Federal Court  Cour fédérale

Date: 20250711

Docket: IMM-13379-24

Citation: 2025 FC 1243

Toronto, Ontario, July 11, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BANARSI
SANJEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated July 5, 2024 [the Decision], by the Refugee Appeal Division [RAD], dismissing the Applicants' appeal and confirming the decision of the Refugee Protection Division [RPD] to refuse the Applicants' refugee claims. In

the Decision, the RAD concluded that the Applicants have a viable internal flight alternative [IFA] within India.

[2] As explained in greater detail below, this application for judicial review is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. **Background**

[3] The Applicants are spouses and citizens of India who fear persecution in India by local thugs and police [together, the Agents of Persecution or AOP] due to the Applicants' political opinion. The thugs targeted the Applicants because the first-named Applicant [the Principal Applicant] assisted the spouse of his cousin [the Cousin] in a local election, in opposition to a candidate supported by the thugs. Following the election, the thugs threatened and attacked the Principal Applicant on multiple occasions and murdered the Cousin and a relative of the Cousin.

[4] The Principal Applicant sought help from the police, but no action was taken because the thugs bribed the police. In November 2019, the police came to the Applicants' home, assaulted the second-named Applicant [the Associate Applicant], and detained, questioned, beat, and extorted the Principal Applicant. Upon his release, the police informed the Principal Applicant that they would be watching him. The Applicants went into hiding and subsequently left India on February 12, 2020, and arrived in Canada on February 13, 2020, and claimed refugee protection.

[5] In a decision dated March 12, 2024, the RPD rejected the Applicants' refugee claims. The RPD found that sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA] both apply to the Applicants' circumstances. However, the RPD refused the Applicants' claims because the RPD determined that the Applicants have a viable IFA in five cities within India.

[6] The Applicants appealed the RPD's decision to the RAD, and on July 5, 2024, the RAD issued the Decision that is the subject of this application for judicial review.

III. **Decision under Review**

[7] In the Decision, the RAD dismissed the Applicants' appeal and confirmed the RPD's decision that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97, respectively, of the IRPA. The RAD found that two of the cities the RPD determined to be IFAs are not viable because they are in the "local area" where the AOP would be able to locate the Applicants [the Local Area IFAs]. However, the RAD then assessed the remaining three cities identified by the RPD as IFAs and ultimately concluded that those locations represented viable IFAs for the Applicants within India [the Viable IFAs].

[8] The RAD concluded the Applicants would not face risk according to section 96 or 97 of the IRPA in the Viable IFAs because the Applicants failed to establish, on a balance of probabilities, that the AOP have either the means or motivation to locate the Applicants in the Viable IFAs. The RAD found that the evidence did not support that the AOP have the means or motivation to locate the Applicants outside the local area where the incidents of persecution had occurred.

[9] The RAD additionally rejected the Applicants' submission that the RPD failed to consider a medical report addressing the Principal Applicant's mental health issues [the Medical Report], including difficulties recollecting and answering questions. The RAD found the RPD made reasonable accommodations for the Applicants and that the Applicants understood the questions the RPD asked of them and answered accordingly.

[10] The RAD then found the Applicants failed to establish that the Proposed IFAs are unreasonable. In relation to the Applicants' argument that the RPD had failed to consider the Gender Guidelines of the Immigration and Refugee Board of Canada [the Gender Guidelines], the RAD agreed with the RPD that the Applicants failed to demonstrate that the Associate Applicant fit the profile of a woman who would be vulnerable as to her basic life needs in the Viable IFAs, noting that she is well-educated and has work experience. The RAD further accepted the RPD's analysis that the Principal Applicant's mental health issues do not render the Viable IFAs unreasonable, because the Medical Report did not address how returning to India would impact these issues and because mental health services are more readily available in urban areas such as the Viable IFAs.

[11] Given the foregoing, the RAD found the Applicants have a viable IFA within India and rejected the Applicants' refugee claims.

IV. **Issue and Standard of Review**

[12] The sole issue for the Court's determination in this application for judicial review is whether the Decision is reasonable. As contemplated by this articulation of the issue, the

standard of reasonableness applies to this analysis, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

V. **Analysis**

[13] The Applicants advance several arguments in support of their position that the Decision is unreasonable.

