

Federal Court



Cour fédérale

Date: 20231016

Docket: IMM-9632-22

Citation: 2023 FC 1378

Ottawa, Ontario, October 16, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**SYED ZAIGHAM ABBAS NAQVI
SYEDA NIGAH-E-ZAINAB
RUBAB ZAIGHAM
SYED MUHAMMAD HASSAN ABBAS
NAQVI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated September 9, 2022, confirming the determination of the Refugee Protection Division (“RPD”) and finding that the Applicants are neither Convention refugees nor persons in

need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The RAD upheld the RPD’s refusal of the refugee claim on the basis that the Applicants have a viable internal flight alternative (“IFA”) in Hyderabad, Pakistan.

[3] The Applicants submit that the RAD erred in its assessment of the IFA, specifically with respect to the motivation of the agent of persecution to pursue the Applicants in Hyderabad and the country condition evidence regarding violence against Shia Muslims.

[4] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicants*

[5] Syed Zaigham Abbas Naqvi (the “Principal Applicant”) and his wife, Rubab Zaigham (the “Associate Applicant”) are citizens of Pakistan. Their two children (the “Minor Applicants”) are also citizens of Pakistan. The Applicants are Shia Muslims.

[6] The Principal Applicant was employed as a police officer in Pakistan. On March 20, 2019, while the Principal Applicant was on a night shift and patrolling a highway in Lahore, he allegedly arrested two men for possession of illegal firearms and “jihadi literature.” The

Principal Applicant claims that he took the two men to the police station for further investigation, but that a higher-ranking police officer informed him that he had received a threatening phone call from Sipah-e-Sahaba (“SSP”), a Sunni extremist group. The officer allegedly informed the Principal Applicant that he had to release the two men.

[7] The Principal Applicant claims that he reported this incident to his superintendent the following day, who advised him to “stay away from this matter.” The Principal Applicant allegedly began receiving phone calls from the SSP the following week, in which the callers would threaten to kill his children. Despite reporting these threats to a higher-ranking officer, the Principal Applicant claimed he was helpless as a lower-ranking officer and as a Shia Muslim.

[8] The Principal Applicant claims that on April 1, 2019, he received a phone call from a member of the SSP threatening to kidnap his children from school and kill them. The Principal Applicant decided to send his family to Canada for their safety. The Associate and Minor Applicants entered Canada on April 5, 2019.

[9] On April 19, 2019, the Principal Applicant’s supervisor allegedly advised him to take a leave from work for a few days given threatening phone calls he had received from the SSP. The SSP had allegedly threatened to attack the police station with a suicide bomber if the Principal Applicant was seen there and the Applicant’s supervisor did not want further issues. The Principal Applicant claims that he stopped going to work, mostly stayed at home, and was scared and depressed.

[10] The Principal Applicant claims that he sought the advice of his brother, who resides in Canada and who the Applicants visited in 2019. The Principal Applicant's brother allegedly advised the Applicant to come to Canada for his safety. The Principal Applicant applied for a visitor visa in May 2019. While waiting for his application to be processed, the Principal Applicant claims that he relocated to a nearby village to hide. In the meantime, he allegedly received an extortion call from the SSP on May 18, 2019, demanding 60 million Rupees and threatening that the SSP would kill the Applicant if the demand was not met. The Principal Applicant claims that he informed his supervisor about this threat and about his plans to leave Pakistan, to which the supervisor allegedly admitted that the police would be unable to protect him.

[11] The Principal Applicant arrived in Canada on May 30, 2019. The Applicants' claims for refugee protection were received in July 2019.

B. *RPD Decision*

[12] In a decision dated March 24, 2022, the RPD found that the Applicants are neither Convention refugees nor persons in need of protection.

[13] The RPD found that the Applicants have a viable IFA in Hyderabad. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicants to demonstrate that

relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367).

[14] At the first prong of the IFA test, the RPD found that the Principal Applicant provided insufficient evidence to demonstrate that the SSP would be motivated to pursue him in the IFA. The RPD found that the Principal Applicant did not establish that the SSP would be motivated to target him *after* he ceased to be a police officer in the national highway police in Lahore in May 2019.

[15] The RPD further found, on the basis of the objective National Documentation Package (“NDP”) evidence, that Sunni extremist groups such as the SSP would not have the means to track the Applicants to the proposed IFA of Hyderabad. The RPD noted that the SSP’s presence has greatly diminished since 2002, that its dominance is particularly low in Hyderabad, and that it is only loosely coordinated with its militant wing, Lashkar-e-Jhangvi (“LeJ”). The RPD found that the Principal Applicant’s profile does not fit the profile of someone who would be typically tracked across the country, particularly given his relatively low profile. The RPD concluded that the Applicant provided insufficient evidence that the SSP is known to attack police stations; that the Principal Applicant’s mandatory address registration upon relocation would not trigger the SSP to learn of the Applicants’ new location; and that there is little objective evidence to demonstrate that the Applicants would face a risk in Hyderabad solely on the basis of their Shia identity.

