

Federal Court



Cour fédérale

**Date: 20240307**

**Docket: IMM-10065-22**

**Citation: 2024 FC 386**

**Ottawa, Ontario, March 7, 2024**

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

**BETWEEN:**

**MAJID KHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] The Applicant is a 43-year-old citizen of Pakistan. He worked and resided in Kuwait since 2003 on a work visa.

[3] The Applicant married his wife in November 2011. She continued to reside in Pakistan after the marriage, while the Applicant continued working in Kuwait. He visited Pakistan every six months.

[4] The Applicant practices Sunni Islam. His wife practices Shia Islam. One of the Applicant's cousins opposed the marriage and was of the view that the Applicant was no longer a Muslim for having married a Shia Muslim woman. The cousin had ties with a local cleric who was a member of Lashkar-e-Jhangvi (the "LeJ"), an extremist group with a presence across Pakistan. The cleric joined the Applicant's cousin in opposing the marriage and rebuked the Applicant publicly for his decision.

[5] In March 2012, the Applicant and his wife were driving when they were ambushed and attacked by unknown assailants. The attackers fled when the Applicant and his wife called for help. However, they threatened to kill the Applicant in the future. The Applicant filed a complaint at the local police station, but no further action was taken.

[6] By 2016, the Applicant's wife and children resided in Rawalpindi, next to the Applicant's father's home. In 2016 and 2017, the Applicant's wife and his father both received threatening

calls from individuals who identified themselves as members of the LeJ. The Applicant was in Kuwait at the time, and the callers threatened to kill him once he returned to Pakistan.

[7] The Applicant moved his wife and children to live with a friend in Lahore in November 2016. However, in May 2018, the Applicant's friend became worried, and the Applicant moved his wife and children again to Karachi.

[8] In 2019, the Applicant's visa in Kuwait expired, and he returned to Pakistan on or around August 22, 2019. He alleges that, on August 25, 2019, some men tried to kidnap one of his children. The Applicant's wife began yelling, and the assailants fled the scene. The Applicant filed a complaint, but did not identify the assailants.

[9] The Applicant left Pakistan on or around August 31, 2019. He entered Canada on September 6, 2019 and claimed refugee protection shortly thereafter. His wife and children remained in Pakistan.

[10] The Applicant alleges that, since claiming protection in Canada, his wife has received two threatening phone calls in early 2020. He also alleges that several individuals visited his father's home to inquire about his (the Applicant's) whereabouts, and began to throw things at the house when his wife answered the door. The Applicant's family subsequently moved to Hyderabad in January 2022.

### III. The Decision

[11] The Refugee Protection Division (the “RPD”) denied the Applicant’s claim, finding that it was not credible. The Applicant appealed the RPD’s decision to the RAD.

[12] The determinative issue on appeal was the existence of a viable internal flight alternative (“IFA”). The RAD notified the Applicant of the new issue raised on appeal and provided him with the opportunity to make written submissions.

[13] The Applicant’s submissions included new evidence. The Applicant did not seek an oral hearing, but requested that certain accommodations should be made if an oral hearing were to take place. The RAD considered whether the new evidence called for an oral hearing pursuant to section 101(6) of the Act and found that it did not raise serious issues with respect to the credibility of the Applicant and that it is not central to this case. No oral hearing was held.

[14] The RAD held that the Applicant had a viable IFA in Hyderabad. It found that, although the LeJ had a presence throughout Pakistan, it lacked the motivation to harm the Applicant, particularly outside of Rawalpindi. It also held that it would not be unreasonable for the Applicant to relocate to Hyderabad, and that the Applicant has not demonstrated that such a move would jeopardize his life or safety.

[15] With respect to the attacks in March 2012 and August 2019, the RAD noted that they were the only occasions of direct harm alleged by the Applicant. In both instances, the attacks occurred

in Rawalpindi and there was nothing linking the attackers to the LeJ beyond mere speculation by the Applicant.

[16] The RAD also noted that the Applicant's family were not attacked in Karachi, despite receiving a threatening call. Nor was there evidence to suggest that the Applicant's family's location in Lahore was identified by the LeJ. The evidence merely suggested that the family's host in Lahore was fearful, but not that he or the Applicant's family were threatened.

[17] Although the Applicant's family did receive threatening calls from individuals who identified themselves as members of the LeJ, the RAD observed that those threats mostly occurred while the Applicant's family was residing in Rawalpindi and that, with all such threats, no violence materialized thereafter. The RAD found that these facts support the view that there is no real motivation to harm the Applicant or his family, and that if any such motivation existed, it was limited to Rawalpindi.

[18] As for Hyderabad, the RAD reviewed the country evidence and found that there are large Sunni and Shia communities in that city and that the Applicant and his wife were already legally married. It inferred from this that the Applicant and his family are unlikely to face persecution or harm due to the Applicant's interfaith marriage with his wife, particularly since they would not have to disclose the mixed nature of their marriage in Hyderabad. The RAD acknowledged that, according to the country evidence, interfaith marriages are not legal in Pakistan. However, it also observed that the Applicant had provided a Pakistani marriage certificate that shows his marriage to his wife is in fact legal.

[19] Finally, the RAD rejected the Applicant's submission that the LeJ would engage corrupt officials to pursue him or his family, finding no objective evidence to support it. Further, even if the premise of the Applicant's submission was true, the RAD concluded from the documentary evidence that police officers do not share information across provinces in Pakistan except for high profile people of interest. The Applicant was not such a person, and therefore the agents of harm in Rawalpindi would not be informed of the Applicant's move with his family.

[20] The Applicant argues that the RAD erred in (1) finding that the new evidence does not raise serious issues with respect to the credibility of the Applicant and that it is not central to the determinative issue in this case, thereby denying the Applicant an oral hearing, and (2) concluding that the Applicant had a viable IFA in Hyderabad.

#### IV. Issues

[21] Did the RAD err by finding that the new evidence does not raise serious issues with respect to the credibility of the Applicant and that it is not central to the determinative issue in this case, thereby denying the Applicant an oral hearing?

[22] Did the RAD err by concluding that the Applicant had a viable IFA in Hyderabad?

#### V. Analysis

[23] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

A. *New Evidence Not Before the RAD*

[24] The Applicant submits new evidence that was not before the RAD or the RPD. The Court may not consider such evidence absent narrow exceptions, none of which apply here (*Momi v Canada (Citizenship and Immigration)*, 2023 FC 1714 at paras 31-33, citing, *inter alia*, *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

B. *Oral Hearing*

[25] The Applicant states that the RAD's determination that the new evidence does not call for an oral hearing is unreasonable.

[26] The Applicant suggests that the RAD rejected a request by him for an oral hearing or that he has a right to a hearing on appeal. However, this is not the case. First, the appeal record shows no such request by the Applicant. Second, it is well-established that hearings before the RAD do not entitle an appellant to a *de novo* oral hearing (*Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 79). Section 101(6) of the Act permits the RAD to hold a hearing if, among other things, new documentary evidence raises credibility issues or issues central to the appeal. The RAD found that the Applicant's new evidence does not satisfy these requirements.

[27] The Applicant does not provide any substantive submissions in support of his view that the RAD's conclusion here was unreasonable. Nor does he attempt to show that, pursuant to section

101(6) of the Act, the new evidence he submitted raised issues of credibility or issues that are central to the determinative issues. The Applicant's submissions in respect to an oral hearing are limited to conclusory statements.

[28] The RAD's finding that the new evidence does not call for an oral hearing was reasonable.

C. *The Internal Flight Alternative*

[29] The Applicant argues that the RAD's finding that he has a viable IFA in Hyderabad is unreasonable. He claims that the RAD disregarded evidence that shows that (1) the LeJ or its allies have a presence in or around Hyderabad, particularly among corrupt officials, (2) the Pakistani authorities continuously fail to protect minorities against violence, (3) the LeJ targets those who, like the Applicant, convert from Sunni Islam to Shia Islam, and (4) the LeJ uses corrupt officials to identify their targets. The Applicant also submits that the attacks against the Applicant in 2012 and 2019 indicate that the Applicant and his families will continue to be targeted by the LeJ.

[30] However, the RAD did not find, as the Applicant suggests, that the LeJ's presence was limited to Rawalpindi, but that the LeJ is not motivated to find or harm the Applicant to begin with. Nor did the RAD find that the Applicant can avail himself of the protection of the Pakistani authorities or that the LeJ does not engage corrupt officials generally. Rather, it held that there was no evidence to indicate that the LeJ used police officers in the Applicant's particular case. The Applicant's submissions do not challenge these conclusions.

[31] Additionally, the Applicant's claim that the LeJ targets those who convert from Sunni Islam to Shia Islam suggests that the persecution in his case arises out of an alleged conversion by the Applicant to Shia Islam. However, this was not the basis of the Applicant's claim before the RAD. He claimed protection from persecution arising out of his interfaith marriage. Therefore, even if the Applicant establishes that the LeJ targets Sunni converts to Shia Islam, it is distinguishable from the risk of persecution due to his interfaith marriage.

[32] Finally, the RAD found that there is no evidence beyond the Applicant's speculation to indicate the LeJ was responsible for the 2012 and 2019 attacks. The RAD did not preclude the possibility of future attacks, as the Applicant argues, but found that there is no evidence showing that such attacks would be initiated by the LeJ, whom the Applicant claims are able to find him anywhere in Pakistan. Therefore, the Applicant was not able to show that he would face more than a mere risk of persecution in Hyderabad.

[33] The RAD's finding that the Applicant has a viable IFA in Hyderabad was reasonable.

[34] The application is dismissed.

**JUDGMENT in IMM-10065-22**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-10065-22

**STYLE OF CAUSE:** MAJID KHAN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 26, 2024

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** MARCH 7, 2024

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