Federal Court  Cour fédérale

Date: 20231026

Docket: IMM-11050-22

Citation: 2023 FC 1426

Ottawa, Ontario, October 26, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

AMIT VARTIA
KARANPREET SINGH VARTIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Amit Vartia and his adult son, Karanpreet Singh Vartia, are citizens of India. They seek judicial review of a decision by the Refugee Appeal Division [RAD], dated October 17, 2022, dismissing their appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting their claim for refugee protection. The RAD found that they are neither

Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicants allege that they fear the New Delhi and Punjab police, along with two of Mr. Vartia's former employees, whom the New Delhi police believe to be militants. The RAD concluded that the RPD was correct to find that the Applicants have a viable internal flight alternative [IFA] in Mumbai. The RPD had also concluded that Mr. Vartia's wife, Karanpreet's mother, is a Convention refugee on the basis that it would be unreasonable for her to relocate to the IFA due to the treatment she receives in Canada for her serious mental health issues. As such, Mr. Vartia's wife is not an applicant in the present proceedings.

[3] The Applicants submit that the RAD's decision is unreasonable on three grounds. First, the RAD failed to apply the law in that it undertook an IFA analysis despite the agent of persecution being the state. The Applicants plead that at the bare minimum there is a presumption that there is no IFA in cases involving state agents. Second, an IFA cannot be unreasonable for one family member but reasonable for the rest. The RAD, in the Applicants' view, failed to consider the family as a unit and take into account the hardship caused by separation. Third, the RAD's IFA analysis is flawed on the basis that the RAD applied too onerous a standard.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to persuade me that the

RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Standard of Review

[5] The parties agree that the applicable standard of review is that of reasonableness as set out in Canada *(Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

[6] As noted above, the determinative issue for both the RPD and the RAD was the existence of a viable IFA. If a refugee claimant has a viable IFA, this will negate a claim for refugee protection under either section 96 or 97 of the IRPA, regardless of the merits of other aspects of the claim (*Olusola v Canada (Citizenship and Immigration*), 2020 FC 799 at para 7 [*Olusola*]). It is the Applicants who bear the burden of demonstrating that a proposed IFA is not viable.

[7] The test for establishing the viability of an IFA is two-pronged. Both prongs must be satisfied in order to make a finding that a claimant has an IFA. The first prong consists of establishing, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution in the proposed IFA. In the context of section 97, it must be established that the claimant would not be personally subjected to a section 97 danger or risk in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-98; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5 [*Mora Alcca*]; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17; *Ifaloye v Canada (Citizenship and Immigration)*, 2021 FC 1110 at para 14). The onus is on the Applicants to negate either of the two prongs (*Chitsinde v Canada (Citizenship and Immigration)*, 2021 FC 1066 at para 21 [*Chitsinde*]).

[8] The Applicants submit that the RAD erred in its analysis in that because the police are agents of persecution, an IFA should not have been a relevant consideration in the RAD's analysis. They plead that an IFA analysis is only appropriate when the agent of persecution is not the state. At the very least, they state, there is a presumption that there is no IFA in cases involving state agents. The Applicants rely on a number of authorities, including *Buyuksahin v*

Canada (Citizenship and Immigration), 2015 FC 772 [*Buyuksahin*], where Russel W. Justice Zinn stated the following:

> [29] First, I agree with the submission of the applicant, that an IFA analysis is appropriate only when the agent of persecution is not the state. Here the agents of persecution were alleged to include state authorities. Indeed there is evidence in the record that throughout Turkey (including the two cities specifically found to be an IFA) persons situated similarly to the applicant in terms of their ethnic-religious background and political activities in support thereof are regularly detained, threated, and assaulted by state authorities. As was stated by counsel, this is not a situation that is a local police issue – it is a country wide issue, because the persecution is occurring on a state-wide basis.

[9] The Applicants plead that the New Delhi and Punjab police are agents of the Indian State "because they are presumed to derive their authority from the Indian State itself". As such, in the Applicants' view, the New Delhi and Punjab police are acting on behalf of the Indian State and thus the RAD erred by conducting an IFA analysis because no IFA is available to them. The Applicants state that this principle is well recognized and, contrary to the practice in cases involving other nations, the RAD is not applying it in cases involving India. The RAD, therefore, should have addressed this head on.

[10] The Respondent submits that the Applicants' position is an incorrect statement of the law. The Respondent pleads that the burden rests on the Applicants to prove that no IFA exists, which may well include demonstrating that a central or national state agent of persecution is involved, thereby rendering it more difficult to defend the existence of an IFA. The Respondent submits that this is a fact-driven enquiry, which the RAD reasonably conducted. In the Respondent's view, the RAD reasonably concluded that there was insufficient evidence of prospective risk in the proposed IFA.

