

Federal Court



Cour fédérale

Date: 20251031¹²

Docket: IMM-20387-24

Citation: 2025 FC 1763

Ottawa, Ontario, October 31, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAMAN KUMAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA], Mr. Raman Kumar (the Applicant), seeks judicial review of the rejection of his refugee protection appeal by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB).

[2] This judicial review is dismissed for the following reasons.

[3] The Appellant is a citizen of India and alleges fearing violence at the hands of two neighbours in his hometown over a land dispute. Before the Refugee Protection Division (RPD), he alleged that the men were well-connected to the authorities, including to the ruling Bharatiya Janata Party (BJP). The RPD found his allegations credible but rejected the claim because he had a viable internal flight alternative (IFA) in Kolkata. The RAD agreed.

[4] In finding a viable IFA, the RPD found that the agents of harm lacked the means and motivation to follow him to the IFA, and that it was not unreasonable for the Applicant, in his circumstances, to move to the proposed IFA. The RAD disagreed with the RPD's finding that the agents of harm lacked the means to locate him in the IFA. However, the RAD found that after they successfully took over the disputed land on February 5, 2024, the agents of harm lost the motivation to follow him to the IFA.

[5] The Applicant had left India in or about January 2023 to come to Canada to claim refugee protection. At the judicial review, the Applicant argued that in finding a viable IFA, the RAD had in effect found that he was a person in need of protection in his hometown. Further, in finding that the agents of harm always had the means to locate him, but that they only lost motivation on February 5, 2024, in effect the RAD had found that he was a protected person between the time he left his country and February 5, 2024. As such, the RAD needed to assess the claim under the compelling reasons exception under section 108(4) of IRPA, which allows the RAD to consider whether there are compelling reasons for a person to refuse to avail themselves of the protection of the country they left.

[6] The Applicant argues that by not assessing the compelling reasons exception, the RAD's reasons lost the intelligibility needed for the decision to be reasonable. At the hearing, the

Applicant argued further that after the RAD effectively found him to be a protected person at the time he had left India, its failure to proactively deal with the compelling reasons exception constituted a breach of procedural fairness. This ground of review was never raised or argued in the Applicant's memorandum or further memorandum, nor did he articulate how the RAD compromised procedural fairness. I will therefore only deal with his reasonableness argument.

[7] The Applicant does not challenge the reasonableness or the fairness of the RAD's finding that the Applicant had a viable IFA.

II. Decision

[8] I dismiss the Applicant's judicial review application because I find that the RAD's decision was reasonable and was reached in a procedurally fair manner.

III. Standard of Review

[9] The standard of review for the RAD's decision is reasonableness. Reasonableness review is a deferential standard that requires evaluating the outcome of an administrative decision in light of its rationale to determine whether the decision is transparent, intelligible, and justified (*Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at paras 12–15, 95 [Vavilov]). The reasons are the primary mechanism by which administrative decisionmakers show that their reasons are reasonable (*Vavilov* at para 81). Under *Vavilov*, a reasonable decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law” (*Vavilov* at para 85).

[10] The party challenging the decision must prove that it is unreasonable. For a reviewing court to overturn an administrative decision, the applicant must establish that there are “sufficiently serious shortcomings” such that it “cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency” (*Vavilov* at para 100).

IV. Analysis

A. *Preliminary matter: Can the Applicant raise the compelling reasons exception for the first time on judicial review even if it was never raised at the RAD?*

[11] In this case, I find that it was reasonable to raise the compelling reasons exception as an issue for the first time on judicial review. The Applicant argued, and the Respondent agreed at the hearing, that the issue could not have been reasonably contemplated before the RAD rendered its final decision. The Applicant argued that the RAD found that the agents of harm always possessed the means of locating him in the IFA, and lost motivation only after they illegally took the land on February 5, 2024. Therefore, according to the Applicant, the RAD effectively found that he was a protected person during the period between January 2023, at the time he left India, to February 5, 2024. It was the RAD’s final decision and its findings, which differed from the RPD’s, that triggered the compelling reasons exception as an issue.

[12] Because the RAD decision triggered the legal issue, the case differs from this Court’s other decisions that did not allow the applicant to raise compelling reasons for the first time on judicial review. For example, in *Singh*, justice Duchesne found evidence in the RPD’s reasons that could have allowed the Applicant in that case to bring the compelling reasons exception before the RAD (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 1865 at para 32 [*Singh*]). In *Ruano Castaneda*, Justice Grammond found that though the RAD accepted a version

of the facts most favorable to the claimant, this did not create an implicit finding that the claimant was entitled to refugee protection, and therefore the subsection 108(4) claim failed (*Ruano Castaneda v Canada (Citizenship and Immigration)*, 2024 FC 1514 at para 7 [*Ruano Castaneda*]). Justice Grammond thus did not consider whether subsection 108(4) of IRPA could be raised on judicial review (*Ruano Castaneda* at para 9).

[13] The facts at bar do not engage the logic of these cases. This is because the RAD's findings support the Applicant's argument that he was a protected person at the time he left India in January 2023, until the change of circumstance in February 2024. Furthermore, at the hearing, counsel for the Respondent agreed that under the circumstances, I could hear the issue concerning the compelling reasons exception. In other words, the RAD's specific findings raise the "potential" for the compelling reasons exception to arise on the facts. As the situation differs from that in *Singh* and *Ruano Castaneda*, it is therefore appropriate to hear the argument on judicial review.

[14] Furthermore, section 165 of IRPA provides that the RPD and the RAD function as boards of inquiry and may do all things necessary to ensure a full and proper hearing (*Sanders Carcamo c Canada (Citoyenneté et Immigration)*, 2024 CF 1181 at paras 7-8). This authority encompasses not only procedural flexibility but also the substantive duty to engage with any issue that, on the record, is reasonably capable of being determinative to the outcome.

[15] I therefore deal with whether the RAD's failure to deal with the compelling reasons exception rendered the decision unreasonable.

B. *Preliminary matter: Certified Question*

[16] The Applicant also submitted the following certified question:

“Is it ‘appropriate’ for this Court to hear a new issue on Judicial Review, when the Applicant could not have raised this new issue before the Tribunal, since this new issue was born from the Tribunal’s decision which is being challenged on Judicial Review?”

[17] To be certified, a question must be a serious one that is dispositive of the appeal, transcends the interests of the immediate parties to the litigation and raises an issue of broad significance or general importance (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 37 [*Mason*]; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36).

[18] Both parties agreed that if the Court found that the RAD’s reasons engaged the compelling reasons exception, then, it could decide the case on its merits. Given this, the compelling reasons exception would not be considered a new issue. The Applicant stated that he would then withdraw the certified question.

[19] Considering my finding to hear the case on its merits, the question is not dispositive of the case. Because it is not dispositive, the question does not meet the legal requirements to be certified (*Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040 at para 76).

C. *Did the RAD's failure to proactively deal with the compelling reasons exception render the decision unreasonable?*

[20] Given the legal framework of the compelling reasons exception and its limited relevance on the facts, I find that it was reasonable for the RAD not to engage with it as an issue.

[21] The reasonableness analysis does not take place in a factual vacuum. A reasonable decision is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 66). *Vavilov* advises against cataloguing an exhaustive list of factual considerations that could constrain the administrative decision-maker, but it creates a framework where "elements that will generally be relevant" guide the court to evaluate the reasonableness of a decision (*Vavilov* at para 106). These include factors such as the statutory scheme; relevant statutory or common law; the evidence before the decision-maker; the submissions of the parties; the past practices of the decision-maker; and the potential impact on the individual to whom a decision applies (*Vavilov* at para 106). These elements are not a checklist for reasonableness review, but rather highlight elements of surrounding context that can cause a reviewing court to lose confidence in the outcome reached (*Vavilov* at para 106).

[22] Since the case's legal and factual context are key to my assessment, I deal with both here. As stated, section 108(4) of IRPA sets out the statutory framework relevant to analysing the compelling reasons exception:

Rejection

108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of

Rejet

108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

protection, in any of the following circumstances:

(e) the reasons for which the person sought refugee protection have ceased to exist.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

e) les raisons qui lui ont fait demander l'asile n'existent plus.

Exception

(4) L'alinéa (1)e ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

The compelling reasons exception only triggers when, pursuant to paragraph 108(1)(e), the underlying reasons for the refugee claim have ceased to exist from the time the claimants fled. In this case, the Applicant argues that once the family decided to give up the property on February 5, 2024, the threats against them ceased, and that this amounted to the required change of circumstances under paragraph 108(1)(e).

[23] In applying sections 96 and 97 of *IRPA*, the Federal Court has held that the Board only has to consider the compelling reasons exception on its own initiative where a person was determined to be a Convention refugee or a person in need of protection, and also that the conditions that led to that finding no longer exist (*Contreras Martinez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 343 at para 21; *Lorne v Canada (Minister of Citizenship*

and Immigration), 2006 FC 384 at para 11; *Stapleton v Canada (Citizenship and Immigration)*, 2006 FC 1320 at para 29).

[24] The Applicant argues that the RAD found, by implication, that he was a person in need of protection from January 2023 when he left the country to February 5, 2024, when the change of circumstance occurred. The RAD decided that the agents of harm had the means and only lost the motivation after February 5, 2024; they continued to be interested to harm him in his hometown and the claim only failed on the availability of the IFA.

[25] However, the Applicant only partially engages with the elements needed to apply the compelling reasons exception. The jurisprudence also developed additional legal requirements for the compelling reasons exception, to trigger the RAD's duty to consider compelling reasons. This includes a need to have evidence of an elevated level of harm or persecution that would justify applying an exception to the rule under IRPA's paragraph 108(1)(e). After all, the compelling reasons exception arises from the atrocities committed by Nazi Germany in the Holocaust, and it is not to be extended to any and every refugee claimant who was persecuted in the past and that would not face a prospective risk.

[26] In *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 [*Gomez Dominguez*], justice Grammond quashed a RAD decision and found that the RAD needed, on the facts, to consider the application of section 108(4). The Court found that the evidence before the RAD showed that the Applicant's family had suffered grave harm, namely that family members had been murdered by the Revolutionary Armed Forces of Colombia, which *prima facie* might

have established compelling reasons (*Gomez Dominguez at paras 44-45*). But here, without the necessary evidence that could reasonably trigger the compelling reasons exception to be determinative, the RAD's failure not to proactively raise it does not render the decision unreasonable. I also disagree with counsel's argument during the hearing that the RAD's failure to raise the compelling reasons exception as an issue amounts to a breach of procedural fairness. It was not a potential issue to be raised in the circumstances of this case.

[27] While the jurisprudence diverges on the level or severity of harm needed to trigger the compelling reasons exception, there is no debate that the claimant bears the onus to prove the severity of harm. Regarding the debate as to the level of severity, one camp considers that the level of harm must be "atrocious" or "appalling" (see e.g. *Canada (Minister of Employment and Immigration) v Obsoj*, 1992 CanLII 14800 (FCA) at p 748). Another camp defines severity more broadly based on cases such as *Suleiman*, which have held that the issue is whether, given "the totality of the situation, i.e. humanitarian grounds, unusual or exceptional circumstances, it would be wrong to reject a claim or make a declaration that refugee protection has ceased in the wake of a change of circumstances" (*Suleiman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125 at para 16 [*Suleiman*]).

[28] *Suleiman* does not stand for the proposition that an elevated level of past persecution or harm is not needed. *Suleiman* only adopted that the factual circumstances of compelling reasons is based on all the circumstances of the case, including a consideration of the trauma caused by repatriation (my emphasis) (*Suleiman* at paras 16-19).

[29] This case cannot settle the debate on the severity of harm. However, both lines of cases still contemplate a heightened evidentiary burden to establish that there are compelling reasons for a claimant to refuse to avail themselves of the protection of the country they left (IRPA, s 108(4)). As a result, during the judicial review hearing, I asked the Applicant's counsel to point me to any evidence of past persecution on the record before the RAD that could be viewed "potentially" as an evidentiary foundation for the compelling reasons exception. Counsel referred me to none. Counsel only took me to the part of the RPD decision where the member found that subjective fear existed, and the RAD decision where the member found that the risk ended only on February 5, 2024, and reiterated the argument that the Applicant was therefore a person in need of protection at the time he left India.

[30] On either standard, these pieces of evidence do not establish on a balance of probabilities that there are compelling reasons not to return the Applicant to their home country.

[31] It is important to situate the tribunal's approach within the context of its statutory mandate, the factual context of the case, and its operational realities. The RPD and the RAD are specialized tribunals and are aware of the necessary evidentiary burden governing each legal test applicable to their determinations. The RAD did not need to address the compelling reasons exception; nothing on the record reasonably triggered such a need. As high-volume adjudicative bodies, the RPD and the RAD have a duty to resolve matters fairly, efficiently, and in accordance with the legal framework that governs their proceedings.

[32] It is well established that an administrative decision-maker, particularly one managing a substantial caseload, may structure its reasons and analysis in a manner that promotes efficiency and access to justice, provided that the decision remains intelligible and responsive to the determinative issues before it. One cannot expect administrative decision-makers to “respond to every argument or line of possible analysis” or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (*Vavilov* at para 128, citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16, 25).

[33] Accordingly, where the factual and legal circumstances are such that resolving a single, dispositive issue necessarily determines the outcome of the case, the tribunal is neither required nor expected to engage in further analysis of alternative issues that, on the facts as found, could not alter the result. The tribunal must address the issues that are material to the disposition, and avoid commenting or making findings on irrelevant issues, as here, or on matters rendered moot by its primary determination.

[34] This approach reflects both adjudicative economy and sound administrative practice, and results in reasons that respond to the facts before the adjudicator and the law they must apply. In so doing, the tribunal fulfills its statutory duty to decide cases in a fair, timely, and efficient manner while remaining faithful to the governing legal principles.

[35] As the Applicant agreed, the RAD’s reasons on the IFA analysis are reasonable and fair.

V. Conclusion

[36] For the foregoing reasons, the application for judicial review is dismissed.

[37] There is no question to be certified.

JUDGMENT IN IMM-20387-24

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.
2. There is no question for certification.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-20387-24

STYLE OF CAUSE: RAMAN KUMAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 23, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: OCTOBER 31, 2025

APPEARANCES:

Jonathan Gruszczyński FOR THE APPLICANT

Shalene Curtis-Micaleff FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jonathan Gruszczyński FOR THE APPLICANT
Montréal, QC

Department of Justice Canada FOR THE RESPONDENT
Montréal, QC