[16] At the second prong of the IFA test, the RPD acknowledged the Applicants' testimony that other than the threat from the SSP, there is no barrier to the Applicants' relocation to Hyderabad. The RPD found that the Applicants speak Urdu and the Principal Applicant has transferrable experience as a police officer of seventeen years. On this basis, the RPD found that relocation to the proposed IFA would not be unreasonable in the Applicants' circumstances. The RPD ultimately found that the Applicants have a viable IFA in Hyderabad.

C. *Decision under Review*

[17] In a decision dated September 9, 2022, the RAD upheld the RPD's determination and found that the Applicants are neither Convention refugees nor persons in need of protection, on the basis that they have a viable IFA in Hyderabad.

[18] On appeal, the Applicants submitted that the RPD erred by misapprehending the NDP evidence regarding the SSP's ability to locate Shia Muslims, reached unreasonable conclusions regarding the Principal Applicant's profile and the SSP's means and motivation to pursue him, and was overly microscopic in assessing the Principal Applicant's testimony regarding the SSP's attacks on police stations.

[19] With respect to the RPD's assessment of the NDP evidence, the RAD found the NDP evidence to demonstrate that the SSP has been less active after 2002, that police stations are not mentioned as targets of extremist groups such as the SSP or the LeJ, and that Hyderabad is not once mentioned as a location in which the SSP is dominant. The RAD found that the RPD

correctly assessed the objective evidence and, in turn, correctly identified the nature of the SSP as the agent of persecution.

[20] Regarding the first prong of the IFA test, namely whether there is a serious possibility that the Applicants would face a risk at the hands of the SSP in the proposed IFA, the RAD found insufficient evidence to establish that the SSP would pursue the Principal Applicant to Hyderabad three years after the arrest that allegedly brought him to their attention in the first place. Referencing the NDP evidence, the RAD found that the SSP typically engages in mass casualty operations, rather than individual attacks. The RAD found that the Principal Applicant does not possess the profile of someone who would attract the attention of the SSP even after relocation to the IFA.

[21] The RAD further found insufficient evidence to demonstrate that the SSP has the means or the motivation to pursue the Applicants in the IFA. The RAD found that on the basis of the objective evidence, a large urban centre like Hyderabad affords a certain degree of anonymity for those fleeing non-state actors, and that it is unlikely that the SSP has the means to use the address registration system to track the Principal Applicant to the IFA, particularly in light of his relatively low profile.

[22] Concerning the second prong of the IFA test, the RAD found that the Applicants provided insufficient evidence to discharge the high evidentiary burden to prove that relocation to the proposed IFA would be unreasonable.

[23] The RAD ultimately dismissed the Applicants' appeal and upheld the RPD's determination that they are neither Convention refugees nor persons in need of protection.

III. Issue and Standard of Review

[24] The sole issue in this application is whether the RAD's decision is reasonable.

[25] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[26] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[27] For a decision to be unreasonable, the applicant must establish that it contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence

before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision’s reasonableness may be called into question where the decision exhibits a “failure to meaningfully grapple with key issues or central arguments” (*Vavilov* at para 28).

IV. Analysis

[28] The Applicants submit that the RAD erred in its assessment of the IFA, specifically in its consideration of the Principal Applicant’s profile, the consideration of the country condition evidence, and in its finding that being Shia Muslim affords a certain degree of anonymity in Hyderabad. I disagree. In my view, the Applicants have not raised a reviewable error in the RAD’s assessment such that this Court’s intervention is warranted.

[29] The Applicants submit that the RAD’s finding regarding the Principal Applicant’s profile as one that would not attract the attention of the SSP in Hyderabad is unreasonable. The Applicants submit that this finding fails to accord with the clear evidence that the SSP began targeting the Principal Applicant when he was still a police officer working in the national highway patrol, which means his profile was sufficiently high to trigger the SSP’s attention. The Applicants submit that the Principal Applicant fits the profile of someone who is typically targeted by the SSP as a Shia Muslim with influence and authority, and is someone who arrested two members of the SSP.

[30] The Applicants further submit that the RAD failed to consider the totality of the country condition evidence. The Applicants submit that several pieces of evidence in the NDP demonstrate that extremist groups in Pakistan such as the SSP and the LeJ continue to be responsible for violence against religious minorities. The Applicants submit that the RAD failed to grapple with this evidence, which directly contradicts its finding that the Applicants are not likely to be at risk of persecution by the SSP in Hyderabad.

[31] The Applicants submit that the RAD erroneously found that they would be afforded some level of anonymity in Hyderabad and would be less likely to be located by the SSP upon relocation. The Applicants submit that the Principal Applicant would necessarily resume similar employment to his previous job as a police officer, once again making him visible and publicizing his Shia identity. The Applicants submit that the size of the population of Shia Muslims does not relieve the RAD of the duty to assess the Applicants' specific risk of persecution and does not necessarily render the IFA viable in the Applicants' circumstances.

[32] The Respondent maintains that the RAD's decision is reasonable. Regarding the possibility of persecution in the proposed IFA, the Respondent submits that the RAD reasonably found that the Applicants provided insufficient evidence to demonstrate such a risk facing them in Hyderabad. For the Respondent, the RAD reasonably found that the alleged arrests that brought the Principal Applicant to the attention of the SSP occurred three years ago and the Principal Applicant is no longer a police officer; that the documentary evidence does not support the allegation that the Principal Applicant has the high profile of someone that the SSP would be interested in and would individually pursue across the country; and that the evidence of

individual attacks against certain individuals with high profiles does not fit the Principal Applicant's profile.

[33] The Respondent submits that the RAD is presumed to have considered all the objective evidence in arriving at its decision and in any event, the excerpts regarding sectarian violence that the Applicants point to in their submissions are aligned with the RAD's own finding that extremist groups operate through targeted mass casualty violence, rather than individual attacks. The Respondent submits that this evidence does not demonstrate that the Principal Applicant is likely to be personally targeted by the SSP in Hyderabad. The Respondent submits that the RAD also reasonably assessed the evidence with respect to the SSP's means to locate the Applicants in Hyderabad and that the Applicants have not raised a reviewable error in this assessment.

[34] The Respondent further submits that the RAD reasonably found that the Applicants did not provide sufficient evidence to demonstrate that relocation to the proposed IFA would be unreasonable, noting the Principal Applicant's own testimony that there was no reason that would render relocation unreasonable, beyond the fear of the SSP.

[35] I agree with the Respondent. Reviewing the RAD's decision globally, I do not find that the Applicants have raised a reviewable error in the decision to warrant this Court's intervention. The RAD's reasons reveal a thorough and cogent review of the evidence, establishing a clear line of reasoning between the evidentiary record—both with respect to the Applicant's own evidence and the objective NDP evidence—and its findings regarding the viability of the IFA (*Vavilov* at para 102).

[36] I disagree with the Applicants' submission that the RAD's finding regarding the Principal Applicant's relatively low profile as a "platoon leader in the national highway patrol" reflects a failure to consider that his job as a police officer was the basis for the targeting to begin with. I find that this submission is a misapprehension of the RAD's finding. The RAD did not dispute that the Principal Applicant's role as a police officer and his alleged arrests of the two SSP members triggered the SSP's threats against him. Rather, the RAD reasonably found that in light of this basis for the SSP's attacks, the Applicants have not demonstrated that the SSP would continue to pursue the Principal Applicant on an ongoing basis three years after the arrests took place, after the Principal Applicant is no longer a police officer, and after the Applicants relocate to Hyderabad. This is a reasonable finding in light of the evidence.

[37] I do not find that the excerpts of the NDP evidence that are identified by the Applicants in their submissions are contradictory to the RAD's findings regarding the risk of persecution facing the Applicants in Hyderabad. This evidence demonstrates, as the RAD reasonably found, that while sectarian violence continues to be attributed to extremist groups such as the SSP and the LeJ, such violence is largely in the form of mass casualties and not personalized, individual attacks against relatively low profile Shia Muslims. The RAD did not deny that the SSP commits violence against Shia Muslims, but rather found that the Applicants provided insufficient evidence to demonstrate that the Principal Applicant has the profile of an individual who would be located and pursued by the SSP in Hyderabad. The Applicants have not pointed to evidence that the RAD failed to account for or fundamentally misapprehended. To the contrary, the RAD's findings are reasonable in light of the record (*Vavilov* at para 126).

[38] Lastly, I do not find merit in the Applicants' submission regarding the RAD's finding that Hyderabad would afford the Applicants some degree of anonymity. The RAD is entitled to find that, in light of the country condition evidence regarding the nature of sectarian violence committed by extremist groups, an urban centre such as Hyderabad, with a religiously diverse population, would allow the Applicants to live more freely and make it less likely that non-state actors such as the SSP would pursue them.

[39] For these reasons, I do not find that the Applicants have raised a reviewable error in the RAD's decision, which I find accords with the evidentiary record and is adequately justified, transparent and intelligible (*Vavilov* at para 99).

V. Conclusion

[40] This application for judicial review is dismissed. The RAD's decision bears all the hallmarks of a reasonable decision per the principles in *Vavilov*. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-9632-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9632-22

STYLE OF CAUSE: SYED ZAIGHAM ABBAS NAQVI, SYEDA NIGAH-E-ZAINAB, RUBAB ZAIGHAM, SYED MUHAMMAD HASSAN ABBAS NAQVI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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