Federal Court Cour fédérale

Date: 20250212

Docket: IMM-12031-23

Citation: 2025 FC 278

Ottawa, Ontario, February 12, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SARAVANAN AYYANATHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated September 6, 2023 [the Decision]. In the Decision, the RAD dismissed the Applicant's appeal of a decision by the Refugee Protection Division [RPD] finding the Applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD found that the RPD had correctly rejected the Applicant's refugee claim due to the Applicant having an internal flight alternative [IFA] within India.

[3] As explained in further detail below, this application for judicial review is allowed, because the RAD erred in its assessment of whether it would be unreasonable for the Applicant to relocate to the IFA.

II. **Background**

[4] The Applicant is a citizen of India and a member of the Agamudayar caste. The Applicant fears harm in India from an individual in his village [the agent of persecution or AOP], whom the Applicant refused to politically support, and the AOP's allies, including the local police.

[5] In 2014, the Applicant refused to support the AOP's campaign for president of the village council. After the AOP lost this election, he attacked the Applicant and others who supported the AOP's rival.

[6] The Applicant again refused to support the AOP for president in the December 2019 election, and the AOP again attempted to pressure the Applicant through his associates. The Applicant's subsequent police complaint against the AOP was dismissed due to the AOP's power within the All India Anna Dravida Munnetra Kazhagam [AIADMK] political party. The AOP lost the election and began to threaten the Applicant. The Applicant sought help from the president of the village council, but he was told nothing could be done due to the AOP's connections with the AIADMK.

[7] Fearing harm by the AOP, the Applicant left his village. In January 2020, while the Applicant was away, he was informed that the AOP's associates had come to his village looking for him.

[8] The Applicant fled India, arrived in Canada on January 26, 2020, and submitted a refugee claim. Since the Applicant has arrived in Canada, the AOP has continued to look for him.

[9] On March 31, 2023, the RPD rejected the Applicant's refugee claim based on him having two viable IFAs within India. The Applicant appealed the RPD's decision to the RAD and on September 6, 2023, the RAD issued the Decision that is the subject of this application for judicial review.

III. **Decision under Review**

[10] In the Decision, the RAD dismissed the Applicant's appeal of the RPD's decision and rejected the Applicant's refugee claim due to the availability of viable IFAs within India.

[11] The RAD applied the relevant test for the viability of an IFA, assessing whether the Applicant had established that: (a) the Applicant would be at risk of persecution or harm in the IFAs; or (b) it would be unreasonable for the Applicant to relocate to the IFAs. As the RPD did not make any credibility findings regarding the Applicant, the RAD presumed the Applicant's sworn evidence was truthful.

[12] The RAD first assessed the Applicant's risk of persecution or harm in the IFAs. While accepting that the AOP was likely motivated to harm the Applicant, the RAD found the

Applicant's arguments in support of his assertion that the AOP had the means to locate him, and therefore the means to harm him in the IFAs, to be speculative or unsupported by the evidence.

[13] The RAD then found it would not be unreasonable for the Applicant to relocate to the IFAs. The RAD rejected the Applicant's argument that he would not be able to find employment or accommodation in the IFAs based on his caste, and it found that the Applicant could maintain an online social media presence in the IFAs with reasonable care, such as not posting his address. The RAD further noted that separation from family and other emotional supports, while difficult, do not amount to an IFA being unreasonable.

[14] The RAD also addressed the Applicant's argument that the RPD failed to consider whether he faced persecution in India due to his caste and found, based on the evidentiary record before the RPD, that the RPD was under no obligation to consider this ground. The RAD nevertheless assessed whether the Applicant would face a risk of persecution in India. The RAD found the Applicant failed to establish that he would be recognizable as a member of his caste to the public. In any event, the RAD found there was insufficient evidence, considering both the Applicant's personal experience and objective evidence, that the Applicant would face discrimination that amounts to persecution.

[15] Finding that the Applicant had not established he would face a serious possibility of persecution in India, the RAD concluded the Applicant would also not meet the higher standard of proof to establish harm under subsection 97(1) of the IRPA. Moreover, the RAD found there was no evidence that uniquely related to the Applicant's claim under subsection 97(1) such that it required a separate analysis.

[16] Given the foregoing, the RAD found the Applicant was neither a Convention refugee nor a person in need of protection under the IRPA and dismissed the Applicant's appeal.

IV. **Issue and Standard of Review**

[17] The Applicant advances arguments that require the Court to determine whether the Decision is reasonable. As is implicit in that articulation, the reasonableness standard applies to the Court's review of the merits of the Decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17).

