Federal Court Cour fédérale

Date: 20250703

Docket: IMM-6145-24

Citation: 2025 FC 1187

Toronto, Ontario, July 3, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

AJAY JAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In that decision, the RAD rejected the appeal of Mr. Jain's claim for refugee protection.

[2] The RAD confirmed a finding of the Refugee Protection Division that Mr. Jain was not a credible witness in certain respects, and that he has viable internal relocation options in his country of origin. As such, the RAD confirmed the rejection of Mr. Jain's claim for refugee protection. Mr. Jain now comes before this Court alleging that the RAD's analysis of his internal flight alternatives in India was fundamentally flawed. While I find that the Applicant has raised important and broad questions about the proper approach for considering internal flight, I do not find that the RAD erred, as alleged. As a result, I will dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] Mr. Jain is a citizen of India, from Punjab. He fled India because he was allegedly targeted by a woman named Pinky and her family, and by the Indian authorities. The basis of his claim is essentially that following disagreements regarding rent and guests, one of the Applicant's tenants, Pinky, threatened to file a false charge of sexual abuse against Mr. Jain, and subsequently had her family members assault and beat him. He attempted to report the assault to the police, but the police allegedly refused to take his complaint, as Pinky and her family were "big supporters" of the Congress Party, which was in power in Punjab at that time.

[4] After this incident, Mr. Jain continued to receive death threats and was attacked again on two separate occasions; once, with his wife, by unknown assailants; and again, by Pinky's son.

[5] In February 2022, Pinky allegedly followed through with her threat and filed a sexual abuse complaint against Mr. Jain. The police were said to have raided the Applicant's home, but

found he had already fled. As a result, the Applicant came to Canada and sought asylum. He claims that the Indian police have continued to visit his wife and sons at home in the intervening years, attempting to find him, and that Pinky's family members have followed and attacked his sons.

[6] As mentioned above, the Refugee Protection Division [RPD] refused the Applicant's refugee claim, finding that he had a viable internal flight alternative [IFA] and that certain elements of his story were not credible. The Applicant appealed to the RAD.

B. *Decision under Review*

[7] The RAD confirmed the RPD's determination that the Applicant is neither a Convention refugee nor a person in need of protection. The determinative issue was the availability of an IFA. The RAD believed certain elements of Mr. Jain's narrative; namely, that he had a conflict with Pinky and her family, and that Pinky threatened to file a false case against him. However, it agreed with the RPD that Mr. Jain's allegations that Pinky had in fact filed a false charge, and the corresponding police interest in him, were not credible. As a result, the RAD confirmed the RPD's finding that the Indian police would not have an interest in the Applicant, because Pinky had never filed the alleged false report.

[8] In coming to that conclusion, the RAD found that the RPD had correctly relied on the Applicant's submitted Police Clearance certificate, which indicated there were no outstanding charges against Mr. Jain and that he is not currently wanted by the police in India. The RAD found this evidence more credible than the letters of support attesting that Mr. Jain is wanted by

the Indian authorities, and therefore found that the Police Clearance contradicted and displaced the evidence contained in those letters of support. It therefore found that the Applicant is not wanted by the police.

[9] The RAD also considered the Applicant's wife's affidavit, attesting to the alleged 2022 police raid and continued police visits, and noted that the assailants in that instance were not uniformed police officers. On a balance of probabilities, the RAD found that those who visited the Applicant's home in February 2022 or after were not there on official police business. The RAD came to similar conclusions regarding the other letters of support.

[10] As a result, the RAD rejected the Applicant's allegations that he would be persecuted by the Indian Police.

[11] The RAD went on to find that, because the police are not an agent of persecution, the Applicant has viable IFAs in Mumbai and Bengaluru. In coming to that conclusion, the RAD found insufficient evidence that Pinky and her associates would have the means to locate Mr. Jain in the IFA locations, as there is insufficient evidence that she has police or political ties. It also found that Pinky would not be able to trace Mr. Jain through Aadhar cards, the Crime and Criminal Tracking Network and Systems [CCTNS], the tenant verification system, or through his return to the country. This was primarily because the RAD found that there are no outstanding police charges against the Applicant, and he is not of interest to the police.

[12] The RAD summarized its findings on the first prong of the IFA test as follows:

> Overall, the RPD was correct in finding that the Appellant had failed to establish that there is a serious possibility of persecution

> because his agents of persecution have both the means and the motivation to search for and pursue the Appellant in the IFA cities. The Appellant's evidence fails on prong one.

[13] On the second prong, the RAD found that the Applicant had not adduced sufficient evidence to prove that it would be objectively unreasonable to relocate to Mumbai and Bengaluru.

III. ISSUES

[14] The Applicant submits that the RAD erred in its application of the first prong of the IFA test. Specifically, he argues that the RAD employed the wrong standard of proof for its assessment of the first prong; that being whether the agents of harm "have" the means to locate a claimant, rather than the correct standard of whether there is "a serious possibility that the agents of persecution have the means" to locate someone.

IV. STANDARD OF REVIEW

[15] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

V. LEGAL FRAMEWORK

[16] The test for the determination of an IFA was considered in a trilogy of Federal Court of Appeal decisions between 1991 and 2000: *Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [*Rasaratnam*]; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]; and *Ranganathan v Canada (Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) [*Ranganathan*]. In considering whether a refugee claimant has an internal flight alternative, two criteria must be considered:

1) First, the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted, or that they will be subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment, in the proposed IFA location; and

2) It must not be unreasonable for the claimant to seek refuge in the IFA, considering their particular circumstances.

[17] These considerations are disjunctive, which is to say that there will be no IFA if *either* the claimant faces the requisite risk in the IFA location, or if it is unreasonable for the claimant to seek refuge in the IFA location.

[18] With respect to the first part of the test, it appears to be firmly entrenched in the jurisprudence that a serious possibility of persecution, or a risk of torture, risk to life, or risk or cruel and unusual punishment can only arise if it is found that the agents of harm have both the

means and motivation to locate an applicant in the proposed IFA: *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46, citing *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43.

VI. ANALYSIS

[19] The Applicant makes essentially three arguments on judicial review. He submits that the RAD erred in assessing his risk from the agents of harm; that the RAD's decision was unintelligible; and that the RAD applied the wrong standard of proof for establishing the agent of harm's interest and capacity to locate him in the IFA. While I am not persuaded that the Applicant has raised a reviewable error, the last of the Applicant's submissions warrants a more detailed analysis, which will follow in the section below.

A. *No Error in Finding Applicant Not Wanted by Police*

[20] First, the RAD did not err in finding that Mr. Jain is not wanted by the Indian police. The RAD did not question the claim that some individuals visited the Applicant's house in search of him, but concluded that they were not Indian police officers. The Applicant does not directly challenge this conclusion, but instead argues that it is incomplete. Having accepted that *someone* visited the Applicant's home, he argues that the RAD was under a duty to assess the risk from these persons, which it did not do. I disagree.

[21] While it is true that the RAD did not directly assess the risk posed by these individuals, its finding that the assailants were not police officers was important to its subsequent finding that the Applicant had a viable IFA. The RAD's IFA assessment was premised on the finding that it

was Pinky and her associates, and not the Indian police, who had approached the Applicant's home. This being the case, it is incorrect to suggest that the RAD did not assess the risk faced by these individuals.

B. *The RAD's finding that the Applicant's Indian lawyer was "baseless"*

[22] Second, the RAD's analysis of the evidence was not unintelligible. Included in the Applicant's evidence was a letter from his lawyer in India, who indicated that: i) there are no legal proceedings or cases registered against Mr. Jain; ii) that it appears that Pinky has wrongfully implicated Mr. Jain in a false sexual assault complaint; and iii) that "instances of illegal detention and baseless accusations against individuals are common in India." In considering this letter, the RAD stated:

> The Appellant has not credibly established that he has an outstanding complaint of sexual assault with the India Police. His lawyer in India is baseless and the Appellant has not convinced me the RPD's finding that his lawyer has no direct knowledge of the statements he wrote given the contradicting evidence from the Indian police which confirmed he has no criminal record and is of good standing. (emphasis added).

[23] The Applicant argues that the RAD's description of the Applicant's lawyer as "baseless" is unreasonable. While I certainly agree that the above passage leaves much to be desired in terms of clarity, I ultimately agree with the Respondent that this is not a particularly significant error. In all likelihood, the RAD member intended to state that the lawyer's *description* of the Applicant's situation regarding Pinky was baseless, as the lawyer had no direct knowledge of the incidents which he purported to confirm. Understood in this sense, and in the context of the

RAD's larger findings, this was not an unreasonable conclusion. As *Vavilov* instructs, reasonableness review is not a "line-by-line treasure hunt for error" (at para 102).

C. *The RAD's application of the standard of proof to the first prong of the IFA test*

[24] Finally, contrary to the Applicant's submissions, I have concluded that the RAD did not incorporate the wrong standard of proof in assessing the ability of the agents of persecution to locate him in the proposed IFA locations. He argues that the RAD implicitly, if not explicitly, assessed whether the agents of persecution had the means to find him on a balance of probabilities. This, he argues, is incorrect, as the proper approach is to consider whether there is a serious possibility that the agent of persecution has the means to find him.

[25] While I do not find in this case that the RAD applied the wrong standard in its assessment, I will offer commentary on the applicable standards of proof for the first prong of the IFA test in the Certified Questions section below, as I do find there is some variance in this Court's jurisprudence on that issue that warrants consideration.

[26] At no point in the RAD's reasons did it explicitly state that it was assessing the capacity of the agents of persecution to locate the Applicant on a balance of probabilities standard. However, the Applicant points to various passages in the RAD's decision which, he argues, indicate the tribunal incorporated this standard into its assessment of means. I am not convinced that this is the case.

[27] The passages in question include the following:

- "The Appellant has not demonstrated that Pinky, her family, and their goons have the means to locate him through the Indian Police or in Mumbai and Bengaluru."
- "There is insufficient evidence to support Pinky has the means to find the Appellant in the IFA cites."
- "Based on the evidence before me, Pinky does not have a wide scope of influence, which meant that the Appellant's agents would not be able to track him down in Mumbai and Bengaluru."
- "I find that there is insufficient proof to establish that Pinky could influence the police in Mumbai and Bengaluru."

[28] Several decisions of this Court have considered similar arguments: see for example *Marimuthu v Canada (Citizenship and Immigration)*, 2022 FC 1694, at paras 41-45; *Krishnapillai v Canada (Citizenship and Immigration)*, 2022 FC 485; *Tcheuma v Canada (Citizenship and Immigration)*, 2022 FC 885 at paras 29-38; *Eyeoyibo v Canada (Citizenship and Immigration)*, 2024 FC 1008 at paras 10-12; *Ciuron v Canada (Citizenship and Immigration)*, 2024 FC 97 at paras 20-26; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1837 at paras 30-33.

[29] I do not take these decisions to suggest that words such as "have," "would," or "could," on their own, connote any particular standard. For example, one could find, on a balance of probabilities, that an individual has the means to find another individual. However, one could just as easily arrive at the same conclusion based on a serious possibility: "I find there is a serious possibility that the agent of persecution has the means to find the claimant." The key consideration is not the decision-maker's choice of verbs, but rather, the broader language used to describe the standard, that then suffuses the verb with specific meaning.

[30] In this case, it is clear that where the RAD directly articulated the standard, it did so correctly. For example, the RAD described the RPD analysis as follows: “The RPD correctly applied the two-prong test for IFA to determine if there is a serious possibility of persecution or risk of harm in the proposed IFA.” Later, it stated: “Overall, the RPD was correct in finding that the Appellant had failed to establish that there is a serious possibility of persecution because his agents of persecution have both the means and the motivation to search for and pursue the Appellant in the IFA cities.” Over the course of its analysis, the RAD found, for various reasons, that the Applicant had failed to credibly demonstrate that the agents of persecution had the means to find him in the IFA locations. Taken together, and in context, I find that the Applicant has not established that the RAD assessed the question of means on an incorrect articulation of the standard.

[31] Parenthetically, I would also note that it appears that the Applicant’s claim for refugee protection is largely based on factors falling within s.97 of the *Immigration and Refugee Protection Act*. The Federal Court of Appeal has clearly found that the legal threshold for establishing risk in such cases is not a serious possibility, but whether the risk is more likely than not to become a reality: *Li v Canada (Minister of Citizenship and Immigration)* (F.C.A.), 2005 FCA 1 at para 29 [*Li*].

[32] The above is dispositive of this application for judicial review. That being said, the issues raised by the Applicant and his proposed certified question do, in my view, warrant some consideration.

VII. CERTIFIED QUESTION

[33] The Applicant has proposed the following questions for certification:

> - Is it an error to find an Internal Flight Alternative because the refugee claimant had to prove that the agent of persecution was likely going to pressure his family and friends instead of proving this on the standard of "serious possibility"?
>
> - Is it an error to find an Internal Flight Alternative because that [sic] the agents of persecution have the means to locate the refugee claimant? Or is the proper approach to determine whether there is a serious possibility that the agents of persecution have the means to locate the claimant.

[34] In *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151, the Federal Court of Appeal recently stated as follows with respect to the certification of questions of general importance (at para 28):

> It is well established in the jurisprudence of this Court that a question cannot be certified unless it is serious, dispositive of the appeal and transcends the interests of the parties. It must also have been raised and dealt with by the court below, and it must arise from the case rather than from the judge's reasons. Finally, and as a corollary of the requirement that it be of general importance pursuant to section 74 of the IRPA, it cannot have been previously settled by the decided case law: see *Liyanagamage v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1637 (QL) at para. 4; *Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178 at para. 36; *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras. 36, 39 (Lewis).

[35] I am convinced that the proper characterization of the "means and motivation" approach transcends the interests of the parties to this application. I am also convinced, for a couple of reasons, that the "means and motivation" approach raises a serious question that has not been finally settled in the jurisprudence. First, as noted above, the frequent use of the means and

motivation approach appears to post-date the Federal Court of Appeal's seminal decisions in *Rasaratnam*, *Thirunavukkarasu*, and *Ranganathan*. There is therefore no appellate jurisprudence on the specific issue raised by the Applicant in his second proposed question. Second, as noted above, there does appear to be some divergence in this Court's approach to these issues, as will be set out below.

[36] With all of this said, because the Applicant failed to establish that the RAD assessed the question of means and motivation on a balance of probabilities standard, any consideration of the second proposed question could not be dispositive of the appeal. As noted above, the absence of reviewable errors in the RAD's description of the IFA analysis is a determinative issue in this application. This being the case, the proposed questions on the means and motivation approach cannot be dispositive of the appeal. As a result, while I am convinced that some of the issues raised by the Applicant may warrant appellate consideration, I decline to certify a question in this case.

[37] However, given that there does appear to be some confusion on the interplay between the evidentiary standard and the legal test in IFA cases, and because the parties provided fulsome submissions on this issue, I will provide the following commentary.

[38] As noted above at paragraph 18, the first prong of the IFA test is frequently considered through the prism of two considerations: 1) whether the agent of harm has the motivation to find the refugee claimant in the proposed IFA location; and 2) whether the agent of harm has the means to find the claimant in the IFA location. This has not always been the case. Rather, it appears that the first use of these terms dates back to a decision of Justice Luc Martineau in

Vigueras Avila v Canada (Minister of Citizenship and Immigration), 2006 FC 359. This decision related primarily to the issue of state protection where the agents of persecution were non-state actors, but it also implicated the issue of an internal flight alternative. The court stated (at para 28):

> When, as in this case, the applicant fears the persecution of a person who is not an agent of the state, the Board must *inter alia* examine the motivation of the persecuting agent and his ability to go after the applicant locally or throughout the country, which may raise the question of the existence of internal refuge and its reasonableness (at least in connection with the analysis conducted under section 96 of the Act).

[39] Thereafter, it appears that the "means and motivation" assessment became firmly integrated into the IFA analysis in the early 2010s: see *Lara Deheza v Canada (Citizenship and Immigration)*, 2010 FC 521; *Singh Gill v. Canada (Citizenship and Immigration)*, 2011 FC 447*; Flores Vargas v Canada (Citizenship and Immigration)*, 2012 FC 129; *Mayorga Gonzalez v Canada (Citizenship and Immigration)*, 2012 FC 987*; Gulyas v Canada (Citizenship and Immigration)*, 2013 FC 355; *Nimako v Canada (Citizenship and Immigration)*, 2013 FC 540.

[40] The "means and motivation" assessment appears to be helpful in assisting decision-makers to consider the question of risk in the IFA location. After all, if an agent of harm lacks *either* the desire or the capacity to harm an individual, it will generally follow that international protection is not warranted. Conversely, if the agent of harm *does* possess both the means and the motivation to harm the individual in an IFA location, there is an essentially straight line to the conclusion that refugee protection may be warranted.

[41] Recall that the test for the first prong of the IFA test is whether, on a balance of probabilities, there is a serious possibility of the claimant being persecuted, or that the claimant will be subject to a personalized risk of torture, risk to life, or risk of cruel and unusual punishment, in the proposed IFA location.

[42] With this in mind, the question arises as to how the "means and motivation" assessment maps onto the first prong of the IFA test, which was developed several years before the "means and motivation" approach became a common mode of analysis for assessing risk in an IFA location. More specifically, it raises the question as to whether (in the s.96 context) the "means and motivation" line of inquiry relates to background facts, to be assessed on a balance of probabilities, or whether it constitutes the decision-maker's core risk assessment, to be assessed against the "serious possibility" threshold.

[43] In *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 483 at para 16, this Court found that the Immigration and Refugee Board had erred because it addressed the question of whether the assailant in that case would be able to find the applicant on a higher standard than that of a "serious possibility of persecution."

[44] Later, in *Halder v Canada (Citizenship and Immigration)*, 2019 FC 922 [*Halder*] the Court again considered the issue, concluding that it was incorrect for the Refugee Protection Division to require the applicant to prove that his past persecutors would find him in the future, on a balance of probabilities.

[45] Roughly a year later, my colleague Justice Grammond squarely addressed the issue in *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098, at paras 27-29 [*Gomez Dominguez*]:

> The RAD committed a second error by applying the balance of probabilities standard to all of the issues in the case. In so doing, it failed to apply the standard of serious risk to the persecution to which Ms. Gomez would be exposed. As the Supreme Court of Canada noted in *Chan*, the standard of serious risk does not require that there be more than a 50% probability that the risk will materialize.
>
> The RAD's error is reflected in the following excerpt from its reasons for decision:
>
> > After examining the evidence, I find that the RPD did not err in concluding that FARC dissidents do not have the capacity or motivation to find them in Cartagena, on a balance of probabilities.
>
> A conclusion as to the capacity or motivation of agents of persecution, while it may depend on certain facts, is essentially a risk assessment. As Justice de Montigny pointed out in *Pacificador*, the decision maker then looks to the future. Future events are not proven, but feared. This fear justifies refugee protection even if the probability of the event occurring is less than 50%.

[46] As the parties note, neither *Halder*, nor *Gomez Dominguez* have been cited widely by this Court. The decisions were recently distinguished in *Ahlawat v Canada (Citizenship and Immigration)*, 2025 FC 87. *Gomez Dominguez* was also distinguished in *Bolivar Cuellar v Canada (Citizenship and Immigration)*, 2022 FC 641, *Orrego Suarez v Canada (Citizenship and Immigration)*, 2023 FC 14, and *Zepeda Rosales v Canada (Citizenship and Immigration)*, 2024 FC 213.

[47] In *Bayode v Canada (Citizenship and Immigration)*, 2024 FC 18 [*Bayode*], Justice Roy appears to have taken a different approach, one that I must acknowledge is not obviously reconcilable with *Gomez Dominguez*. In that decision, Justice Roy stated (at para 24): "The facts, and in this case they are the facts that help establish means and motivation, must be proven on a balance of probabilities, and those proven facts may lead to the conclusion that there is a serious possibility of persecution at the IFA location." [emphasis added]

[48] Again, while it is not strictly necessary to reconcile the jurisprudence in disposing of this application, I tend to agree with the analyses set out in *Halder* and *Gomez Dominguez*. This is primarily because I agree that the assessment of the future motivation and means of one person to persecute another person does strike me as lying at the very core of any assessment of risk. If this assessment is undertaken on a balance of probabilities, there is essentially nothing left to be assessed according to the serious possibility test: see para 40, above, and *Gomez Dominguez* at para 31.

[49] Somewhat ironically, I find further support for this view from the *Bayode* decision, in which Justice Roy stated (at para. 25): "It is rather obvious, it seems to me, that if there is no, or not sufficient, evidence [on a balance of probabilities] of means and motivation to find and locate persons who are said to flee persecution in their neck of the woods, there can hardly be a serious possibility of risk." Respectfully, it seems to me that if there can be no persecution without means and motivation, this supports the suggestion that these concepts are central to the assessment of risk.

[50] The above analysis is not meant to question the distinction between the standard of proof applied to evidentiary findings and the legal test: *Li* at para 10. In most circumstances, the distinction between the two assessments is clear. History has proven, however, that in some circumstances, delineating these concepts is "no easy task": *Gomez Dominguez* at para 18. As Justice O'Reilly noted in *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at para 5, while the test is "well known and widely accepted, it is notoriously difficult to express in simple terms."

[51] I believe the difficulty lies in the fact that, in some circumstances, factual findings that would typically be assessed on a balance of probabilities are conclusive of the ultimate issue, which is the question of risk. In my view, the assessment in those circumstances must incorporate the "serious possibility" threshold. Otherwise, the risk assessment is functionally (and improperly) undertaken on the elevated balance of probabilities standard.

[52] It follows from the above that the question of means and motivation, in the IFA context, may be sufficiently intertwined with the ultimate risk assessment, such that they should be considered in light of the legal test, in other words, the serious possibility threshold.

VIII. CONCLUSION

[53] For the above reasons, this application for judicial review will be dismissed, and I decline to certify a question of general importance.

JUDGMENT in IMM-6145-24

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. No question is certified.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Micheal Crane	FOR THE APPLICANT
Idorenyin Udoh-Orok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT