* at paras 99, 125). The RAD thoroughly assessed each aspect of the Applicants' evidence and testimony in arriving at the conclusion that there is insufficient evidence to demonstrate that the Applicants would be faced with a risk to their lives at the hands of the Haryana police in any of the proposed IFAs, or that relocation to the IFAs would be unreasonable in their circumstances.

[41] At the first prong, the RAD considered the Applicants' testimony and acknowledged the NDP evidence stating that the police may pursue individuals across states in certain instances, but reasonably found that the Applicants did not provide evidence to demonstrate that the Principal Applicant fit the profile of such an individual, or that the Principal Applicant had previously been pursued in Uttar Pradesh as a result of the police finding and tracking his location of their own accord. At the second prong, the RAD acknowledged general hardships associated with relocation advanced by the Applicants, such as differences in language and barriers to establishment as a result of the Principal Applicant's low education, but reasonably found that this did not rise to the level of hardship such that relocation is rendered unreasonable and the high burden at the second prong of the IFA test is met. The RAD's decision establishes a clear line of analysis between the Applicants' evidence and the ultimate conclusion that the Applicants have viable IFAs available to them (*Vavilov* at para 102).

V. Conclusion

[42] This application for judicial review is dismissed. The RAD's decision is reasonable in light of the evidentiary record. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3482-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3482-22

STYLE OF CAUSE: GURMEET KUMAR MADAAN, GEETA MADAAN
AND SHAGUN MADAAN (THROUGH LITIGATION
GUARDIAN, GURMEET KUMAR MADAAN) v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 30, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: SEPTEMBER 8, 2023

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