[11] Having considered the record before the RAD, along with the jurisprudence of this Court, I have not been persuaded that the RAD erred in conducting an IFA analysis.

[12] Our Court has rejected the argument that a viable IFA does not exist where the agents of persecution are the Punjab police (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at para 22; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 58 [*Singh*]). In *Singh*, Justice Yvon Pinard found the existence of an IFA is "a purely factual issue within the expertise of the Refugee Protection Division" (at para 22). Justice Pinard noted, much like the present case, that the alleged problems were with the local police and there was no warrant, formal charge, or criminal record against the applicant (at para 17). Similarly, the Respondent highlights that in the present case there was no First Information Report, no order to report, no request to report, no summons, no charge, and no warrant.

[13] The Applicants rely on *Buyuksahin* and *Chitsinde* and submit that these are strong authorities, which the Respondent has not addressed. I disagree, as the Respondent repeatedly emphasized that the existence of an IFA is a fact-driven question and the agents of persecution in this case are the police in the states of Punjab and Delhi. The cases of *Buyuksahin* and *Chitsinde* address situations where the alleged persecution was a country-wide issue as opposed to a local one. In *Buyuksahin*, Justice Zinn noted that the persecution in Turkey was on statewide basis as opposed to being a local police issue (at para 29). In *Chitsinde*, Justice Henry Brown highlighted the fact that the agent of persecution in Zimbabwe was a national politician (at para 27).

[14] The issue of the agents of persecution being Indian state authorities as opposed to national authorities is problematic for the Applicants' position. The Applicants provided a supplementary index of authorities which lists RAD decisions and submit that the RAD member in this case ought to have been applying the well-recognized principle in those decisions that no IFA exists, or the presumption that one does not exist, in cases involving an agent of persecution who is the state. First, it is clear from *Vavilov* that administrative decision makers are not bound by their previous decision in a *stare decisis* manner, albeit administrative decision makers must be concerned with the general consistency of administrative decisions (at para 129). Second, and importantly, none of the RAD decisions cited by the Applicants relate to India.

[15] I note, while neither the RAD member in this case nor myself are bound by previous RAD decisions, the Applicants' argument that an IFA should not have been considered has been rejected by the RAD in cases involving India in the past. A recent example is X (Re), 2021 CanLII 153921 [*X (Re)*], where the appellant argued that an IFA is non-existent because the agent of persecution was the Punjab police. The RAD in *X (Re)* rejected the argument, relying on the India Jurisprudential Guide and the National Documentation Package [NDP] for India (at paras 13-16), based on the fact that India does not have a national police force, rather each of the 29 states and seven union territories have their own police force.

[16] The Applicants have not drawn my attention to evidence in the record that supports the proposition that the Punjab and/or Delhi police ought to be treated as a national police force or that they are akin to the Indian State itself. On the contrary, the record before the RAD in the

present case contains the information mentioned in *X(Re)* above. In the NDP Tab 10.3 (Police Organisation in India), it states at page 6:

> "The police is a state subject and each of 29 states and seven union territories has its own police force. The organisation and working of the police are governed by rules and regulations framed by the state governments. These are spelt out in the police manuals of the state police forces."

[17] In their record, the Applicants included extracts from the NDP that they relied on for their appeal to the RAD. Tab 1.11 (Country Policy and Information Note India: Internal relocation) states that "[e]ach state and union territory has responsibility for its own separate police force and effectiveness and conduct varies across states." (at para 2.3.6).

[18] Based on the record before the RAD, the jurisprudence of this Court, and the facts of this particular case, I have not been persuaded that the RAD erred in undertaking an IFA analysis or failing to presume that no IFA exists because the agents of persecution are the Punjab and Delhi police. As in *Singh,* the agents of persecution are local ones as opposed to a national one.

[19] The Applicants submit that the RAD erred in stating: "I disagree with the Appellants that an IFA is always not viable in cases where the agent of persecution is the state". They argue that it was not open to the RAD to "disagree with the Federal Court case law". I do not consider that the RAD erred. The RAD disagreed with the Applicants' submissions and then went on to state that it was for the Applicants to establish that the agents of persecution had the means and the motivation to find them and harm them. I do not find that the RAD's statement is contrary to the jurisprudence of this Court, nor was it unreasonable in light of the record before it. While the

RAD could have responded to the Applicants' argument in greater detail, in my view, this is not a reviewable error.

