Federal Court



# Cour fédérale

Date: 20231201

**Docket: IMM-5602-21** 

**Citation: 2023 FC 1615** 

Ottawa, Ontario, December 1, 2023

**PRESENT:** The Honourable Madam Justice Elliott

**BETWEEN:** 

#### **CHEHELEENA VERMA**

**Applicant** 

and

# MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

#### **JUDGMENT AND REASONS**

## I. <u>Preliminary Issues</u>

- [1] In accordance with the Federal Courts Rules, the style of cause is amended to reflect the Minister of Citizenship and Immigration as the proper Respondent.
- [2] At the beginning of the hearing, Counsel for the Applicant moved to be removed from the record as they were unable to get in touch with their client for instructions.

[3] After hearing the arguments of Counsel, I granted the motion. Therefore, Counsel will be removed from the record and will not be shown as appearing on behalf of, or representing the Applicant.

## II. <u>Overview</u>

- [4] The Applicant, Cheheleena Verma, seeks judicial review in respect of the decisions (the "Decisions") by a Senior Immigration Officer (the "Senior Officer" or "Officer"), dated December 30, 2020, wherein the Officer determined in a pre-removal risk assessment ("PRRA"), that the Applicant was not at risk on return to India.
- [5] For the reasons that follow, this application for judicial review is dismissed.

# III. Background

- This is an application brought by the Applicant for judicial review of a PRRA decision. The underlying PRRA decision, however, considered the forward-looking risk of the Applicant and her family, which included her mother, Mamta Verma, her stepfather, Sanjay Kumar Verma, and her brother. Both the Applicant and her brother were born to Mrs. Verma's first husband, Subhas Gogna. They are all citizens of India.
- [7] The Applicant, along with her family, arrived in Canada on June 28, 2014 on a visitor visa.

- [8] The Applicant and her family filed their refugee claim with the Refugee Protection Division (RPD), which was refused on February 2, 2015. Subsequently, they filed an appeal with the Refugee Appeal Division (RAD), which was refused on June 3, 2015. The claim was based on Mrs. Verma's troubled separation from Mr. Gogna, which was based on Mr. Gogna's refusal to accept the divorce and his threats to the family, demand for money and break in of their house in India several times. The family stated that Mr. Gogna has continued to try to locate them and he is trying to force the Applicant to marry someone of his choice by threatening that he will kill her if she does not obey. The family stated they will not be able to move to any other part of India due to religious and cultural differences and because they do not speak regional languages, only Hindi and English. The family further stated that the only place they can return in India would be Delhi where Mr. Gogna can easily find them.
- [9] On December 30, 2020, after having reviewed the Reasons for Decisions from the RPD and the RAD, the Senior Officer rejected the Applicant's PRRA application because it was determined that the Applicant would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to India.

## IV. <u>Decision under Review</u>

- [10] The Senior Officer refused the claim based on the following reasons:
  - a) Availability of an Internal Flight Alternative (IFA) in Mumbai, Kolkata and Bangalore.
  - b) A letter from the family doctor, Dr. Miriam Wiebe, which the Senior Officer found contained no additional persuasive evidence to depart from the RAD's conclusion

that an IFA was available. The letter was also dated two years prior to the submissions of the PRRA application and there was insufficient evidence to conclude that Mamta Verma was still suffering from the conditions mentioned. In addition, there was insufficient evidence to demonstrate that psychological treatment will not be available to her in the IFA locations.

- c) Regarding the emails from friends and acquaintances, the Senior Officer found it was not clear who wrote the emails and what the relationship was between the authors and the Applicant and her family as no identity documents were provided with the letters. Further, the Senior Officer determined that the threats described in the letters were very vague and, according to the emails, the alleged perpetrator of violence did not know the current location of the Applicants and was assuming that the Applicants are somewhere in India even though they left the country more than six years ago. The Senior Officer further stated that there is no evidence that Mr. Gogna has a sophisticated ability to track the whereabouts of the Applicants and no evidence that he has ever looked for them in any proposed IFA locations.
- d) Regarding the country condition evidence, the Senior Officer found that the article titled "Killed by the in-laws" is not relevant to the case at hand because there was no information provided about the Applicant's caste. The Officer found that the Panel's IFA finding applied to the concern of forced marriage and honour killings as well. Although the Officer was sympathetic to the Applicant's adjustment to India, they found that the country conditions do not demonstrate a personalized forward-looking risk in India.

#### V. Issues and Standard of Review

- [11] The Applicant submits that the Respondent failed to address the Applicant's risk separately from that of her family.
- [12] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

  Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 23 [Vavilov].

  While this presumption is rebuttable, no exception to the presumption is present here.
- [13] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15.

  Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

## VI. Analysis

[14] Both memoranda submitted by the parties contain hyperbolic and accusatory language that attempts to sway the Court using information not relevant for judicial review. I have narrowed it down to the only argument that I can decipher from their submissions – the failure to consider the Applicant's risk separately from that of the family.

- [15] I agree with the Applicant that the PRRA decision considered the forward-looking risks faced by the family, which emanated from her mother's difficult separation from her abusive husband and his efforts to locate them. Another central allegation was the threats of forced marriage and honour killing made against the Applicant and an incident where the ex-husband attempted to kidnap her at school. This formed the basis of the family's refugee claim before the RPD and the RAD, which was refused on the basis of an IFA. Their claim was submitted and decided as a unit.
- [16] When it came to the notification of a PRRA, again, the family's application was filed and the decision was rendered as a unit. In their PRRA application, the family filed a narrative, written by Sanjay Kumar Verma on August 7, 2019 and another additional narrative, written by Mamta Verma, on October 10, 2019. There was no narrative in the form of a letter or an affidavit written from the perspective of the Applicant. Her experiences of abuse from her father, sexual assault from her father's drivers, and concerns for her removal to India, were documented for the first time in her affidavit filed in her application for judicial review.
- [17] While I acknowledge these traumatic experiences may have been difficult to share, I cannot fault the decision-maker for failing to consider evidence that was not before them. This was highly relevant information that went to her forward-looking risk and it ought to have been presented before the decision-makers at the RPD, RAD or the Senior Officer. I also agree with the Respondent that the allegations against former counsel have not been established in accordance with the Federal Court policy on incompetent counsel and are therefore, not properly before this Court for consideration.

The Applicant's argument that the Senior Officer failed to consider evidence concerning her unique circumstances that was not before them at the time of the Decision is not a proper ground to order reconsideration. I also find that the Applicant's suggestion that the Senior Officer ought to have presented Cheheleena a further and separate opportunity to present her circumstances separate from her family is without merit. Based on the record before the Officer, I find that the Officer considered all previous considerations of the allegations of risk in India, the new evidence that was submitted, and they made a reasonable decision in finding there continues to be a viable IFA for the entire family.

## VII. Conclusion

- [19] Given all of the foregoing, this application for judicial review is dismissed and there is no question for certification.
- [20] Counsel of record for the Applicant shall be removed from the record, at their request.

# **JUDGMENT in IMM-5602-21**

# THIS COURT'S JUDGMENT is that:

- 1. This application for judicial review is dismissed.
- 2. No question for certification arises on these facts.
- The style of cause is amended to reflect the Minister of Citizenship and Immigration as the proper Respondent.
- 4. Counsel for the Applicant is removed from the record, at his own request.

"E. Susan Elliott"
Judge

## FEDERAL COURT

# **SOLICITORS OF RECORD**

**DOCKET:** IMM-5602-21

STYLE OF CAUSE: CHEHELEENA VERMA v THE MINISTER OF

CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 8, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** DECEMBER 1, 2023

**APPEARANCES:** 

No one appearing FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

**SOLICITORS OF RECORD:** 

Attorney General of Canada FOR THE RESPONDENT

Toronto, Ontario