Federal Court  Cour fédérale

Date: 20250227

Docket: IMM-6889-23

Citation: 2025 FC 376

Ottawa, Ontario, February 27, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

GURMANNJOT SINGH CHAUHAN
GAUHAR SINGH
REHMAT SINGH
SARBJEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Appeal Division [RAD] dismissed the Applicants' refugee claim because they had an internal flight alternative [IFA]. On judicial review, the Applicants allege that the RAD's decision was unreasonable because it failed to consider contradictory evidence on a central issue,

namely the means and motivation of the agents of persecution [gangsters] to find and harm the Applicants. I agree with the Applicants. For the following reasons, this application is granted.

II. Context

[2] The Applicants are a family of Indian citizens who resided in Patiala, a city in southeastern Punjab. The Principal Applicant worked there as a bank manager. On December 15, 2016, it is alleged that five gangsters came into the Principal Applicant's bank and threatened to kidnap his family, physically assaulting him before leaving. The next day, more gangsters returned to the bank, asking the Principal Applicant to exchange money with them from the branch's supply. He replied that the bank had no cash, before hiding in the bathroom to secretly call the police, who came and allegedly arrested the gangsters.

[3] As a precaution, and fearing retaliation from the gang, the Applicants left Patiala in July 2017 for the city of Bathinda, where the Principal Applicant continued to work at a different bank. They would stay there until returning to Patiala in April 2018, after hearing news that the leader of the gang responsible for the alleged threats had died.

[4] On October 15, 2018, two men visited the Applicants' home and asked about the Principal Applicant's whereabouts. The men claimed that the Principal Applicant was responsible for their arrest and threatened to kill him and his family. Fearing for their safety, the Principal Applicant's wife and children fled to the city of Ludhiana, in Punjab. Three days later, on October 18, 2018, the Principal Applicant resigned from his position at the bank. The family never returned to their

hometown of Patiala, ultimately fleeing to Canada, where they claimed refugee status in January 2019.

[5] The Principal Applicant claims that he fears for his life, as he hears from relatives and neighbours that unknown individuals continue to ask about their whereabouts.

[6] The Refugee Protection Division rejected the Applicants' claim because they had a viable IFA and were therefore not Convention refugees nor people in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. On appeal, the RAD confirmed this finding and found it to be the determinative issue. The Applicants now challenge the RAD's decision before this Court, arguing that it failed to consider a central concern with respect to the gangsters' means and motivation to track them down and seriously harm them in the proposed IFA locations.

III. Issues and Standard of Review

[7] The sole issue is whether the RAD reasonably determined that the applicant has a viable IFA.

[8] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker

misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[9] A two-pronged test determines the viability of an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 711, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, 1993 CanLII 3011 (FCA) at 592). The first prong considers whether a claimant would be subject to a serious possibility of persecution under section 96 or to a risk of harm under subsection 97(1) of the IRPA in the proposed IFA. Under this prong, one considers the agent of persecution's "means" and "motivation" to locate the claimant in the proposed IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8 [*Singh*]; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21 [*Adeleye*]). The second prong assesses whether it would be reasonable, in all the circumstances, to expect the claimant to seek safety in the IFA (*Singh* at para 10; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 8 [*Olusola*]). The threshold to establish unreasonableness is very high, requiring "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" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15). Once an IFA is proposed, the onus is on the claimant to prove that they do not have a viable IFA (*Adeleye* at para 20; *Olusola* at para 9).

[10] The applicant submits that the RAD's decision is unreasonable with respect to the first prong of the IFA test, raising two arguments to this effect.

[11] The first argument concerns the RAD's conclusion on the use of India's Criminal Tracking Network and Systems [CCTNS], which the Applicants claimed would enable the police to share their new location with the gangsters pursuing them across the country. The RAD found that "there [was] insufficient evidence to establish that the [gangsters] had the connections required to obtain any of the evidence the [Applicants] argue can be used to locate them in the proposed IFA locations" (RAD Reasons at para 52). On judicial review, the Applicants essentially repeat the argument presented before the decision maker, to the effect that "[regardless] of whether the Applicants are named in the CCTNS or not, the tenant and employment verification systems pose the serious risk that local police in Punjab will be notified of the Applicants' return to India" (Applicants' Memorandum at para 10).

