

Federal Court



Cour fédérale

Date: 20211220

Docket: IMM-2637-21

Citation: 2021 FC 1450

Vancouver, British Columbia, December 20, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

PRABHJOT KAUR SANDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered Orally from the Bench by Videoconference on December 13, 2021)

[1] The Applicant seeks judicial review of the decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dated March 26, 2021, which rejected her refugee claim. Her claim was based on a fear of persecution by Indian society for being perceived as a single divorcée, in addition to a risk to her life from her abusive ex-husband.

[2] The RAD upheld an earlier decision of the Refugee Protection Division (RPD), which had also rejected her claim on the basis of an internal flight alternative (IFA).

[3] The RAD, in a detailed decision agreed with the RPD that she made out a credible allegation of domestic violence, but the determinative issue was whether she could return to safety in Bengaluru (Bangalore), as distinct from Manuke, the village in the province of Punjab where she lived with her ex-husband.

[4] The RAD determined the RPD was correct to conclude that the Applicant's agents of persecution would not be able to find her in Bangalore, and that the Applicant had not contested this conclusion. The RAD also noted that the Applicant had since remarried, and did not allege any mistreatment in her new relationship. The RAD acknowledged the prevalence of violence against women in India, including sexual violence, but found, as had the RPD, that the Applicant had failed to demonstrate that she would face a serious possibility of risk if she were to relocate to the IFA.

[5] The RAD noted that the Applicant's claim was based on the premise that she would be perceived as a single divorcée abandoned by her husband. The RAD pointed out that the Applicant was no longer single, but had rather remarried, and would have access to a network of support, including from her parents and her new husband's family, even if abroad.

[6] The RAD also noted that when she was questioned on why her new husband could not accompany her to India, she replied that there was no work in India and he could not support himself, an assertion that was not supported by any evidence. After the RAD acknowledged the

discrimination suffered by women in employment, education and housing in addition to the evidence that divorced women were ostracised, the RAD observed that single women are more likely to be employed in urban areas, and that the Applicant was educated in IT sciences. The RAD also noted the RPD's observation that the IT sector is the largest industry in Bangalore, in addition to being the Indian industrial sector in which the largest number of women are employed.

[7] In this judicial review, the parties agree that the appropriate standard of review is reasonableness, per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[8] The Applicant challenges the RAD decision on two separate grounds.

[9] First, the Applicant submits that the RAD was speculative in its IFA analysis when it considered that the Applicant would have access to a network of support. The Applicant submits that her in-law's family was primarily in Canada and that there was no evidence they would provide support that would limit her being ostracised in the IFA. She further submits that there was no evidence her husband would support her, and that having testified that he would not accompany her to India, the RAD's conclusions as to the support she could expect were based on pure conjecture.

[10] I cannot agree that it was unreasonable to infer that a husband would support his wife, even if it were from abroad, given his legal, to say nothing of moral and possibly religious obligations to do so. I note that the Applicant's reason for the husband not accompanying her to India was based on an entirely unsubstantiated assertion that he would be unable to find work

there, which the RAD considered speculative. Furthermore, as pointed out during the arguments before this Court, the fact that she fears being perceived as a single woman does not validate that claim. The fact is that she is now married. Whether her husband chooses to live physically with her or remain in Canada, is their choice as a married couple. He has a right to live in India as an Indian citizen, just as she does. Her subjective fear does not meet the requirements of the objective component of the IFA analysis.

[11] Furthermore, the Applicant's husband's family's composition was indeed before the RAD. She testified before the RPD that her husband's mother, father and sister lived in Canada, and that he had a brother living in the Punjab. The RAD also took into consideration that the Applicant had received concrete support from her parents during her divorce from her first husband. Consequently, it was reasonable for the RAD to infer that the Applicant's family, including her new husband and his family would offer her support if she were to return to India, even if the support was to come from abroad. There is no evidence in the record that either of these families have indicated any reluctance to support their daughter or daughter-in-law, whether emotionally, financially or otherwise.

[12] Second, the Applicant submits that the RAD erred by failing to consider that the Applicant had no work experience in India, and that she does not speak the languages that are widely spoken in the IFA. I note that there was some discussion of the Applicant's language competencies during her testimony before the RPD, but no arguments were raised with respect to her language competency and whether she could settle in Bangalore. First, I was not pointed to any evidence in the record before me to support her assertions that her language, Punjabi, is not spoken in the IFA. Second, even if that is the case, arguments that were not before the

decision-makers below cannot properly be raised for the first time on judicial review before this Court, particularly in the absence of an evidentiary record substantiating those new arguments. Finally, looking at reasonability of the decision in its totality, as *Vavilov* instructs the reviewing Court to do, the RPD explicitly took into account objective evidence of the IFA's openness and competitive work environment, and that Sikh minorities living outside the Punjab have access to housing, employment, health care, education and freedom to practice their religion and that they do not generally face difficulties relocating to other areas of India. There was no evidence that I was shown suggesting the situation to be any different in Bangalore.

[13] As for the question of work experience, while the RAD may not have explicitly noted the Applicant's lack of work experience, I cannot agree that this in and of itself renders the decision unreasonable. The Applicant has completed a bachelor's degree and a master's degree in IT sciences. She is 29 years old. The RAD specifically noted the Applicant's education in IT and cited objective evidence that the sector comprises the largest industry in Bangalore, and that employment opportunities are widely available to women there. It is clear that in spite of her lack of work experience, the RAD considered and was not concerned by her future job prospects. I cannot see, given the Applicant's educational profile, that this was an unreasonable conclusion. As the Respondent noted, all job entrants have to enter the job market somewhere, and Bangalore is a good place to start given the strength of its IT sector.

[14] For this and all the other reasons outlined above, I find the RAD's conclusion on the IFA, and the decision as a whole, to be reasonable.

JUDGMENT in IMM-2637-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties raised no questions for certification and I agree that none arise.
3. No costs will be issued.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2637-21

STYLE OF CAUSE: PRABHJOT KAUR SANDHU v THE MINISTER OF
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PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 13, 2021

JUDGMENT AND REASONS: DINER J.

DATED: DECEMBER 20, 2021

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