Federal Court Cour fédérale

Date: 20251107

Docket: IMM-14043-24

Citation: 2025 FC 1797

Toronto, Ontario, November 7, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

PARTH VISHNUBHAI PATEL
NIVYA PARTH PATEL

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 12, 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 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 RAD's IFA analysis in the Decision is reasonable.

II. **Background**

[3] The Applicants are spouses and citizens of India who fear persecution in India by members of the Bharatiya Janata Party [BJP] and the Rashtriya Swayamsevak Sangh party, including family members of the aunt of the first-named Applicant [the Principal Applicant], who hold powerful positions in the BJP, and their police accomplices [together, the Agents of Persecution or AOP]. The AOP targeted the Applicants due to the Principal Applicant's former membership in the Congress Party and participation in anti-government protests in 2015, as well as a dispute between the Principal Applicant's aunt and her former husband, the Principal Applicant's uncle.

[4] The Applicants left their hometown and began hiding in a location identified by a relative of the second-named Applicant [the Associate Applicant] in India in January 2018, and in May 2018 the Applicants left India and arrived in Canada. The Applicants filed their refugee claims in 2022.

[5] On February 21, 2024, the RPD rejected the Applicants' refugee claims, finding that the Applicants are neither Convention refugees nor persons in need of protection under sections 96

and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], due to the availability of a viable IFA within India.

[6] The Applicants appealed the RPD's decision regarding a viable IFA, and on July 12, 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 due to the availability of an IFA within India.

[8] The RAD first rejected two articles filed as new evidence before the RAD. The RAD found that one article failed to meet the requirements for admission of new evidence under subsection 110(4) of the IRPA, but it accepted that the second article, dated March 29, 2024, and titled "Young Indians more likely to be jobless if they're educated" [the Second Article], met these requirements. The RAD nonetheless determined the Second Article was inadmissible because it did not relate to the Applicants' circumstances and was therefore irrelevant. Accordingly, the RAD also dismissed the Applicants' request for an oral hearing.

[9] The RAD concluded that the Applicants would not face a risk in accordance with section 96 or 97 of the IRPA in the proposed IFA. For the purposes of its analysis, the RAD accepted that the AOP have the means to locate the Applicants in the proposed IFA, but it found that the Applicants failed to establish on a balance of probabilities that the AOP have the motivation to

exercise these means. The RAD rejected the Applicants' arguments that the RPD erred in rationalizing the AOP's actions and finding that the AOP would be unaware of the Applicants' presence in the proposed IFA despite the Applicants' family and internet use. The RAD found insufficient evidence to establish, on a balance of probabilities, that the AOP remain interested in the Applicants, noting that the Applicants hid in the proposed IFA for five months prior to arriving in Canada without contact from the police and that the AOP have not contacted the Applicants or the Applicants' family in India since the Applicants left India.

[10] The RAD then concluded that the Applicants failed to establish that the proposed IFA is unreasonable. The RAD noted that the Applicants referred to new evidence before the RAD, which the RAD found inadmissible, rather than identifying errors in the RPD's analysis. The RAD accepted the RPD's analysis and found, on a balance of probabilities, that the Applicants would be able to find employment and housing in the IFA location and would not face serious social, cultural, familial, or economic barriers by relocating to the proposed IFA.

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

IV. **Issues and Standard of Review**

[12] The parties' submissions raise the following issues for the Court's determination in this application:

A. Whether the RAD erred in refusing to admit the Second Article; and

B. Whether the Decision on the merits of the Applicants' claim is reasonable.

[13] As contemplated by the articulation of the second issue above, the Court's review of the merits of the Decision is subject to the standard of reasonableness, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. As the RAD's finding, that the Second Article was not admissible as new evidence, forms part of the Decision itself, it is also governed by the reasonableness standard (*Arylov v Canada (Citizenship and Immigration)*, 2024 FC 997 at paras 24-25, 11; *Oommen v Canada (Citizenship and Immigration)*, 2025 FC 1039 at paras 3-4).