[12] I see no reason to intervene with the RAD's finding on this issue. The reasons demonstrate an administrative decision maker doing what it is required to do: make intelligible, transparent, and justified findings of fact in light of the evidence and submissions presented to it (*Vavilov* at paras 105, 125–128). The RAD observed that the documentary evidence did mention that the CCTNS "is in use in an increasing number of police stations and that there is a mandatory system of tenant verification in India," but also noted that police systems between districts and states were not integrated, that there were insufficient resources to follow up on all tenant verification forms, and that there was no evidence that a First Information Report [FIR] was filed against any of the Applicants (RAD Reasons at para 51).

[13] This Court is well acquainted with the CCTNS and its effects on the lives of those who fear persecution in India. In this case, as in many others, the Court has referred to the evidence that the CCTNS does not contain information on extrajudicial arrests, that there is little interstate police communications (with the exception of major crimes), and that the police is prohibited by law to use biometric data from the tenant verification system for criminal investigations (see for example *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at para 32; *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at paras 23–24; *Sandhu v Canada (Citizenship and Immigration)*, 2024 FC 262 at paras 17, 21–22; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1758 at paras 30–31). The Applicants are essentially asking the Court to reweigh the evidence in order to arrive at a different conclusion regarding the capacity to locate them in the proposed IFA. This is something the Court will not do on judicial review absent exceptional circumstances, which do not arise here (*Vavilov* at para 125).

[14] The second argument raised by the Applicants concerns the responsiveness of the RAD's reasons, with respect to a central concern raised before the decision maker. The RAD concluded that "[there] was no evidence, beyond [the Applicants'] own assertions, to support [their] claim that the agents of persecution would have the motivation to expend the time and resources to track the family down in the proposed IFA cities" (RAD Reasons at para 45). The Applicants take issue with this conclusion, noting that they had in fact submitted several pieces of new evidence before the RAD, including an email from the Principal Applicant's cousin post-dating the rejection of their initial claim (Application Record at 35–39, Exhibit C), which was accepted as "relevant to the issue of IFA, new and credible" (RAD Reasons at para 13). What this email describes is a violent incident suffered by the cousin, who claims that he was beaten and interrogated by

gangsters searching for the Applicants in one of the towns to which they had fled some years before (after leaving Patiala). This beating came shortly after the cousin had gone to the police with threatening letters these gangsters had allegedly sent him over the preceding days, in which they claimed to be searching for the Applicants.

[15] The omission of this evidence is what renders the decision unreasonable. While there is indeed a presumption that the RAD considered the evidence in its entirety (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 34), their obligation does not end there. The RAD "must also deliver reasons that transparently and intelligibly justify its decision" (*Pintyi v Canada (Citizenship and Immigration)*, 2021 FC 117 at para 10, citing *Vavilov* at para 85). Transparency entails a discussion of contradictory evidence, especially when the evidence relates to one of the main points on which the decision maker relies to reach their conclusions (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17; *Lapaix v Canada (Citizenship and Immigration)*, 2025 FC 111 at para 77).

[16] In this case, the new evidence marshalled by the Applicants directly touched upon the means and motivation of the gangsters to pursue the Applicants outside of Patiala, and potentially across the country. It concerns actions allegedly committed by the gangsters, years after the Applicants' departure, to engage in violent retaliation against them and their family in more than one city. It may also disclose potential collusion between the gangsters and the police, as the gangsters beat the cousin in part because he had alerted the police (and therefore the police must have provided information of that fact to the gangsters). In any event, it is not for the Court to

appreciate the facts. The evidence was deemed relevant and credible by the RAD, and it was accordingly unreasonable for it to have been completely omitted from the IFA analysis.

[17] It was open to the decision maker to weigh the evidence and draw conclusions from it. However, the RAD could not omit and reject important and contradictory evidence without providing transparent or intelligible reasons for doing so (see *Banovic v Canada (Citizenship and Immigration)*, 2024 FC 1990 at para 66). Consequently, and although "omissions are not stand-alone grounds for judicial intervention," the aspect omitted from the analysis in this case is crucial and has caused this Court to lose confidence in the outcome reached (*Vavilov* at para 122).

V. Conclusion

[18] For the reasons set out above, this application for judicial review is granted. There is no question to certify.

[19] I thank counsel for their detailed and able submissions.

JUDGMENT in IMM-6889-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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