[14] In relation to the first prong of the IFA test, which considers whether there is a serious possibility of a refugee claimant being persecuted in a proposed IFA, the Applicants emphasize the evidence that they were harassed and attacked for several years and were located by the AOP in places to which they moved in India prior to fleeing to Canada, as well as evidence of efforts by the AOP to locate the Applicants in India (albeit in the local area where the persecution had occurred) even after they came to Canada. The Applicants argue that, with the benefit of that evidence, it was unreasonable for the RAD to find that the AOP have neither the means nor the motivation to locate them in the three Viable IFAs. The Applicants submit that, in arriving at that conclusion, the RAD ignored, misconstrued, or failed to give appropriate weight to the evidence and take the position that it was irrational, and represents speculation and conjecture, for the RAD to have concluded that the AOP have the means and motivation to locate them in the Local Area IFAs but not in the Viable IFAs.

[15] I accept the Applicants' submission that the Decision does not expressly reference and analyse all the individual pieces of evidence that were before the RPD and RAD. However, it is clear from the Decision that the RAD accepted that the Applicants had been threatened and

attacked by thugs over the course of several years and that the thugs were able to bribe the local police to harass and intimidate the Applicants. There is therefore no basis to conclude that the RAD ignored or overlooked evidence of the persecution that the Applicants experienced in the area in which they lived.

[16] As for efforts by the AOP to locate the Applicants after they went into hiding, the RAD noted the Applicants' argument that they had been located by the AOP on several occasions. However, the RAD explained that, aside from one of the Local Area IFAs, the Applicants had not specified which locations or occasions they were referring to. The RAD also noted that, even accepting that the AOP were aware that the Applicants had relocated to that Local Area IFA, their own testimony was that there was no encounter with the AOP there. While the RAD accepted that the AOP would be able to locate the Applicants in that Local Area IFA and that there was therefore no viable IFA there, the RAD found that the evidence was insufficient to demonstrate that the AOP would have the means to locate and harm the Applicants in the Viable IFAs.

[17] As the Respondent submits, the Applicants' submissions have not identified any particular evidence that was overlooked or misconstrued by the RAD in conducting the foregoing analysis. Nor have the Applicants convinced the Court that the record before the RAD included evidence that sufficiently contradicts the RAD's findings that the Court should infer that such evidence was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FCTD) at para 17). Rather, I agree with the Respondent's

position that the Applicants' arguments amount to a disagreement with the weight that the RAD assigned to the evidence. Revisiting such weight is not the Court's role on judicial review.

[18] As I read the Decision, the RAD reasoned from the evidence that the persecution experienced by the Applicants was in their local area and that, while they faced risk in that area including the Local Area IFAs, there was insufficient evidence to establish that the AOP have the means or motivation to locate the Applicants in the Viable IFAs that were outside the local area. That reasoning is intelligible and withstands judicial review under the principles identified in *Vavilov*.

[19] The second prong of the IFA test considers whether, in all the circumstances particular to the refugee claimant, conditions in a proposed IFA are such that it would not be unreasonable for them to seek refuge there. In relation to this prong of the test, the Applicants refer to the Medical Report in support of an argument that the RAD erred in failing to consider the fact that the Principal Applicant suffers from an adjustment disorder as a result of the persecution he has experienced in the past.

[20] However, the Decision demonstrates that the RAD expressly considered the Applicants' arguments on appeal that the RPD had ignored the Medical Report. The RAD concluded that the RPD had specifically considered the Medical Report and the availability of mental health care in the proposed IFAs, noting that the Medical Report did not address how returning to India may affect the Principal Applicant and also that mental health services are more readily available in urban areas such as the proposed IFAs. The RAD observed that the Applicants did not address

those issues on appeal. I find no reviewable error arising from the Applicants' submissions in relation to this aspect of the Decision.

[21] Also in relation to the second prong of the IFA test, the Applicants argue that the RAD erred in not considering the Gender Guidelines and how the Associate Applicant would be affected if she were to return to India, including whether the Associate Applicant would be able to obtain police protection. The Applicants had similarly argued on appeal to the RAD that the RPD failed to properly consider the Gender Guidelines. However, the Decision demonstrates that the RAD considered this argument and agreed with the RPD that the Associate Applicant did not fit the profile of a woman who would be vulnerable as to her basic life needs in the proposed IFAs.

[22] As to the availability of police protection for the Associate Applicant in the IFAs, I note that the Applicants also argue that the RAD erred by failing to consider whether both Applicants would be able to obtain police protection or state protection more generally in India. I agree with the Respondent's response to this argument that, if an IFA is found to be viable within the meaning of the applicable test, no state protection analysis is required (*Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263 at paras 10-11)

[23] In conclusion, I find that the Decision is reasonable and that this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT in IMM-13379-24

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13379-24
STYLE OF CAUSE:	BANARSI ET AL v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 10, 2025
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	JULY 11, 2025

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