Federal Court  Cour fédérale

Date: 20211119

Docket: IMM-2359-21

Citation: 2021 FC 1270

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 19, 2021

Present: The Honourable Mr. Justice Pamel

BETWEEN:

AJAY ARORA
MILAN ARORA
DAKSH ARORA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Where an internal flight alternative [IFA] is available, the burden is on the refugee protection claimant to provide objective evidence establishing that there is a serious possibility of persecution in the proposed IFA or that conditions in the proposed IFA make relocation to that

area unreasonable, taking into account all the circumstances, including the claimant's personal situation. The threshold is to establish "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. In addition, it requires actual and concrete evidence of such conditions" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15).

[2] Ajay Arora, his wife, Milan Arora, and their minor son are seeking judicial review of a decision of the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] that the applicants are not Convention refugees or persons in need of protection because there is an IFA available to them in Bangalore, in the state of Karnataka, India.

[3] However, I see nothing unreasonable in the RAD's finding that the applicants have not demonstrated that it would be possible for their agents of persecution to locate them in Bangalore without the assistance of the state apparatus, that the agents of persecution would be able to locate them through the information on their national identification cards, or that the police in their previous place of residence would have the ability or incentive to file false criminal charges against them. For the reasons that follow, I am of the view that the application for judicial review should be dismissed.

II. Facts

[4] Mr. Arora was born and raised in Pehowa, in the state of Haryana, India. When Mr. Arora began working for the Indian National Lok Dal [INLD] party in June 2013, members of the Bharatiya Janata Party [BJP] began harassing him and threatening to physically attack him and his family if he did not join their party.

[5] In March 2016, members of the BJP stopped Mr. Arora, who was riding a motorcycle, and told him he had to join their party if he did not want them to attack his family. Mr. Arora was frightened by that event, and decided to leave with his wife and their son to live with his sister in Beas, in the state of Punjab. They stayed there for 15 days, as Mr. Arora had to return to work in the INLD camps.

[6] On May 29, 2016, while returning from an INLD camp, Mr. Arora was knocked off his motorcycle and attacked by BJP members. Following the attack, Mr. Arora and his wife went to the police station to file a complaint against the individuals who had assaulted him. The police officer refused to take their complaint, threatening instead to lodge a complaint against Mr. and Ms. Arora and incarcerate them. They left the police station without filing their complaint.

[7] Mr. Arora left India in June 2016 with the help of his uncle. Ms. Arora and her son remained in India with family members. In July 2016, strangers questioned Ms. Arora about her husband's whereabouts and threatened her with retaliation if she did not tell them where he was. Following that event, Ms. Arora decided to hide with her son at the home of family members.

However, members of the BJP tracked them down and threatened them again. Frightened, Ms. Arora ran away with her son, who injured himself when he tripped. Following that, Ms. Arora and her son rarely went out, and changed their location several times for fear of being found by the BJP members.

[8] Mr. Arora arrived in the United States in August 2016 and immediately filed a claim for asylum there. In June 2017, Ms. Arora decided to leave India with her son, and began the process of obtaining visitor visas for Canada. After obtaining visitor visas, they departed for Canada on December 25, 2017. In the meantime, Mr. Arora abandoned his asylum claim and left the United States in June 2018 to join his family in Canada, where the applicants claimed refugee protection on August 17, 2018.

III. Lower tribunal decisions

[9] In a decision dated July 15, 2020, the RPD found that an IFA was available in Bangalore. The RPD was not satisfied, on a balance of probabilities, that there was a serious possibility that the applicants would be persecuted in Bangalore. Having undertaken a detailed analysis of the resources available to the agents of persecution to track the applicants to Bangalore, the RPD found that the applicants' suggestions were mere speculation, as there was no objective evidence to show that the Indian government uses data from national identification cards to trace individuals or that the applicants could be tracked using police databases and the tenant verification system.

[10] The RPD further found, on a balance of probabilities, that it was not unreasonable for the applicants to move to Bangalore, given their advantageous situation in having the education and language skills to find employment there, and their adaptability.

[11] The applicants argued before the RAD that the RPD had failed to consider all of the documentary evidence in the National Documentation Package [NDP] regarding police databases and the tenant verification system.

[12] In a decision dated March 12, 2021, the RAD found that the RPD was correct in concluding that Bangalore was a viable IFA for the applicants. First, the RAD determined that the applicants had not demonstrated that it would be possible for their agents of persecution to locate them in Bangalore without the assistance of the state apparatus, given that the BJP is not the ruling party in the state of Karnataka. Second, the RAD concurred with the RPD that the applicants had not demonstrated that the agents of persecution would be able to trace them using data linked to the national identification card. Third, the RAD found that the applicants had not established that corrupt police in their previous place of residence would have the ability or incentive to file false criminal charges against them.

[13] With respect to the applicants' arguments, the RAD found that the RPD had not erred in not considering all of the documentary evidence in the NDP pertaining to police databases and the tenant verification system. Specifically, the RAD considered the issue of

> whether the Bangalore police would likely consult the [Crime and Criminal Tracking Network and Systems] regarding the appellants once registration in the tenant verification system begins, whether they would find any information there from corrupt police officers

> from the state of Haryana, and whether that information, if applicable, would likely cause them to communicate with colleagues from the state of Haryana. . .

[14] The RAD reviewed the NDP documents and decided "to give more weight to the most recent sources that refer to the most current reality, rather than those that refer to the failures of systems that no longer exist or sing the praises of what the technology promises to do on a national scale some day".

[15] After reviewing all of this evidence, the RAD therefore concluded that it had not been established that the tenant verification system and computer systems such as the Crime and Criminal Tracking Network and Systems [CCTNS] put the applicants at risk in Bangalore. The RAD added that in any event, it had not been established "that corrupt police officers from their previous place of residence had entered any information whatsoever into the computer systems accessible to Bangalore's police" and that "it [was] still speculative to claim that the police, or other authorities in Bangalore, would be sufficiently interested in those computer entries to contact the police from the appellants' previous place of residence".

IV. Issue

[16] There is only one issue raised in this application for judicial review: Is the RAD's decision reasonable?

V. Standard of review

[17] The parties believe that the standard of review applicable to the RAD decision is that of reasonableness (*Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11). I agree.

[18] The Court's role is therefore to determine whether the decision as a whole is reasonable, that is, whether it is based on "an internally coherent and rational chain of analysis" and whether it is in itself transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85–86, 100 [*Vavilov*]).

[19] The RAD's findings on the availability of an IFA are based on its assessment of all of the evidence, and require a high degree of deference from the Court (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 459 at para 23 [*Singh 2021*]).

[20] The Court must therefore refrain from reassessing and reweighing the evidence before the RAD unless the RAD "fundamentally misapprehended or failed to account for the evidence before it" (*Singh 2021* at para 23; *Vavilov* at paras 125–26).

VI. Analysis

[21] The test for establishing the existence of an IFA is two-pronged. The RAD must be satisfied, on a balance of probabilities (1) that there is no serious possibility of the claimants being persecuted in the Bangalore area; and (2) that, in all the circumstances, including circumstances particular to the claimants, it is not unreasonable for them to seek refuge in

Bangalore (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at pp 709–11).

[22] The applicants challenge only the RAD's findings on the first prong of the test. In essence, they argue that although the RAD [TRANSLATION] "conducted a very detailed analysis of the objective evidence", it discounted evidence in the NDP that did not support its reasoning regarding the tenant verification system and the CCTNS. Relying on these excerpts from the NDP, the applicants maintain that it is reasonable to believe that they would be tracked down by BJP members if they moved to Bangalore.

[23] I cannot agree with the applicants' argument. It is clear from the RAD's reasons that it was well aware that the NDP documents presented conflicting information:

> [21] Before analyzing the evidence related to these issues, it seems relevant for me to point out that the documentary evidence in the NDP is easily confusing for many reasons. . . .
>
> [23] As for the CCTNS, according to the recent RIR found at Tab 10.13, it is separated into a central and state component. Even though the CCTNS is functional in 91% of police stations according to some sources, or 55% of police officers have access to it, the central component, which is responsible for hosting data from across the country, is not, in my opinion, functional or reliable. The central component of the CCTNS imports data from the National Data Centre, which in turn imports data from the State Data Centre in the various states. However, data importation was paused in early 2017 when various software incompatibilities were noted. There is no indication that successful data importation has subsequently resumed. Therefore, I do not agree with the appellants' statement that the system has now been widely implemented.
>
> [24] Therefore, I prefer to give more weight to the most recent sources that refer to the most current reality, rather than those that refer to the failures of systems that no longer exist or sing the

> praises of what the technology promises to do on a national scale some day, as demonstrated by promising pilot projects.

[24] The applicants' only argument at the hearing was that although the RAD stated in paragraph 24 of its decision that it would give more weight to the most recent sources, it did not consider all recent sources. I see no substance to this argument.

[25] It is well established that a decision maker is presumed to have weighed and considered all of the evidence, unless the contrary is established (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 38 [*Singh 2020*]). In addition, the Supreme Court of Canada has established that "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Failure to mention certain evidence does not mean that the RAD ignored it.

[26] It is up to the RAD to determine what evidence it considers most persuasive to support its findings, and the Court is not authorized to reassess the evidence or substitute its own assessment (*Singh 2021* at para 20; *Singh 2020* at para 39).

[27] Furthermore, it is important to note that the applicants do not challenge the RAD's other findings. The objective evidence submitted by the applicants does not contradict the RAD's other findings, including that it had not been established that the Haryana police had entered any information into the CCTNS and that it was speculative to claim that Bangalore police officers would be sufficiently interested in the applicants to contact the Haryana police.

[28] The RAD found that the applicants had not presented any actual and concrete evidence that the agents of persecution would be able to track them to Bangalore (*Adebayo v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 330 at para 53). In short, in this case, the applicants have not met their burden of showing that the IFA is unreasonable, and I have not been persuaded that the RAD's decision was unreasonable in the circumstances.

VII. Conclusion

[29] I would dismiss the application for judicial review.

JUDGMENT in IMM-2359-21

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Peter G. Pamel"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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