V. **Analysis**

[18] The determinative issue in the Decision was whether the Applicant has a viable IFA within India. As noted in the Decision, to find that a viable IFA exists, a decision-maker must be satisfied that, on the balance of probabilities: (a) a refugee claimant will not face a serious possibility of persecution and/or a likely risk to their life or cruel and unusual treatment or punishment, or a danger, believed on substantial grounds to exist, of torture in the IFA location; and (b) the IFA location is reasonable in the claimant's circumstances (*Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589, 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*]; *Ahmed v Canada (Citizenship and Immigration)*, 2023 FC 496 [*Ahmed*] at para 25). Once the possibility of an IFA is raised, the refugee claimant bears the onus to establish the proposed IFA is not viable by defeating at least one prong of the above test (*Thirunavukkarasu* at 595–96; *Ahmed* at para 26).

[19] The Applicant has raised arguments that the RAD erred in its analysis under both prongs of the IFA test. However, my decision to allow this application for judicial review turns on an argument related to the second prong and, in particular, the question whether the Applicant's caste would be an impediment to him obtaining accommodation in the proposed IFAs.

[20] Among his other arguments, the Applicant argued that his caste would preclude him from finding either employment or accommodation in a proposed IFA. In relation to employment, the RAD noted the Applicant's testimony that, while he had trained as a diesel mechanic, he had to become a cook because of his caste. The Applicant had explained that, as cooking is done by people in a low caste, it is easy to get a job (and a stable job) of that nature. Based on that testimony, the RAD concluded that the Applicant would be able to find stable employment in the IFA. While the RAD recognized that this was not the Applicant's preferred employment, it noted that the unreasonableness test is not met where a refugee claimant asserts that they are not able to find suitable work in the IFA (referencing the Federal Court of Appeal's decision in *Thirunavukkarasu*).

[21] That portion of the RAD's analysis is supported by the evidence and applicable jurisprudence and withstands reasonableness review.

[22] However, the Applicant also asserted that he would be unable to find accommodation in either IFA city due to his caste. Again, the RAD referenced the Applicant's testimony, in this case that, when he registered as a new tenant, the police would dig into the matter, discover his caste, and advise the landlord. The RAD found that the Applicant's belief as to how the police would act was speculative.

[23] In the course of this analysis, the RAD stated that there was no evidence that the Applicant's caste would be apparent to landlords or employers in either IFA city. However, the RAD observed that a document in the National Documentation Package [NDP] stated that last names are almost always indications of which caste a person belongs to. The Decision demonstrates that the RAD concluded that this country condition evidence did not apply to the Applicant, because of his testimony that the police would have to dig into the matter to discover his caste. The RAD reasoned from the Applicant's testimony that his caste would not be apparent in the absence of such efforts by the police.

[24] I agree with the Applicant's argument that this analysis demonstrates the RAD failing to intelligibly engage with relevant country condition evidence in the NDP. The Court expresses no view as to whether the referenced evidence in the NDP applies to the Applicant's particular surname and caste. However, it was not reasonable for the RAD to conclude that it did not, just because the Applicant testified as to a different means by which a landlord might become aware of his caste.

[25] I note that, at the hearing of this application, the Applicant's counsel (who was also counsel before the RAD) acknowledged that he had not relied on this particular evidence in the NDP in his arguments before the RAD. However, I agree with his position that, once the RAD identified this evidence and its potential relevance, it was obliged to address it, and it failed to do so in a sufficiently logical manner for that aspect of its analysis to withstand reasonableness review.

[26] In considering whether this particular deficiency is sufficiently material to the Decision to represent a reviewable error, I have considered that the RAD also found that, even if the Applicant's caste would be apparent to a potential landlord or employer, the fact that he would be likely to find work suggested he would not be in the lowest socioeconomic class. The RAD then stated that this fact must be balanced against his caste in determining whether he would be able to find accommodation. However, the Decision does not demonstrate that the RAD actually performed that balancing exercise. As such, to the extent that component of the Decision reads as an alternative analysis surrounding the availability of accommodation, it is incomplete and therefore does not assist to support the reasonableness of the Decision.

[27] The Respondent's counsel emphasizes the high threshold that must be met under the second prong of the IFA test, in order for a proposed IFA to be considered unreasonable. As expressed in *Thirunavukkarasu* at 598:

> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough 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 of persecution, then IFA exists and the claimant is not a refugee.

[28] These principles are not in dispute. However, I agree with the Applicant's position that an inability to obtain accommodation could render an IFA unreasonable. Indeed, the RAD did not find otherwise.

[29] As the Decision's analysis of the availability of accommodation does not withstand reasonableness review, this application will be allowed, the Decision set aside, and the matter returned to a differently constituted panel of the RAD for redetermination. It is therefore unnecessary for the Court to consider the Applicant's other arguments.

VI. **Certified Question**

[30] The Applicant has proposed certified questions related to the standard of proof that the RAD employed under the first prong of the IFA test. The Respondent opposes certification.

[31] As the determinative issue in this application for judicial review is unrelated to the issue to which the proposed questions relate, answers to those questions would not be determinative of the outcome of an appeal, and certification is not appropriate.

JUDGMENT IN IMM-12031-23

THIS COURT'S JUDGMENT is that:

1. This application is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RAD for redetermination.
2. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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