

Federal Court



Cour fédérale

Date: 20240911

Docket: IMM-12833-23

Citation: 2024 FC 1433

Toronto, Ontario, September 11, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

MAHENDRA GURU JAT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mahendra Guru Jat [Applicant], seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated September 27, 2023 [RAD Decision], upholding the Refugee Protection Division's [RPD] determination that he is neither a Convention refugee nor person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection*

Act, SC 2001, c 27. The determinative issue for both the RPD and the RAD was the availability of a viable Internal Flight Alternative in Mumbai [the IFA].

[2] The Applicant submits that the RAD committed numerous fatal errors in its IFA analysis; however, the errors he has raised appear more like an attempt to re-litigate the same arguments made to the RAD. Despite the RAD having addressed each of these same alleged errors, the Applicant's arguments to this Court fail to engage the RAD's analysis. As the Supreme Court instructed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paragraph 83, the role of the Court on judicial review is to *review* – not to determine what decision it would have made in place of the RAD. Having reviewed each of the errors raised, I find that the Applicant has not discharged his burden of showing that the RAD Decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Facts

A. *The Applicant's agro-business*

[3] The Applicant is a citizen of India. He lived in the village of Rajasthan with his wife and two children where he ran a domestic agro-based business. He earned the reputation of being fair and community-minded in the way he conducted his business, which earned him the goodwill of the local farmers and dealers in the cities where he resold his produce.

B. *The Applicant's political activities*

[4] Leaders from different political parties started to approach the Applicant to join their party in order to benefit from his connections in the community. He became a member of the Indian National Congress Party-INCP [the Congress Party], rejecting the Bharatiya Janata Party [BJP], which he considered a religious extremist party. He became active in local political campaigns, which attracted the ire of the BJP and in particular, Kailash Chand [KC] and Rameshwar Lal Puniya [RLP], local gangsters and BJP activists who warned and threatened the Applicant about influencing and misleading villagers.

[5] In mid-June 2020, the Applicant received an extortion threat from KC, RLP and two others. Following the advice of local police, he paid the money.

C. *The Applicant's political activities and the resulting threats*

[6] The Applicant continued to engage in political activities against the interests of the BJP and he actively campaigned for the Congress Party candidate who successfully ran in the Rajasthan Legislative Assembly by-election in April 2021. KC phoned the Applicant after the election and accused him of being responsible for the BJP candidate's loss. KC told the Applicant that he had to join the BJP if he wanted to stay safe and continue to run his business.

D. *The Applicant's refusal to give in to further extortion threats*

[7] The Applicant received a further extortion threat by his BJP persecutors in June 2021. This time when KC and RLP showed up to receive the payment, the Applicant refused to pay them and he was kicked and threatened by them.

[8] In September 2021, the Applicant was ambushed by KC and RLP and three others while he was travelling one kilometer from his village. They took him into the jungle and beat him, demanding their money. The Applicant was treated at the hospital and filed a police report the following day.

[9] The Applicant describes having received follow-up calls from KC and RLP between September and December 2021, including while he was staying at a friend's house in his village and once in New Delhi where the Applicant had started to look for a job. KC's friend spotted him in New Delhi, which led KC to call the Applicant. The Applicant fled India a month later, landing in Toronto in March 2022. He eventually claimed refugee status.

E. *The RPD Decision*

[10] The RPD rejected the Applicant's refugee claim on the basis of the existence of a viable IFA and the RPD's credibility concerns with the Applicant's evidence.

F. *The RAD Decision*

[11] The RAD stated that while it did not share the RPD's credibility concerns and found the Applicant "generally credible with regard to his central allegations," it did not accept the Applicant's fear of future persecution in the IFA. The RAD agreed with the RPD that the Applicant had a viable IFA and that the Applicant had failed to show that the alleged agents of persecution had the motivation and means to find him in Mumbai, considering it is a city of over 20 million people, located over 1000 km away from the Applicant's village.

[12] In terms of *motivation*, the RAD held that the Applicant had failed to establish a continuing interest on the part of his persecutors to follow him to the IFA. While it accepted that the Applicant's family and friends continued to be questioned about his whereabouts, these inquiries were made in his local village, which was consistent with the local nature of the threat to the Applicant. In terms of *means*, the RAD rejected the Applicant's testimony that his persecutors have the means to pursue him in the IFA.

[13] Finally, the RAD considered that it was not unreasonable in all the circumstances for the Applicant to relocate to the IFA.

III. Legal Principles

[14] The test to determine if an IFA is viable in the claimant's country involves a two-prong analysis that demonstrates that a claimant in the IFA (1) will not be subject to a serious possibility of persecution nor to a risk of harm in the proposed IFA location [the First Prong];

and (2) it would not be objectively unreasonable for the claimant to seek refuge there, taking into account all the circumstances [the Second Prong] [collectively, the IFA test] (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 [*Rasaratnam*] at 710).

[15] Once an IFA is proposed, the claimant has the burden of proof to establish that: (1) on a balance of probabilities, there is a serious possibility of being persecuted in the IFA; and (2) it is objectively unreasonable or unduly harsh, in all circumstances, for the claimant to move to the proposed IFA (*Rasaratnam* at 711).

IV. Issues and Standard of Review

[16] The only issue on this judicial review is whether the Applicant has shown that the RAD's determination that Mumbai constitutes a viable IFA is unreasonable.

[17] The standard of review that applies to the merits of the RAD Decision is that of reasonableness (*Vavilov* at paras 16-17 and 23-25). The role of the Court in a reasonableness review is to holistically and contextually examine the administrative decision maker's reasoning and the outcome to determine whether the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 97 and 85).

[18] The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Did the RAD err in its assessment of the Applicant's forward-facing risk?*

[19] The Applicant submits that the RAD made three fatal errors in its assessment of the Applicant's risk of persecution in the IFA.

(1) Error in the burden of proof applied

[20] First, the Applicant submits that the RAD erred in requiring the Applicant to prove definitively that he would be persecuted in the IFA instead of applying the correct standard requiring only a "serious possibility." The Applicant points to the fact that he was found credible with respect to his subjective fear and submits that he "should not be expected to adduce further evidence to prove what he has already testified [to]."

[21] The RAD addressed this argument directly in its Decision, stating:

I find the [Applicant] generally credible with regard to his central allegations; however, I do not accept the [Applicant's] subjective belief that his persecutors have the motivation and means to find him in Mumbai. These are not inconsistent findings. The Federal Court has recognized that a finding that an applicant is generally credible does not preclude rejection of certain parts of their testimony, because while an applicant "may very well have a strong personal belief ... a preponderance of objective evidence may run counter to their sincerely-held [*sic*], subjective belief (citing *Jimenez v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1225 at para 20) (RAD Decision at para 6) [emphasis in the original].

[22] I see no fault in the RAD's application of the case law. Moreover, the RAD is entitled to deference in its weighing of the Applicant's subjective fear and the objective evidence on the record before it, including evidence from the National Documentation Package [NDP], which in its view confirmed that the BJP gangsters lacked the means and motivation to follow him to the IFA. The RAD expressly used the appropriate evidentiary burden of "a reasonable chance or a possibility that is more likely than not." I find the RAD's analysis to be intelligible and justified on the record (*Vavilov* at para 100).

(2) The RAD ignored evidence

[23] Second, the Applicant argues that the RAD erred in ignoring evidence on the record, which was relevant to the Applicant's future risk in the IFA. The evidence allegedly ignored by the RAD includes the objective country documentary evidence and his personal documents.

[24] The Applicant does not highlight any particular evidence in either set of documents that he says was missed and instead baldly asserts that they were never considered by the RPD or the RAD. This is simply not accurate: both sets of documents were addressed by the RAD.

[25] With respect to objective country evidence, the RAD accepted the evidence that political violence occurs in India between BJP and Congress supporters, but found that the Applicant had failed to show that he was "similarly situated" to persons shown to have been persecuted by the BJP and its supporters. The RAD also found that this evidence was not relevant to an assessment of future risk.

[26] I find that this reading of the objective country evidence was open to the RAD and the Applicant has not directed the Court to any specific evidence in the NDP that was either misapprehended or which contradicts this finding (*Vavilov* at para 75). The articles in the NDP speak to violence against protesters and Congress leaders and suggest that politically motivated violence is typical around elections.

[27] Nor do I find that the RAD ignored the Applicant's personal documents. These documents included: statements from the Applicant's wife, Congress Party leader, and his friend who sheltered him in New Delhi; confirmation of his Congress Party membership; and a police and medical report confirming the events of September 4, 2021. These documents corroborate the Applicant's subjective fear of his BJP persecutors; however, the RAD held that they did not assist him in establishing his forward-facing risk since they did not relate to a future risk in the IFA. The fact that the Applicant received a call from KC in New Delhi was considered by the RAD as having resulted because of a "chance encounter" that was unlikely to occur in the IFA given the IFA's population and distance from the Applicant's village. The RAD reasoned, "[t]his is simply too remote to amount to a reasonable chance or a possibility that is more likely than not" (RAD Decision at para 17).

[28] Again, these findings were open to the RAD on the evidence and the Applicant has not pointed to a specific error with respect to any particular document or piece of evidence or the RAD's analysis of it in order to satisfy his burden.

(3) The RAD erred in its assessment of the evidence

[29] Third, the Applicant argues that the RAD erred in its assessment of the evidence in characterizing the Applicant's future risk of harm as "localized."

[30] I find that it was open to the RAD on the record to find that the Applicant's problems were local based on the evidence it cited which included that: he was a successful businessman in his village which made him a good candidate for extortion; he was accused of being responsible for the election loss of the local BJP candidate; his political influence was with local villagers; and the inquiries made of his family and friends all occurred in his local village.

[31] The only evidence that extended beyond the Applicant's local village was the phone call he received while staying with his friend in New Delhi. Addressing the BJP gangsters' motivation to pursue the Applicant in the IFA based on this evidence, the RAD stated this:

I accept that when close by or "under their nose" they might continue to target him to teach him a lesson. But I do not find that the evidence establishes on a balance of possibilities that their enmity runs so deep that they would continue to look for him in Mumbai, a great distance from their area of interest and influence. And while I recognize that it cannot always be inferred that geographic distance equates to safety, in this case, as I note at paragraph 16 below, even when the [Applicant's] persecutors knew that he was in Delhi, they did not question his family members to secure his exact whereabouts. I find this to be further evidence that they do not have the motivation to find him when he is outside their locale (RAD Decision at para 11).

[32] I find that the RAD's reasoning demonstrates a rational chain of analysis which is justified on the record before it (*Vavilov* at para 85).

B. *Did the RAD err in finding that the BJP gangsters lack the ability to track the Applicant to the IFA?*

[33] The Applicant submits that the RAD erred in finding that the BJP gangsters lacked the ability to track the Applicant in the IFA. The Applicant cites the same means it argued before the RAD: the network of BJP gangsters throughout India; the internet and social media; and corrupt police.

[34] Here is what the RAD said about the Applicant's argument:

The [Applicant] argues that there is a network of BJP gangsters in India that is capable of tracking the [Applicant], and that perhaps even corrupt police officials would provide the [Applicant's] location to KC or RLP. These are unsupported assertions and I do not see an evidentiary basis for them in the record before me. While I acknowledge that there is evidence that the police in India are corrupt, and that they often do the bidding of politicians, there is no evidence before me that KC or RLP, or in fact other unknown BJP gangsters would or could enlist support from police officers over 1,000 km away in Mumbai to help them to find the [Applicant]. This is sheer speculation on the part of the [Applicant] (RAD Decision at para 13).

[35] The RAD found the Applicant's allegation that he could be traced through the internet or social media to be equally speculative.

[36] The Applicant has not pointed to any evidence on the record that makes this RAD finding unjustified.

[37] The Applicant also argues, as he did before the RAD, that his persecutors will be able to locate him through his family, which will require him not to disclose his whereabouts to them

and live in hiding. The Applicant submits that the RAD erred in not applying Federal Court case law that holds that a claimant is not safe in an IFA in such circumstances (citing *Pantoja v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1790 and *Zamora Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586 at para 28).

[38] On this argument, the RAD agreed with the RPD that the evidence of contact between the BJP gangsters and the Applicant's family does not establish a risk that the Applicant will have to live in hiding. It further stated:

In the [Applicant's] case, I accept that his persecutors have questioned his family who remain in their general locale in Rajasthan; however, I do not accept the [Applicant's] subjective assertion that they are at risk of harm from his persecutors if they do not disclose his whereabouts. Even when KC and RLP knew that he was in New Delhi they did not try to obtain his exact whereabouts from his family (RAD Decision at para 16).

[39] I do not see any error in the RAD's analysis on this issue. It considered the case law cited by the Applicant and distinguished it appropriately.

C. *Did the RAD err in its analysis under the Second Prong of the IFA Test?*

[40] The Applicant submits that the RAD erred in its determination that it was not unreasonable for the Applicant to relocate to Mumbai. He says that the RAD failed to consider the low employment rate in the IFA and unduly focused on the Applicant's prior employment background in finding that it was not unreasonable to expect him to relocate to the IFA.

[41] The RAD considered this same argument which was made by the Applicant before it and stated:

While I acknowledge that in early 2020 the unemployment rate rose significantly to 6.98 percent as a result of COVID-related job losses, this evidence is in relation to India as a whole, not specifically to Mumbai. And while I recognize that relocation to Mumbai is not without hardship, I do not find that there is evidence to support a conclusion that this hardship meets the high threshold required by the Federal Court for the second prong of the IFA test (RAD Decision at para 19).

[42] The RAD's analysis is reasoned, addresses the Applicant's argument and appropriately rejects his concerns as amounting to mere hardship which is an insufficient basis for a finding of unreasonableness under the Second Prong of the IFA Test (*Ranganathan v Canada (Minister of Citizenship and Immigration)* (C.A.), [2001] 2 FC 164 at para 15).

VI. Conclusion

[43] As the Applicant has not satisfied his burden of showing that the RAD Decision is unreasonable, this application is dismissed.

JUDGMENT in IMM-12833-23

THIS COURT'S JUDGMENT is that:

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

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Dov Maierovitz FOR THE APPLICANT

Andrea Mauti FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz FOR THE APPLICANT
Barrister & Solicitor
Thornhill, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario