Federal Court  Cour fédérale

Date: 20240731

Docket: IMM-9108-23

Citation: 2024 FC 1215

Ottawa, Ontario, July 31, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAMANJIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant, Ramanjit Singh [the "Applicant"], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division ["RAD"] of the Immigration and Refugee Board of Canada ["IRB"]. The Judicial Review is dismissed for the following reasons.

[2] The Applicant is a citizen of India, and from Mohali, in the state of Punjab. In or about August 2018, he met his former girlfriend, and by July 2019, they decided to marry. Once the

former girlfriend's father ("GS") learned about the relationship, he did not approve of it and decided to harm the Applicant. The Applicant believes that GS has influence over police and influential Congress party members who also seek to harm him at GS' request. The Applicant and his former girlfriend did not get married and he came to Canada to escape the alleged threats.

[3] When the Applicant completed his required medical exam as part of his refugee claim, he discovered that he was HIV positive.

[4] The Refugee Protection Division of the IRB ["RPD"] heard the Applicant's claim on February 21, 2023, and on March 22, 2023, refused his claim on the basis that a viable internal flight alternative ["IFA"] was available to him in Mumbai, India.

[5] The Applicant appealed the RPD's decision before the RAD, which ultimately upheld the RPD's IFA analysis and dismissed the appeal. The Applicant then applied to this Court to judicially review the RAD's decision.

II. Decision

[6] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[7] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (M.C.I.) v Vavilov*, 2019 SCC 65 [*Vavilov*])

IV. Analysis

A. *Legal Framework*

[8] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk – in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA* – and to which it would not be unreasonable for them to relocate.

[9] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[10] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. The burden for this second prong (reasonableness of

IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] has held that it requires nothing less than 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. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at para 8.

B. *1st Prong: Was the RAD analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[11] The Applicant alleges that the decision is unreasonable because despite finding the Applicant to be credible, the RAD found that there was no connection between GS and the police.

[12] I find that the RAD's reasons demonstrate that the member reviewed the record as well as the RPD reasons and agreed with the RPD that GS' area of influence was not established. This was because of his testimony that he knew about GS through what the former girlfriend had told him, and that the RPD and the RAD found that it was insufficient to establish sufficient influence over the police in the IFA (RAD's reasons at para 22).

[13] The Applicant argued that the RAD had completely ignored the affidavits from family members and a village consultant on GS' influence. The RPD provided reasons for not giving weight to those affidavits in its reasons at para 11, and the RAD agreed that the affidavits repeated the Applicant's assertion that GS was influential without providing detail or context (RAD reasons at para 22). The RAD agreed with the RPD that the Applicant's fear of GS in Mumbai was speculative.

[14] The affidavits speak to the affiant's belief of GS' influence. In addition, they state that the police asks the family and neighbours about the whereabouts of the Applicant. I disagree with the Applicant that the RAD ignored the affidavits. However, if the local police had to rely on information provided from the Applicant's mother to learn about the son's whereabouts, it is difficult to understand how they would have had the means of knowing about him independently. Therefore, it was perfectly reasonable for the RAD to see the affidavits as insufficient evidence to establish a link between the means, or even the motivation, of GS, the congress goons or the police to seek him out in a far away city such as Mumbai. The RAD was not obligated to provide more analysis in this context.

[15] I agree with the Applicant that evidence cannot be found to lack credibility for what it does not contain. This is precisely how the RAD also assessed the evidence (RAD's reasons at para 40), and found that the affidavits are too vague to conclude that there was an ongoing interest in the Applicant (RAD's reasons at para 41 and 42). I find that the member was responsive to the evidence before them and it was reasonable for them not to speculate or read into the evidence. This is particularly reasonable in the context of the onus being on the Applicant to demonstrate that the IFA does not exist for them in Mumbai.

[16] The Applicant also argues that the cousin's affidavit shows that GS's men found the whereabouts of the agent in Delhi who had helped the Applicant leave the country.

[17] However, in this case, the cousin states that the whereabouts of the agent is unknown and that he believes that those who wanted to harm the Applicant had found out the hide out place of the agent. Without any information to substantiate what happened to the agent and by whom, it is the cousin's inference or opinion that not knowing about the whereabouts of the agent is linked to GS or his goons. Neither the RPD nor the RAD had an obligation to presume that an inference or opinion is true. The RAD conclusion that the affidavits were speculative was therefore reasonable.

[18] Moreover, the Applicant argues that it was unreasonable for the RAD to conclude that GS and his goons cannot locate the Applicant through the Core Applicant Software, the tenant verification system or his family.

[19] I find that the RAD engaged with the country condition evidence. More specifically, as the Applicant argued at Judicial Review, the RAD member had taken a similar argument on the registration of information on Daily Diary Registry into account (RAD's decision, at para 26), and concluded that it did not establish the proposal that the Applicant would be registered as such (RAD's decision, at para 27). The RAD went further to state some uncontested material facts, including that the Applicant was not formally charged and that there are no warrants against him (RAD's decision, at para 28).

[20] The Applicant's long quotes from the NDP on Daily Diary Registry do not reasonably demonstrate that the RAD had ignored material evidence. Rather, the Applicant is asking this Court to reweigh the evidence differently.

[21] I find that in its analysis, the RAD conducted a thorough analysis of the evidence before it on the actions of the police. The Applicant in effect is arguing that the unreasonableness of the RAD decision stems from the RAD member's failure to speculate into a range of possibilities of the police's various balancing acts of local politics.

[22] It was based on the analysis of the Applicant's personal evidence that the RAD reasonably concluded that there was no First Information Report, he had faced an extra-judicial arrest and was probably not reported to the CCTNS, through which tenant verification is conducted. I find that the RAD member based their analysis on the evidence before them and not on assumptions or other speculations. This was reasonable for them to do.

[23] The RAD's analysis shows a thorough understanding and awareness of the CCTNS system and the tenant verification system. The RAD's ultimate conclusion that the Applicant's information was unlikely to be in the CCTNS given the particular circumstances of his arrest was reasonable and based on the RAD's analysis of the NDP documents before it.

[24] The Applicant relied on *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*], A.*B. v Canada (Citizenship and Immigration)*, 2020 FC 915 (*AB*) and *Bhuiyan v Canada (MCI)*, 2023 FC 410 [*Bhuiyan*] to argue that a refugee claimant is not expected to live in hiding in the IFA. The agents of harm had also visited the family in those cases and inquired about their whereabouts. The Court concluded that it was unreasonable to expect family members to put their own lives in danger by denying knowledge of or misleading the agents of persecution.

However, the facts of this case are different. I agree that the Applicant is not reasonably expected to hide in Mumbai and the evidence in this case shows that the relatives have never had to put their own lives in danger in the course of their interactions with the local police about their son.

[25] The RAD provided fulsome reasons for why it was speculative to believe that the Applicant could be located in the IFA through his family. I agree with the RAD's interpretation of the jurisprudence, including that *Ali* does not stand for the proposal that inquiries through family would mean that the Applicant must either live in Mumbai in hiding or risk harm to his family. As the RAD reasonably found, to assess the means and motivation of agents of harm are highly factual, and in the context of the fact-findings by the RAD.

[26] I find that the RAD analysis on the first prong of the IFA to be thorough and responsive to the totality of the evidence before it. The chain of reasoning is clear. I therefore find that the RAD's analysis of the first prong of the IFA test was reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicant, in his particular circumstances, to relocate to Mumbai?*

[27] As stated above, to overcome the second prong of the IFA test, the Applicant needs to present concrete evidence of conditions that would jeopardize his life and safety in relocating to the IFA. I find that there was no such evidence before the RAD, and it was therefore reasonable for the RAD member to conclude that it was reasonable for him to relocate to Mumbai.

[28] The RAD member looked at the totality of the evidence, including the profile of the Applicant as a Sikh man who was HIV positive, and concluded that it was reasonable for him to relocate to the IFA. The Applicant only challenges the RAD's analysis of the HIV status.

[29] The Applicant is arguing that due to his status as an HIV positive individual, the RAD did not take into account the unavailability of certain medications in Mumbai and looked into medical facilities in Delhi and not Mumbai. I disagree. The RAD looked at the evidence and concluded that the Applicant did not discharge their onus that it was unreasonable for them to live in Mumbai. The RAD looked at specific services in Mumbai, including a lawyer collective in that city dedicated to HIV/AIDS, as well as specialized treatment and support. The RAD member was responsive to the arguments made about the discrepancy between the claim that the relevant medication was free in India, and the reality of their high costs. The member looked at the relevant country documents on improved attitudes towards HIV/AIDS and the eligibility of all those who live with the virus eligible for treatment (RAD's reasons, at para 53). The member looked into some of the practical limitations, but noted that there was universal medical coverage and the availability of a wide range of medical treatment for various conditions, including HIV. Therefore, while the member concluded that there was disparity in health care between urban and rural areas, with their thorough analysis of the country documents as a whole, it was reasonable to conclude that the Applicant had failed to establish that his HIV positive status would render Mumbai as an IFA unreasonable.

[30] I find that the RAD member fully engaged with the Applicant's particular circumstances, including his HIV positive status, in a reasonable manner and by taking the relevant evidence and arguments into account. They articulated a clear chain of reasoning.

[31] I find that the RAD's analysis of the second prong is reasonable.

V. Conclusion

[32] The Application for Judicial Review is therefore dismissed.

[33] There is no question to be certified.

JUDGMENT IN IMM-9108-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9108-23
STYLE OF CAUSE:	RAMANJIT SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIDEOCONFERENCE
DATE OF HEARING:	JULY 23, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	JULY 31, 2024

APPEARANCES:

Viken G. Artinian	FOR THE APPLICANT
Sherry Rafai Far	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates Montréal, QC	FOR THE APPLICANT
Department of Justice Canada Montréal, QC	FOR THE RESPONDENT