

Federal Court



Cour fédérale

**Date: 20220705**

**Docket: IMM-3880-21**

**Citation: 2022 FC 991**

**Toronto, Ontario, July 5, 2022**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**DEFICIAN ANTONY  
AMALU FELIZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Appeal Division [RAD] dated May 17, 2021 [Decision] confirming the refusal of the Applicants' refugee claim. The RAD agreed with the Refugee Protection Division [RPD] that the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as they had a viable internal flight alternative [IFA] in Goa, India.

[2] For the reasons that follow, I find that there is no reviewable error and that the application should be dismissed.

I. Background

[3] The Applicants, Defician Antony and Amalu Felix, are a married couple, who are citizens of India. They are from Kerala and were active members of the Kerala Christian Youth Movement. The Applicants assert they were subject to discrimination, harassment, and physical attacks from Hindu extremist groups because of a perception that they have attempted to convert Hindus to Christianity. They say they could not obtain protection from the police as they are primarily Hindu and influenced by the extremists. They assert a fear of persecution from the police and Hindu extremist groups.

[4] The Applicants left for Canada on July 18, 2018 on temporary resident visas and applied for refugee protection on April 17, 2019.

[5] On October 9, 2020, the RPD rejected the Applicants' claim. The RPD concluded that the Applicants did not face a serious possibility of persecution on Convention grounds or personally face a risk to their lives or serious harm in India. The RPD determined the Applicants had an IFA in Goa, India. It concluded that there was a significant Christian population in that state and that Hindu fundamentalists do not operate there. The documentary evidence did not support the Applicants' claim that Hindu fundamentalists and the Kerala police would be able to find them in Goa. As Ms. Felix had testified that the Applicants could make a life for themselves in Goa, both prongs of the IFA test were met.

[6] On May 17, 2021, the RAD denied the Applicants' appeal of the RPD Decision. The RAD agreed with the RPD that the Applicants would not be at risk in Goa, meeting the first prong of the IFA test. There was no challenge to the second part of the IFA test.

[7] On the first part of the test, the RAD reviewed country condition evidence showing that Christians who proselytize face a moderate risk of discrimination or violence, but concluded it does not rise to the level of persecution. It also found that the country condition evidence did not reflect a widespread pattern of persecution of Christians in Goa. The RAD agreed with the RPD that the Kerala police were unlikely to attempt to locate the Applicants in Goa and would not be motivated to find Mr. Antony.

## II. Issues and Standard of Review

[8] The Applicant raises the following two inter-related issues in their application:

- A. Did the RAD err in determining there would be no serious possibility of persecution to the Applicants in Goa?
- B. Did the RAD apply the wrong legal test?

[9] The standard of review is reasonableness. RAD decisions on the availability of an IFA are reviewed on the reasonableness standard: *Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 25. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 9-10, 16-17.

[10] A reasonable decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86. A decision will be reasonable if when read as a whole and taking into account this administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

### III. Analysis

#### A. *Did the RAD err in determining there would be no serious possibility of persecution to the Applicants in Goa?*

[11] The Applicant’s arguments focus on one paragraph of the Decision where the RAD writes:

In terms of the situation in India generally, although I acknowledge there may be a rise in Hindu nationalist sentiments, the Australian Department of Foreign Affairs writes “most Christians live day-to-day without societal discrimination or violence.” Even for Christians that proselytise, or are perceived to proselytise, there is a moderate risk discrimination or violence, and which I do not find rises to the level of persecution. Notably, in January 2019, the Indian government even passed a bill aiming to simplify the naturalization procedures for Christians fleeing from persecution in Afghanistan, Bangladesh and Pakistan and reduced the requirements of resident in India for citizenship by naturalisation from 11 years to 5 years for this community. Finally, according to the United Kingdom Home Office, religious freedom in India is constitutionally protected and is “generally respected,” and “information on the scale of the problem is vague, but Hindu nationalists are a small sub-set of the population and many issues in themselves would not give rise to a well-founded fear of persecution. [Emphasis added, footnotes removed]

[12] The Applicants highlight the RAD’s statement that there was a moderate risk of discrimination or violence to Christians who proselytise, or are perceived to proselytise. They argue that it was unreasonable for the RAD to make this conclusion about the situation in India

as a whole without considering whether this would be the situation in Goa. The Applicants argue that the comments made about Goa are not specific to proselytising. If proselytising in India generally amounts to a moderate risk of discrimination or violence, they argue it must also amount to a serious possibility of persecution, as the acts of persecution are broader for religious persecution. It argues that an application of the law otherwise is unreasonable.

[13] The Respondent asserts that the Applicants' argument focusses on the phrase "moderate risk discrimination or violence", which it analyzes in isolation instead of reading the Decision as a whole. It argues that the Applicants are seeking to lower the standard to which the RAD would grant status under section 96 of IRPA to one where if risk is found, status would need to be granted. The Respondent notes that the Applicants do not argue any of the factual findings; it asserts that instead the Applicants are trying to place a reverse onus on the RAD to establish that the Applicants cannot proselytise in Goa.

[14] As set out in *Vavilov*, when considering the reasonableness of a decision, the decision must be read as a whole. A reviewing court must begin its inquiry by seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion. Reasonableness review is not a "line-by-line treasure hunt for error", but rather a review of the reasoning process to determine if it is transparent, intelligible and bears justification for its conclusions: *Vavilov* at paras 84-85, 102.

[15] In this case, I agree with the Respondent that the Applicant's argument seeks to extract the phrase "moderate risk discrimination or violence" and to read this outside the context of the

Decision and the whole of the reasoning process. When done in context, I cannot find that the Decision is unreasonable or that the RAD has misapplied the IFA test.

[16] In the Decision, the RAD identifies the specific submissions of the Applicants relating to whether they would be targeted for evangelizing in the IFA, noting that the argument focusses not on a risk from the agents of harm from the incidents reported, but instead from Hindu extremists generally. The RAD identifies the standard of proof and concludes that it cannot find “on a balance of probabilities, that the [Applicants] are at risk from Hindu extremists in the IFA, or that they would be prevented from openly practising their faith or evangelizing if they wish to in the IFA.”

[17] The RAD indicates that it has considered the evidence of the Applicants and the National Documentation Package [NDP]. From this review, it notes that Christianity has a strong presence in Goa. It reasonably addresses the issue of conversion, noting that Goa does not have anti-conversion laws. The RAD states that it has considered the NDP and articles provided by the Applicants and acknowledges that there are increasing incidents of violence and discrimination against Christians, but reasonably notes that of the 293 attacks on Christians throughout India in the first half of 2020 only three occurred in Goa. The RAD concludes that even though a single attack is heinous, when considering that there are 66,194,000 Christians in India, “the incidence or likelihood of such an event is very small and does not reflect a widespread pattern suggestive of persecution.”

[18] The RAD then goes on to consider the situation in India generally. While it notes that a document from the NDP (16 April 2021): Item 1.5: Australia Department of Foreign Affairs and Trade, *DFAT Country Information Report: India* (17 October 2018) [DFAT Report] states that there is a “moderate risk discrimination or violence” for Christians that proselytise, the RAD prefaces the comment by noting that the DFAT Report also indicates that “most Christians live day-to-day without societal discrimination or violence”. The RAD states that it does not find that the situation rises to the level of persecution. In my view, when read as a whole this statement is understood to mean that there is no serious possibility of persecution. It was open for the RAD to make this conclusion on the whole of the evidence before it, including the evidence from the NDP and the Applicant on Goa that it had previously reviewed.

[19] The Applicants argue that *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813; 90 FTR 182 (FCTD) [*Fosu*] at paragraph 5 and *Zhang v Canada (Citizenship and Immigration)*, 2009 FC 1198 [*Zhang*] at paragraphs 19-20 stand for the proposition that religious persecution is broader and includes the prohibition on worshipping in public or private, giving or receiving religious instruction, or the implementation of discriminatory policies against persons based on the practice of their religion. It asserts that the breadth of these acts are not limited to violence and affect the reliability of any statistics in the country reports, which refer only to incidents of violence.

[20] However, the comments made in *Zhang* and *Fosu* must also be considered in context. Both *Zhang* and *Fosu* dealt with circumstances where there was state sanctioned persecution. The Applicants have not advanced any evidence of this type of official persecution by the state in

Goa. To the contrary, as noted by the RAD, there are no anti-conversion laws in Goa and religious freedom in India is constitutionally protected.

[21] In my view, the Applicant has not established that the RAD has erred in its analysis.

B. *Did the RAD apply the wrong legal test?*

[22] The Applicants further argue that the language used by the RAD changes the legal threshold for the test to something more than a “moderate risk of persecution” instead of a serious possibility of persecution. However, I do not consider this argument to be persuasive when the statement is considered within the framework of the full Decision.

[23] In *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, 1989 CanLII 5184 (FCA) at paragraph 8, the Federal Court of Appeal [FCA] described the test as a “reasonable” or even “serious possibility” of persecution as opposed to a mere possibility. The FCA recently affirmed the “reasonable chance”, “reasonable possibility”, and “serious possibility” framing of the test in *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 4.

[24] When read as a whole, it is clear that the RAD cited and applied the proper legal test consistently throughout the Decision and referred only to a “moderate risk” of discrimination when referencing the statement made in the DFAT Report.



[25] After making this statement and considering the information from this document and others from the NDP, the RAD concludes:

Therefore, based on an overall assessment of the country condition evidence, including a review of the 2020 Report from the United States Commission of International Religious Freedom, I find the Appellants would not face a serious possibility of persecution or risk to life or cruel and unusual punishment in the IFA of Goa from extremist Hindu groups by virtue of their Christian religion.  
[Emphasis added]

[26] The legal test is similarly reiterated in the RAD's conclusion:

Overall, based on the foregoing, I do not find the Appellants have demonstrated they face a serious possibility of persecution in the IFA that they would face a danger of torture, or at risk of losing their life or being subjected to cruel and unusual treatment or punishment in the IFA, by either Hindu extremists or the police.

[27] The legal test has not been incorrectly applied or stated.

[28] When read as a whole, I am not satisfied that there is a reviewable error. Rather, I consider there to be a rational chain of analysis leading to the conclusions reached. For all these reasons, the application is dismissed.

[29] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-3880-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Angela Furlanetto"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3880-21

**STYLE OF CAUSE:** DEFICIAN ANTONY, AMALU FELIZ v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

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