[20] I turn now to the second issue raised by the Applicants, namely that the RAD erred by failing to consider the family as a unit in the context of its analysis of the 2nd prong of the IFA test. The Applicants rely on *Soto v Canada (Citizenship and Immigration)*, 2022 FC 665 [*Soto*], where Justice Lobat Sadrehashemi found the RAD's IFA analysis unreasonable on the basis that it failed to consider the impact of separating a minor child with Down Syndrome from his parents. The Applicants submit that the principal derived is clear: the family must be treated as a unit. Therefore, given that the IFA in Mumbai was found to be unreasonable for Mrs. Vartia, it is equally so for the Applicants.

[21] The Respondent submits that contrary to the Applicants' arguments, Canadian refugee law does not incorporate the principle of family unity within the definition of a refugee. Rather, claims for refugee protection must be assessed individually and on their own merit on the basis of the definitions set out in sections 96 and 97 of IRPA (*Akinfolajimi v Canada (Citizenship and Immigration)*, 2018 FC 722 at para 30). The Applicants each bore the burden of establishing their refugee claims, including that it would be unreasonable for them to seek refuge in the proposed IFA.

[22] I agree with the Respondent. In Canada, it is settled law that the principle of family unity is not taken into account at the time when refugee status is being determined (*Ly v Canada (Citizenship and Immigration)*, 2021 FC 379 at para 13 [*Ly*]; *Ekema v Canada (Citizenship and*

Immigration), 2022 FC 1556 at para 14). Each family member must individually establish the right to refugee status (*Ly* at para 13). As noted by Justice Sébastien Grammond in *Ly*, the principle of family unity is present in Canadian law, but through different mechanisms, for example, a person who has obtained refugee status may sponsor family members in their application for permanent residence or by way of an application based on humanitarian and compassionate considerations (at para 14).

[23] I disagree with the Applicants' argument that *Soto* stands for the general proposition that the family must be treated as a unit. In *Soto*, Justice Sadrehashemi accepts that the principle of family unity is not applicable to an assessment of an individual's claim for refugee protection (at para 23). Rather, in my view, the conclusion in *Soto* is a narrow one limited to the specific set of circumstances in that case. It does not stand for the general proposition that once one family member demonstrates that there is no viable IFA, this relieves any other family members from doing so.

[24] As noted above, if a refugee claimant has a viable IFA, this will negate a claim for refugee protection, regardless of the merits of other aspects of their claim (*Olusola* at para 7). With respect to the second prong of the test, an applicant bears the onus of demonstrating that the IFA is unreasonable (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21). As stated by Justice René LeBlanc in *Mora Alcca*, the onus is an exacting one:

> [14] I am well aware that the onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is an exacting one. In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily

> relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.
>
> [Citations omitted.]

[25] It certainly does happen that a proposed IFA is unreasonable for several members of a family, given their circumstances. Nevertheless, what is relevant in the present case is whether the RAD erred in concluding that neither Applicant succeeded in demonstrating that it would be objectively unreasonable, considering all the circumstances, for them to seek refuge in Mumbai. In so finding, the RAD considered the Applicants submissions in detail (including the arguments relating to family separation), analyzed and distinguished *Soto*, and meaningfully engaged with the particular circumstances of the Applicants.

[26] I find the RAD's analysis reasonable given the record before it. The particular circumstances of the Applicants, a father and his adult son with no alleged health conditions, differ markedly from those of Mrs. Vartia, who was hospitalized due to serious mental health issues. The threshold for unreasonableness of an IFA is exacting and there is nothing in the record that establishes that the Applicants' lives or their safety would be jeopardized if they were required to relocate to Mumbai and leave Mrs. Vartia behind (*Pajarillo v Canada (Citizenship and Immigration)*, 2019 FC 1654 at paras 32-34).

[27] I turn now to the third and final issue raised by the Applicants, namely that the RAD's IFA analysis is flawed on the basis that the RAD applied too onerous a standard. In particular, the Applicants allege that in the context of the "means and motivation" analysis, the RAD applied too high a test for motivation. The RAD, in the Applicants' view, ought to have applied a

dictionary definition of motivation, and if it had done so, it would have concluded that the evidence satisfied the test.

[28] The Respondent submits that the RAD applied the correct test and reasonably concluded that the local police lack the motivation to locate and harm the Applicants. The Respondent pleads that this conclusion was based on numerous reasonable findings and the failure of the Applicants to establish, with sufficient evidence, a clear motivation on the part of the local police to pursue them in Mumbai.

[29] Under the first prong of the IFA test, a refugee claimant may argue that they will remain at risk in the proposed IFA location from the same agent(s) of persecution who had originally put them at risk. In such cases, the risk assessment will consider whether the agent(s) of persecution "could, and would, cause harm to the claimant in the IFA, that is, whether they have the 'means' and 'motivation' to do so." (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8). The means and motivation of the agent(s) of persecution is therefore one element to be assessed by the decision maker (*Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [*Adeleye*]). This assessment is a prospective analysis that is considered from the perspective of the agents of persecution, not from the claimant's perspective (*Adeleye* at para 21; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12).

[30] Having reviewed the Applicants' evidence, along with the analysis contained in the decision, I am not persuaded the RAD erred. The Applicants' arguments are, in my view, an impermissible request to re-assess the evidence considered by the RAD (*Vavilov* at para 125).

The RAD conducted a risk assessment as to whether the agents of persecution had the means and motivation to find and harm the Applicants in Mumbai. In other words, the RAD assessed whether the Applicants would be subject to a serious possibility of persecution or the likelihood of a danger or risk under section 97 of the IRPA in the proposed IFA. I find the RAD's assessment to be justified in light of the record before it. The Applicants are simply seeking to have this Court reweigh the evidence and come to a different conclusion.

IV. Proposed Question for Certification

[31] In general, decisions of this Court in immigration matters are intended to be final. An appeal to the Federal Court of Appeal is permitted under subsection 74(d) of the IRPA if, in rendering judgment, this Court "certifies that a serious question of general importance is involved and states the question."

[32] As stated recently by the Federal Court of Appeal, to be properly certified, a question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance (*Canada (Immigration and Citizenship) v Laing*, 2021 FCA 194 at para 11 [*Laing*]). Moreover, a question that is in the nature of a reference or whose answer depends on the facts of the case cannot raise a properly certified question (*Laing* at para 11; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paras 46-47; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36).

[33] The Applicants submit the following two questions for certification:

- Is an IFA analysis appropriate where the State is the agent of persecution?

- What is the proper test for establishing the means and motivation of the agent of persecution in an IFA analysis?

[34] The Respondent submits that the questions should not be certified as the issues have already been settled by the Federal Court of Appeal and this Court. The Respondent further submits that these are factual issues and the Applicants have simply failed to adduce sufficient evidence that Mumbai is not a viable IFA.

[35] I agree with the Respondent. As to the first proposed question, in *Singh*, Justice Pinard refused to certify the following question:

> [21] … Is it correct in law to find that there is an Internal Flight Alternative when a victim of persecution, in this case a victim of torture, is fleeing from the police or other state agents? Is there not a legal presumption that no Internal Flight Alternative exists when the persecution emanates from the state or from agents of the state?

[36] Justice Pinard concluded that the issue has been settled and, in addition, it is a purely factual issue that falls within the expertise of the RPD (*Singh* at para 22). The Applicants submit that the landscape of the law has changed since *Singh* was rendered in 2010. I disagree. The authorities relied on by the Applicants, *Buyuksahin* and *Chitsinde*, do not, in my view, change the landscape such that this question is appropriate to certify. Moreover, on the facts of this case, the question is not dispositive of the appeal. The Applicants have not demonstrated that the agents of persecution are in fact the Indian State.

[37] As to the second proposed question, while it is phrased as a general question, it does not transcend the interests of the parties. First, as detailed above in paragraph 29 of this judgment, the analysis of the means and the motivation of an agent of persecution is performed in the context of the first prong of the well-established IFA test. The ultimate assessment is whether, on a balance of probabilities, the claimant will face a serious possibility of persecution on a Convention ground or a likelihood of a section 97 danger or risk in the proposed IFA. The test is not in doubt. Second, the burden rests on an applicant. It is thus for the Applicants, in the present case, to adduce sufficient evidence to establish, on a balance of probabilities, that the Delhi and Punjab police have the means and motivation to locate them such that they will be subject to a serious possibility of persecution or to a likelihood of a section 97 danger or risk in Mumbai. The issue of whether the Applicants have adduced sufficient evidence is a factual one that is specific to the present case. Consequently, the second question is not an appropriate question for certification.

V. Conclusion

[38] For the foregoing reasons, I conclude that the RAD's reasons meet the standard of reasonableness as set out in *Vavilov*. This application for judicial review is therefore dismissed.

[39] No serious question of general importance for certification will be certified.

JUDGMENT in IMM-11050-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed; and

2. No question is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Pia Zambelli	FOR THE APPLICANTS
Lisa Maziade	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pia Zambelli Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT