

Federal Court



Cour fédérale

Date: 20250121

Docket: IMM-8980-23

Citation: 2025 FC 121

Toronto, Ontario, January 21, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ROHIT KUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Rohit Kumar [Applicant], seeks judicial review of a decision of the Refugee Appeal Division dated June 30, 2023 [RAD Decision] dismissing his appeal of a decision of the Refugee Protection Division [RPD] denying the Applicant's refugee claim [RPD Decision]. Based on my consideration of the arguments presented by the parties and my review of the record, I conclude that the application for judicial review must be dismissed.

[2] The Applicant fled India and came to Canada based on his fear of persecution by the police in India [the Police] stemming from an incident where the Applicant aided his friend and the friend's girlfriend, which led the Police to detain and beat him and falsely accuse him of killing his friend. The Applicant believes that the Police will continue to search for him, placing him at risk should he be forced to return to India.

[3] The RPD rejected the Applicant's refugee claim on two bases: they found that the Applicant had an internal flight alternative [IFA] in New Delhi; and he lacked credibility.

[4] The Applicant brought an appeal of the RPD Decision challenging the RPD's credibility findings. The Applicant did not contest the RPD's findings related to the IFA.

[5] The RAD considered the correctness of the RPD Decision and agreed with the Applicant that the RPD had erred in its analysis of his credibility. The RAD conducted an independent assessment of the RPD's IFA analysis and agreed with the RPD that the Applicant has a safe and reasonable IFA in New Delhi.

[6] The Applicant's arguments on this judicial review are based entirely on the IFA analysis. However, the Respondent submits that the Applicant is not entitled to challenge the RAD's IFA analysis, citing Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257 and jurisprudence which has interpreted this rule to mean that the Applicant may not raise errors on judicial review that were not raised on appeal to the RAD (see *Broni v Canada (Citizenship and*

Immigration), 2019 FC 365 at para 15 citing *Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 18-20).

[7] The Applicant acknowledges that the Applicant's memorandum on appeal to the RAD did not challenge the RPD's IFA analysis and the Applicant has not attempted to distinguish the authorities cited by the Respondent. Still, the Applicant maintains that the Court may consider the reasonableness of the RAD's IFA analysis. In *Wu v Canada (Citizenship and Immigration)*, 2022 FC 1123, Justice Roy provides the following explanation for why a Court cannot do so:

The existence of an IFA, as found by the RPD, had the effect of disposing of the refugee claim. One is not a refugee in Canada if there exists a flight alternative in one's own country. There was therefore nothing before the RAD to contest the determinative issue of the existence of an IFA by the RPD. In hindsight, it would have been wiser to reject the appeal. In my view, the further comments on the issue constitute surplusage on the part of the RAD.

As a result, this judicial review application cannot be entertained further as there was no appeal before the Refugee Appeal Division of the IFA issue which was itself dispositive of the refugee claim. The judicial review application must be dismissed (*Wu* at paras 22-23).

[8] Having not challenged the RPD's IFA analysis, this application challenging the RAD's confirmation of that decision cannot be entertained. Accordingly, this application is dismissed.

JUDGMENT in IMM-8980-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed; and
2. There is no question of general importance to certify.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8980-23

STYLE OF CAUSE: ROHIT KUMAR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 21, 2025

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: JANUARY 21, 2025

APPEARANCES:

Rajender Singh	FOR THE APPLICANT
Desmond Jung	FOR THE RESPONDENT

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