Federal Court Cour fédérale

Date: 20240222

Docket: IMM-9630-22

Citation: 2024 FC 288

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

PARDEEP KUMAR
PREETI

Applicants

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a September 14, 2022 decision by the Refugee Appeal Board [RAD] confirming the refusal of their refugee claim by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The RAD found the Applicants, Pardeep Kumar [Principal Applicant], and his wife Preeti [Associate Applicant] had a viable internal flight alternative [IFA] in Mumbai and Bengaluru given the Applicants had

not established that there is a serious possibility of persecution, or that, on a balance of probabilities, they face a risk of section 97(1) harm in Mumbai or Bengaluru, or that it would be objectively unreasonable in all the circumstances for them to seek refuge there [Decision]. Accordingly, the RAD concluded that the Applicants are neither Convention refugees under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor persons in need of protection under s. 97 of the IRPA.

[2] The Applicants allege the Decision violated their right to procedural fairness, and the RAD's IFA findings were unreasonable. They base their procedural fairness concerns on their allegations that the RAD improperly treated evidence as speculative and arrived at negative credibility findings without giving the Applicants an opportunity to make submissions on credibility. They submit the IFA findings were unreasonable because an individual named Vijay Kumar [VK] and the Haryana state police still pose a risk to them in Mumbai or Bengaluru, and relocation to either IFA is unreasonable. The Respondent contends that the Decision was reasonable and procedurally fair, the Court cannot simply reweigh evidence, and the RAD made no negative credibility findings.

[3] For the reasons that follow, the application for judicial review is dismissed. The RAD reasonably assessed the Applicants' submissions and evidence against the accepted test for a viable IFA and reasonably found the Applicants had an IFA in Mumbai or Bengaluru, and the RAD did not commit any breach of procedural fairness as alleged.

II. Background

[4] The Applicants, Indian citizens, are a married couple from a village in the Karnal district of Haryana, India. Prior to their marriage in 2012, the Associate Applicant's family had arranged for her to marry VK, a wealthy inhabitant from her village, but the Associate Applicant's family decided to annul the arranged marriage. Consequently, VK developed a grudge against the Applicants. VK made negative comments to the Applicants whenever he encountered them in the village. Over time, the issue worsened. In December 2018, when the Associate Applicant came across VK at the market, he made a rude comment to her. She then slapped VK, who pushed her, slapped her and grabbed her by the hair. He then pushed the Associate Applicant's mother when she tried to intervene. The villagers eventually put an end to the altercation. VK vowed to take revenge on the Applicants who had insulted him in front of so many people.

[5] After that incident, in January 2019, VK and some of his henchman went to the Applicants' farm and battered the Principal Applicant who had to receive medical treatment for his injuries. He then reported the incident to the police.

[6] Two weeks later, VK attacked the Principal Applicant again, as he was furious that he lodged a complaint against him with the police. The Principal Applicant reported the second incident to the police. Instead of helping him, the police berated him for destroying VK's family reputation. Then they made the Principal Applicant sign a register and provide his personal details.

[7] In the wake of the second incident, the Principal Applicant left the village and moved in with a relative in Karnal, India. The police visited his home while he was away and told his family that he was accused of aiding Khalistani militants and that they had information to support this accusation. The Principal Applicant arranged for an agent to take him to Delhi, India. The agent also brought the Associate Applicant to Delhi shortly afterwards. The agent then arranged the visas and the Applicants travelled to Canada. Upon their arrival in Canada on July 2019, the Applicants submitted refugee claims.

[8] The Applicants allege that since their arrival in Canada, the Haryana police visited their home, from time to time, to enquire about their whereabouts, accusing the Principal Applicant of working with militants and threatening to track him down.

III. Decision under Review

[9] On May 2, 2022, an appeal was filed with the RAD of the RPD's decision against the Applicants that they are not Convention refugees.

[10] On September 14, 2022, the RAD dismissed the Applicants' claim, finding the determinative issues was whether there was an IFA, concluded that they have viable IFAs in Mumbai and Bengaluru and they had failed to establish that there was a serious risk of persecution or that they face a risk to their life or of torture, and are therefore not Convention refugees or persons in need of protection. When conducting the IFA analysis, the RAD assumed that the Applicants' evidence was credible and that past events occurred as alleged. However, the RAD considered that the presumption of truthfulness of the allegations does not apply to

inferences or conclusions that may be drawn from facts, or to speculation for which there is no evidentiary basis (citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at 305).

[11] Dealing with the risks posed by the Haryana police and VK separately, the RAD concluded that there was insufficient evidence to establish that VK's influence extended beyond their local area or that he had taken any steps to locate the Applicants. They also found insufficient evidence to establish the Applicants' allegation that VK's influence motivated the Haryana police to pursue any formal investigation into the Principal Applicant.

[12] Separately, the RAD agreed with the RPD that the Applicants had failed to establish that the Haryana police were motivated to pursue the Applicants outside the state. Through the National Documentation Package [NDP], they determined the police do have resources to track and locate people who have a criminal record in India, have been charged with any crime in India, or are wanted as a person of interest in connection with an investigation in India, but that the Applicants are neither of these. While the Applicants allege the police would persecute the Principal Applicant on suspicion of supporting Khalistani militants, he testified that he was never arrested or charged in connection with such an accusation, and so the RAD found there was no reason the police would persecute him.

A. *Issues*

[13] The Application raises two key issues:

(1) Did the RAD violate the Applicants' right to procedural fairness?

(2) Was the RAD's conclusion that the Applicants have an available IFA in Mumbai and Bengaluru unreasonable?

IV. Relevant Law

A. *Legislation*

[14] The following provisions of the IRPA are applicable in this proceeding:

> **Convention refugee**
>
> **96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
>
> **(a)** is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
>
> **(b)** not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.
>
> **Person in need of protection**
>
> **97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
>
> **(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
>
> **(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

> **(i)** the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
>
> **(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
>
> **(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
>
> **(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.
>
> **Person in need of protection**
>
> **(2)** A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

B. *Standard of Review*

[15] The Applicants had no submission on the standard of review. The Respondent submits the standard is reasonableness. The standard of reasonableness applies to the Decision under review and to findings regarding the existence of a viable IFA (*Valencia v Canada (Citizenship and Immigration*), 2022 FC 386 [*Valencia*] at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration),* 2021 FC 62 at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh 2020*] at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[16] The Supreme Court of Canada has established that when conducting a 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 (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[17] The reasonableness standard "requires that a reviewing court defer" to a decision that is based on "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 85 and 99). In assessing whether a decision is reasonable, the Court will examine the reasons given by the administrative decision maker and will assess whether the decision is appropriately justified, transparent and intelligible. Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[18] If there is no breach to the procedural fairness duty, the Court will apply *Vavilov's* presumption to use the reasonableness standard of review. In that case, a Court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[19] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with

“respectful attention”, seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. "The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[20] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

[21] An allegation of procedural fairness is determined on the basis that approximates correctness review.

C. *Procedural Fairness*

[22] The duty to act fairly comprises two components: 1) the right to a fair and impartial hearing before an independent decision-maker and 2) the right to be heard (*Fortier v Canada (AG)*, 2022 FC 374 at para 14 [*Fortier*]; *Therrien (Re)*, 2001 SCC 35 at para 82 [*Therrien*].

[23] Every person has the right to have a chance to "present their case fully and fairly" (*Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para 28 [*Baker*]).

[24] Ultimately, the question of procedural fairness comes down to whether the Applicants knew the case to be met and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56 [*Canada Pacific*]).

D. *Internal Flight Alternative*

[25] A Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin. A viable IFA, if found to have met both prongs of the IFA test, will negate a claim for refugee protection under either section 96 or 97, regardless of the merits of other aspects of the claim (*Olusola v Canada (MCI)*, 2020 FC 799 at para 7 [*Olusola*]).

[26] The test for finding a viable IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (MCI)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*] and *Thirunavukkarasu v Canada (MCI)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 at 597 [*Thirunavukkarasu*]. This test requires a claimant to satisfy the Board of a well-founded fear of persecution in their part of the country, and, in finding the IFA, the Board must be satisfied, on a balance of probabilities, of two things:

a. There is no serious possibility of the claimant being persecuted or subject to a section 97 danger or risk in the part of the country to which it finds an IFA exists; and,

b. Conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances including circumstances particular to him, for the claimant to seek refuge there.

Rasaratnam at 709-711, *Thirunavukkarasu* at 592.

[27] When discussing an IFA, it is important to consider that an IFA is "inherent in the definition of a Convention refugee" (*Rasaratnam* at 710). This is because an IFA is not a legal defence or doctrine, it is merely a "short-hand way of describing a fact situation in which a person may be in danger of persecution in one part of a country but not in another" (*Thirunavukkarasu* at 592). An IFA can only exist if the claimants have established a serious possibility of persecution under a Convention ground (see *IRPA* section 96) or if removal to their country exposes an applicant to a risk of torture or other enumerated risk, and that such risk exists throughout the country (see *IRPA* section 97(1)(b)(ii)). If no serious possibility of persecution or the aforementioned risk exists throughout the country, there is no reason to advance to an IFA analysis.

[28] The key element of the first prong of the IFA test, a serious possibility of persecution or risk, can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for an applicant in the suggested IFA (*Saliu v Canada (MCI*), 2021 FC 167 [*Saliu*] at para 46, citing *Feboke v Canada (MCI)*, 2020 FC 155 at para 43).

[29] The tribunal must also be satisfied that, in all the circumstances, including the Applicants' particular circumstances, the conditions in the proposed IFA are such that it is not unreasonable for the Applicants to seek refuge there (*Ranganathan v Canada (MCI)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) [*Ranganathan*] at para 15).

[30] The second prong of the IFA test requires the Applicants to demonstrate that it would not be objectively reasonable for them to be required to seek refuge in the IFA area, having regard to

all the circumstances, including the Applicants' particular circumstances (*Thirunavukkarasu* at 597). In this regard, the threshold of objective unreasonableness is "very high" and "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified (*Ranganathan* at para 15). Such conditions must be established based on actual and concrete evidence. Conversely, it is not sufficient "for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear or persecution, then IFA exists and the claimant is not a refugee" (*Thirunavukkarasu* at 598).

[31] The Applicants bear the onus of refuting the reasonability of the IFA, taking into account their particular situation and the country involved (*Thirunavukkarasu* at 597).

V. Analysis

A. *Did the RAD violate the Applicants' right to procedural fairness?*

[32] The Applicants argue that the Decision was procedurally unfair in treating as "speculative" their evidence that VK and the Haryana police each have a motivation to pursue them outside Haryana. This is because the RAD used the phrase "I find it speculative" in paragraphs 21 and 30 of the Decision reproduced below:

> [21] As will be explained in more detail below, the evidence does not establish that VK has influenced police in Haryana to escalate their false accusations against the Principal [Applicant] in the form of a formal investigation or charges. The evidence does not

> establish that VK has the motivation to pursue the Associate [Applicant] outside of Haryana out of revenge for rejecting marriage to him in 2011. While I accept that the issues with VK stemmed from an honour-related issue because of the Associate [Applicant's] refusal to marry VK, **I find it speculative on the facts of this case** that VK has the motivation to now pursue the [Applicants] outside Haryana.
>
> [30] In addition, as found in the section above, the [Applicants] indicate that they and their family in India have not received any further threats or harassment from VK since January 2019. The [Applicants] allege that the police in the village in Haryana ask the [Applicants'] family about the Applicant's whereabouts once every two months while passing by, reiterating the same accusation of the Principal [Applicant] working with militants and threatening that they would find him. The evidence does not establish, on a balance of probabilities, that there has been or will be any motivation by police to escalate the allegations against the Principal [Applicant] or that the previous false allegations of supporting Khalistani militants have been documented in the CCTNS database or other general or daily diaries of the village police station. The Appellants argue that corruption by police is a major problem in India. However, given that there has not been an ongoing threat from VK despite the [Applicants'] family still living in the same village, and given that the police have not escalated their inquiries beyond asking the family about the [Applicants'] whereabouts from time to time, **I find it speculative** that the Haryana police will increase their interest in the Principal [Applicant] such that they will formally document their false allegations and pursue an inter-state search for him.
>
> [Our emphasis]

[33] The Applicants submit that, despite treating their evidence as generally credible, the RAD made opposite conclusions and negative credibility findings about their evidence concerning the motivation of the agents of persecution, and the RAD did not give them an opportunity to make submissions on the issue.

[34] After review of the Decision, it is clear that the RAD did not make any negative credibility findings in determining that the evidence does not establish that VK or the police have the motivation to pursue the Applicants outside of Haryana. The RAD assessed and weighed the evidence before it and determined that the evidence was insufficient, not lacking credibility, to establish that the police were interested in the Principal Applicant or that either VK or the police have the motivation to pursue the Applicants outside the state. This is not a credibility finding by the RAD, but merely a determination that the Applicants offered insufficient evidence.

B. *Was the RAD's conclusion that the Applicants have an available IFA in Mumbai and Bengaluru unreasonable?*

(1) First prong of the IFA test

[35] The RAD's Decision noted that the Principal Applicant testified he has not seen or heard from VK since the last encounter with VK in January 2019 and that, since the Applicants have been in Canada, VK has never gone to their relatives' homes or contacted the Applicants. When the Principal Applicant was asked by the RPD whether VK would be able to find the Applicants in Mumbai or Bengaluru, the Principal Applicant testified that, while earlier he was fearful of VK and that VK is the one who gave his name to the police, he is now in danger from the police. On appeal, the Applicants confirmed to the RAD that they are only in danger from the police. The Decision at paragraph 20 concludes, "[t]hrough their own statements, the [Applicants] indicate that they do not have a forward-looking subjective fear of persecution or harm from VK".

(a) *Persecution by VK*

[36] After careful review, it is clear that the Applicants do not allege, nor does the evidence establish that VK has harassed or threatened the Applicants' family who continue to live in the same village as VK. Even more importantly, it is clear from the Applicants' own testimony and statements that they indicate not having any forward-looking subjective fear of persecution or harm from VK. As such, I must agree with the Respondent that the Applicants' argument that the RAD unreasonably concluded that VK does not pose a risk to them in the proposed IFAs does not have evidentiary foundation and is without merit.

(b) *Persecution by the police*

[37] With respect to the police, the Applicants allege the Haryana state police have continued asking family members about them and have the capacity to track them upon returning to India through systems like national criminal databases or the tenant verification system. The RAD referenced the NDP, which highlights at several points that each state's police force works alone, coordinating with other state or national forces only when the suspect is of sufficient interest on charges of sufficient severity. The RAD also pointed out that there is nothing in the evidence to suggest the Applicants are of such significant interest to the police on undocumented allegations of potential association with possible terrorism that they, despite having no charges or warrants, are in any national database. The NDP clearly indicates the police make illegal arrests under the guise of association with militants or terrorism without going any further because there is no evidence. The RAD references in its Decision that extrajudicial arrests, for example, are not captured in the Crime and Criminal Tracking Network and Systems [CCTNS]. The RAD

reasonably found that there is insufficient evidence that the Applicants are wanted for any crime, let alone supporting Khalistani militants, and as a result would be pursued by the police throughout India.

[38] It bears consideration that the Applicants have submitted no evidence suggesting police in other Indian states would suspect that the Principal Applicant was a Khalistani militant supporter. They base their submissions on the idea that the police could pursue them again on this basis, but without any evidence for why they would do so when they have not demonstrated that the police are persecuting them on this basis in their own state. This speculation cannot be accepted as rendering the Decision unreasonable.

[39] Likewise, the Applicants' submission of the unfairness of the RAD's conclusion that less weight should be attributed to the police documentation because the Applicants did not obtain a copy and submit it into evidence is unfounded. If an individual is arrested under accusation of association with militants, it was not unreasonable for the RAD to find that the document presented during the police visit is worth less weight than first-hand evidence and the NDP suggests there would be *some* documentation provided to the Applicants to that effect, which they would be able to produce. Lacking any such evidence suggests the police knew as well as the Applicants that the arrest was illegal and baseless, so it was not unreasonable for the RAD not to give as much weight to this police documentation.

[40] Concluding the first prong of the IFA test, it was not unreasonable for the RAD to find there was no serious possibility of the claimant being persecuted or being subject to any risk in the proposed IFAs.

(2) **Second prong of the IFA test**

[41] The Applicants submit that the RAD erred in assessing the second prong of the IFA test because it unreasonably requires the Applicants to seek refuge and live in Mumbai or Bengaluru, where the Shiv Sena party makes it difficult for individuals who are new to a city and do not have an established social network to access services. The Applicants also worry that communicating with their family and friends in Haryana will lead the agents of persecution to find out about their relocation leading them to harm. The Applicants argue that their arguments in this regard should have been afforded more weight given that their evidence was considered generally credible.

[42] Considering the Applicants raised these arguments, they bear the onus of establishing that this would have been the outcome of the IFAs and how it would be unreasonable. The Applicants offered no evidence in support of these allegations, pointing only to their concerns that the police would be able to locate them in Mumbai and Bengaluru. After reviewing the Decision, the RAD did not implicitly require the Applicants to isolate themselves or live in hiding. Given the lack of a serious possibility of persecution or risk from VK or the police, it was reasonable for the RAD to find the Applicants would have no reason to live in isolation or otherwise be prevented from communicating with their family and friends in Haryana.

[43] The RAD did consider the other personal hardships such as employment (e.g. finding a job, shifting out of the agricultural sector and into the services and manufacturing sectors), languages spoken in the IFAs (Applicants speaking Hindi - one of the majority languages), religions in the IFAs (Applicants follow the majority religion of Hinduism), and the ability to find housing and access social services in the IFAs. However, it reasonably concluded that it did not rise to the level of constituting objectively unreasonable conditions as described above in the applicable law. In the absence of any concrete evidence of such unreasonable conditions, it was not unreasonable for the RAD to conclude that the Applicants had not met their burden with respect to the second prong of the IFA test.

VI. Conclusion

[44] For the reasons set forth above, this application for judicial review is dismissed. I find that the RAD did not unreasonably consider the evidence in concluding that the Applicants had a viable IFA in Mumbai and Bengaluru. The RAD considered the numerous factors and evidence and came to the conclusion that VK and the police do not have the motivation and means to track down the Applicants in Mumbai and Bengaluru. Many of the Applicants' arguments amounted to a disagreement with the appreciation of and weight assigned to the evidence. There are no valid grounds for the Court to intervene.

[45] No question for certification was proposed by the parties, and I agree that none arises.

JUDGMENT in IMM-9630-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9630-22
STYLE OF CAUSE:	PARDEEP KUMAR, PREETI v THE MINISTER OF CITIZENSHIP & IMMIGRATION CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 12, 2023
JUDGMENT AND REASONS:	TSIMBERIS J.
DATED:	FEBRUARY 22, 2024

APPEARANCES:

MUHAMMAD KAMRAN KHAN	FOR THE APPLICANTS
NEETA LOGSETTY	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LINCOLNS LAW PC MISSISSAUGA, ONTARIO	FOR THE APPLICANTS
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT