

Federal Court



Cour fédérale

Date: 20230328

Docket: IMM-6178-21

Citation: 2023 FC 420

Ottawa, Ontario, March 28, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**ABDUL RAZZAQUE
AYESHA RAZZAQUE
HURAIN ABDUL RAZZAQUE
ABDUL RAFAY RAZZAQUE
JAMILA RAZZAQUE
MUHAMMED YOUSUF**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Abdul Razzaque (the “Principal Applicant”), his wife Ayesha Razzaque, and their children Hurain Abdul Razzaque, Abdul Rafay Razzaque, Jamila Razzaque and Muhammed Yousuf (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing their appeal from the

decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). The RPD dismissed the Applicants’ claim for protection on the basis of the availability of an Internal Flight Alternative (“IFA”).

[2] The Applicants are citizens of Pakistan, living in Lyari, an area of Karachi. They are members of the Kutchi community. They claimed fear of persecution from the Uzair Baloch Group/People’s Aman Committee (“UBG/PAC”). They alleged that this group is a criminal gang that is affiliated with the Pakistan Peoples Party (the “PPP”).

[3] The Principal Applicant claimed that in April 2018, the UBG/PAC demanded the payment of a large amount of money, threatening that if he did not pay, his family would be harmed. When he said he could not pay the amount demanded, he was beaten by gang members.

[4] The Principal Applicant also alleged that later in the month of April 2018, he was robbed at gunpoint by six men who stole original identity documents, a mobile phone, and cash.

[5] The Principal Applicant filed a police report on May 2, 2018. He claims that there was resistance by the police to investigating the incident until he contacted a friend who worked with the police in another jurisdiction.

[6] The Principal Applicant claimed that the police arrested members of the UBG/PAC in July 2018 and that he identified three of them as participants in the April robbery. One of those persons was released on bail and the Applicants received threats.

[7] In December 2018, the Applicants left Karachi for Hyderabad. On December 16, 2018, they left for Canada, in possession of visitor's visas.

[8] In its decision, the RAD confirmed the finding of the RPD as to the availability of an IFA in Pakistan, that is in Islamabad or Lahore.

[9] The Applicants now argue that the decision of the RAD is unreasonable because it applied a balance of probabilities test vis-à-vis future risk, did not give them the benefit of the doubt and made unreasonable negative credibility findings.

[10] The Minister of Citizenship and Immigration (the "Respondent") submits that the RAD made no reviewable errors and its decision is reasonable.

[11] The decision of the RAD, that is the subject of this application for judicial review, is reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[12] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[13] The dispositive issue for the RAD was the availability of an IFA for the Applicants in Islamabad and Lahore.

[14] The test for a viable IFA is addressed in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 at 710-711 (Fed. C.A.). The test is two-pronged and provides as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[15] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 at 596-598 (Fed. C.A.).

[16] I am not persuaded that the RAD applied the wrong standard of proof. In my reading of the decision, the RAD applied the standard of balance of probabilities to assess the sufficiency of the evidence presented by the Applicants about the means of the agents of persecution to locate them in the proposed IFA. The RAD properly applied the standard of proof, on the balance of probabilities, to determine whether an IFA is available.

[17] The Applicants carry the burden of showing that an IFA is not available. The RAD decided that they had failed to discharge their burden. The RAD did not apply the wrong legal test.

[18] The Applicants argue that the RAD erred by failing to give them the benefit of the doubt about evidence suggesting a link between the PPP and UBG/PAC.

[19] I agree with the submissions of the Respondent that the “benefit of the doubt” principle does not apply to speculation. I agree with the reference by the Respondent to the decision of the Supreme Court of Canada in *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593.

[20] In that decision, at pages 669 to 670, the Supreme Court of Canada said that the benefit of the doubt should only be extended when all available evidence has been produced and where the decision-maker has no concerns with credibility.

[21] In my opinion, the RAD assessed the evidence and reasonably concluded that the UBG/PAC, through its association with the PPP in Karachi, do not have the means to locate the Applicants in Islamabad and Lahore

[22] The Applicants also challenge the RAD’s finding on the second prong of the test. They argue that the RAD erred in finding that there was insufficient evidence that the perceptions towards Kutchi people would rise to the level of making the IFA locations unreasonable.

[23] I agree with the submissions of the Respondent, that there is no solid evidence that the proposed IFA locations were unreasonable choices, even if there are perceptions about the Applicants' ethnicity.

[24] The Applicants argue that the RAD unreasonably made negative credibility findings on the basis of discrepancies between the contents of the Basis of Claim ("BOC") and oral evidence presented to the RPD, about events leading to the arrest of a police officer. Relying on the decision in *Manan v. Canada (Citizenship and Immigration)*, 2020 FC 150, they submit that the RAD should not have made negative credibility findings against the Principal Applicant because he provided details in his evidence that were not set out in the BOC.

[25] In *Manan, supra*, the Court decided that details that were omitted from a personal information form will not impugn an applicant's credibility as long as the omitted evidence is not significant to the claim. The Applicants here argue that the RAD gave significant weight to the omission without considering the remaining evidence, in its totality.

[26] In my opinion, the RAD reasonably agreed with the findings of the RPD that the Applicants had failed to show that the police are the agents of persecution. The failure to mention the arrest of the police officer is significant since the role of the police is central to the Applicants' claim.

[27] In spite of the able arguments of Counsel for the Applicants, I am satisfied that the decision of the RAD is reasonable and that there is no basis for judicial intervention.

[28] The application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-6178-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6178-21

STYLE OF CAUSE: ABDUL RAZZAQUE, AYESHA RAZZAQUE,
HURAIN ABDUL RAZZAQUE, ABDUL RAZZAQUE,
JAMILA RAZZAQUE AND MUHAMMED YOUSUF
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 1, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: March 28, 2023

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