V. **Analysis**

A. *Whether the RAD erred in refusing to admit the Second Article*

[14] Applying the factors identified in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 and *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96, the RAD refused to admit the Second Article, because it found its content irrelevant to the Applicants. The RAD noted that the article referred to youth unemployment rates and cited statistics for young people up to the age of 29. The RAD observed that the Principal Applicant was currently 32 years old and, while the Associate Applicant was only 26 years old, the RAD found that the article was not relevant to her as her previous employment was as a homemaker.

[15] The Applicants argue that, while the Principal Applicant does not fall directly within the age categories identified in the Second Article, it is still relevant to him, because it has been only

six years since he finished his postsecondary education and he has limited professional work experience.

[16] However, as the Respondent submits, the RAD noted that the Applicants' submissions in support of the admission of the Second Article merely stated that it was relevant because it referred to the unemployment situation in the India which was part of the IFA assessment. As such, the RAD cannot be faulted for having failed to consider an argument that was not advanced before it. Moreover, the RAD's reasoning in concluding that the article is not relevant to the Principal Applicant is intelligible, and the Applicants' argument is therefore not a basis for the Court to interfere with that aspect of the Decision.

[17] The Applicants also argue that the RAD erred in failing to admit the Second Article because, although the Associate Applicant's experience was as a homemaker, this did not mean that she would not seek employment in India in the future. Again, this argument was not advanced before the RAD and, as the Respondent submits, the evidence before the RAD did not refer to the Associate Applicant finding work in the future. As such, the RAD was entitled to find that the article was not relevant to her.

[18] I find no error by the RAD in its failure to admit the Second Article.

B. *Whether the Decision on the merits of the Applicants' claim is reasonable*

[19] 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)). Once the possibility of an IFA is raised, the claimant bears the onus to establish the proposed IFA is not viable by defeating at least one prong of the above test (*Ahmed v Canada (Citizenship and Immigration)*, 2023 FC 496 at para 26).

[20] The Applicants advance arguments challenging the RAD's findings under both prongs of the IFA test.

A. First Prong

[21] For purposes of its analysis under the first prong of the IFA test, the RAD accepted that the AOP had the means to locate and harm the Applicants. The determinative issue was motivation, as the RAD found that the Applicants had not established that the AOP had the motivation to pursue them outside the state where the persecution had occurred. In so concluding, the RAD noted that the Applicants had not heard from any of the AOP, either directly or indirectly (through family members or anyone else) since they left India in May 2018. Nor did the Applicants or any of their relatives have any contact from the police, who had allegedly detained the Principal Applicant in January 2018, during the period the Applicants were in hiding in the IFA between January and May 2018. Although several of the Principal

Applicant's family members also left India in August 2018, the Associate Applicant still had relatives in India, and there was no evidence that they had been contacted by the AOP.

[22] The Applicants argue that the RAD erred in this analysis, which focused upon the lack of past efforts to locate the Applicants, because the jurisprudence requires that an IFA analysis be prospective (*Acevedo v Canada (Minister of Citizenship and Immigration)*, 2005 FC 585 at paras 11-12). However, while the Applicants accurately assert that the law requires a prospective analysis, it is clear that such an analysis can take into account evidence as to whether agents of harm attempted to locate claimants in the past (*Chavez Perez v Canada (Citizenship and Immigration)*, 2021 FC 1021 at para 10).

[23] Relying on *Canifru Candia v Canada (Citizenship and Immigration)*, 2024 FC 917 [*Canifru Candia*] at paras 20-21, the Applicants also argue that the RAD failed to reasonably factor the particular circumstances of the Applicants' claim into their assessment of motivation. The Applicants emphasize that the AOP's motivation to pursue the Applicants included both political issues and personal revenge.

[24] While the RAD's analysis focused on the lack of past efforts to locate the Applicants, it cannot be concluded from the Decision that this analysis was conducted without attention to the AOP's particular motivation. The RAD expressly references both the political element of the persecution and the desire for revenge. *Canifru Candia* is distinguishable, in that the circumstances in that case, which the Court found had not been considered, included a pattern of no contact by the agents of harm followed by renewed harassment and threats (at para 20).

[25] The Applicants further submit that the lack of effort by the AOP to locate them could be explained by the possibility that the AOP knew that the Applicants had already left India. While this is possible, this submission is effectively asking the Court to reweigh the evidence. It does not identify a logical error in the RAD's reasoning, particularly in the absence of evidence that the AOP were aware of the Applicants' departure.

[26] The Applicants also take issue with the RAD's agreement with the RPD that there was no evidence that the AOP would have any way of knowing if the Applicants returned to India. The Applicants submit that this finding, expressed to be irrespective of the Applicants' Internet usage and contact with family and friends, is inconsistent with the RAD's finding that the AOP had the means to locate the Applicants in the IFA. The Applicants note case law to the effect that it can be unreasonable to expect claimants to limit their Internet use usage (*Marimuthu v Canada (Citizenship and Immigration)*, 2022 FC 1694 at paras 47-48). They submit that, in the context of such use and the RAD recognizing both that the AOP had the motivation to locate the Applicants in the home state and the means to do so elsewhere, the RAD failed to explain why the motivation to locate them in the IFA did not exist.

[27] Effectively, the Applicants are arguing that, if the means existed and it would be easy to exercise those means, then the motivation should follow. While this would be an available analysis of the evidence, it does not undermine the reasonableness of the Decision, as it was available to the RAD in weighing the evidence before it to conclude that, in the absence of past efforts, the AOP were not motivated to put effort into pursuing the Applicants outside their home state.

[28] Finally, the Applicants invoke jurisprudence to the effect that testimony cannot be rejected solely because of a lack of corroborative evidence (e.g., *Potesh v Canada (Minister of Employment and Immigration)*, 2005 FC 1034 at para 7). They argue that the RAD unreasonably rejected the Principal Applicant's testimony, in support of risk that would be faced in the proposed IFA, due to a lack of corroboration, and that this was unreasonable particularly when many of the family members who might otherwise have been contacted by the AOP had left the country.

[29] However, as the Respondent submits, the evidence is that members of the Associate Applicant's family remained in India. Moreover, I do not agree that the RAD's reasoning can be characterized as based on a lack of corroborative evidence so as to fall afoul of the jurisprudence upon which the Applicants rely. While the Applicants asserted that they faced risk in the IFA, and the RAD found otherwise, the Applicants have not identified any factual testimony that was rejected due to an absence of corroboration.

B. Second Prong

[30] The Applicants submit that the Decision is unreasonable because, in assessing the second prong of the IFA test, the RAD failed to consider the evidence in the Second Article. As I have rejected earlier in these Reasons the Applicants' arguments surrounding the admissibility of the Second Article, this submission also fails.

[31] The Applicants also argue that the RAD did not properly consider the objective evidence in the National Documentation Package [NDP] for India. The Applicants emphasize evidence in

a particular NDP item to the effect that people in India may face harassment and political exclusion when moving to a place where the local language and culture are different from their region of origin. Based on this evidence, the Applicants submit that they could face obstacles such as discrimination and harassment in the IFA, leading to difficulties in securing employment in the absence of any network or social connections, and that it was inconsistent with this evidence for the RAD to find that they should be able to establish themselves in the IFA.

[32] I agree with the Respondent that this argument surrounding country condition evidence related to harassment and discrimination in the IFA was not raised before the RAD and is therefore not appropriate for the Court to consider on judicial review (*Akpore v Canada (Citizenship and Immigration)*, 2023 FC 362 at para 35). I also agree with Respondent that, even if this argument were to be considered, it would not undermine the reasonableness of the Decision, as the effect of the evidence now referenced by the Applicants would not meet the high threshold identified by the RAD as necessary to demonstrate unreasonableness for purposes of the second prong of the IFA test (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) at para 15).

VI. **Conclusion**

[33] As I have considered and rejected the Applicants' arguments in support of their position that the Decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-14043-24

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

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