Federal Court  Cour fédérale

Date: 20240508

Docket: IMM-1207-23

Citation: 2024 FC 711

Ottawa, Ontario, May 8, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

PARTHKUMAR PRAVINKUMAR PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated December 27, 2022, upholding the Refugee Protection Division's [RPD] decision dated August 29, 2022, concluding that the Applicant is not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA] nor a person in

need of protection pursuant to section 97 of IRPA, because a viable Internal Flight Alternative [IFA] is available to him in Delhi and Mumbai.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has discharged his burden and demonstrated that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Facts

[3] The Applicant, Parthkumar Pravinkumar Patel [Applicant], is a citizen of India and resided in Gujarat.

[4] The Applicant helped a friend of Muslim faith get a job at his father's factory. Following this, in April 2017, the local Gujarat police [agent of harm] raided the factory looking for the Muslim friend, and ended up arresting and detaining the Applicant. In detention, the Applicant was tortured and questioned by the Gujarat police in relation to "Muslim terrorists." He was released after four days of detention following the payment of a bribe.

[5] At the same time, the Applicant's family home was also searched, and the Applicant's father was questioned by the police on the same matter.

[6] The Gujarat police raided the Applicant's home, arrested him, and tortured him again in July 2017. The Applicant was released two days later following the payment of a bribe, and on the condition that he reports monthly to the police station starting January 1, 2018.

[7] In August 2017, the Applicant left India to go to Chile, in the hopes of making his way to the United States. This plan was unsuccessful, and the Applicant came back to India in December 2017, this time staying in Mumbai with relatives. During this time, the Applicant testifies that the Gujarat police found out that he was living in Mumbai, and made efforts to locate him in Mumbai.

[8] The Applicant came to Canada in June 2018, and made a claim for refugee protection in October 2018. In a decision dated August 29, 2022, the RPD rejected his refugee claim based on their conclusion that the Applicant has a viable IFA in Mumbai and Delhi. The Applicant appealed this decision to the RAD, which dismissed the appeal and confirmed the RPD's conclusion in a decision dated December 27, 2022 [the Decision].

III. Decision under review

[9] The RAD conducted an independent analysis of the record and agreed with the RPD's conclusion that the Applicant has a viable IFA in Mumbai and Delhi.

[10] The RAD determined that there is no serious possibility of persecution or risk of harm to the Applicant in Mumbai or Delhi, because the Applicant did not establish that the local Gujarat police has the means and motivation to locate him in Mumbai or Delhi, given that the threat was

limited to Gujarat and the local police. Moreover, the RAD found that it was reasonable for the Applicant to relocate to Mumbai or Delhi, given his education, age, work experience, language skills, and religion.

IV. Issues and standard of review

[11] The sole question before this Court is whether the RAD reasonably held that the Applicant is not a Convention refugee nor a person in need of protection because he has a viable IFA in Mumbai and Delhi.

[12] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[13] The test for determining whether there is an IFA was developed in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA), and

Thirunavukkarasu v Canada (Minister of Employment and Immigration), [1994] 1 FC 589, 1993 CanLII 3011 (FCA). It is a two-prong test: (i) the administrative decision maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the individual being persecuted in the IFA area; and (ii) the conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). To make a finding that there is an IFA, both prongs must be satisfied (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15).

[14] The onus of demonstrating that an IFA is unreasonable rests with the refugee protection claimant, and it is an exacting one (*Huenalaya Murillo v Canada (Citizenship and Immigration)*, 2022 FC 396 at para 13; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 14).

[15] The Applicant raises the following two main arguments: i) the RAD erred in engaging in the IFA analysis, because the agent of harm is a state actor; and ii) the RAD did not adequately grapple with key evidence on the means and motivation of the agent of harm.

[16] On the first argument, the Applicant relies on *Buyuksahin v Canada (Citizenship and Immigration)*, 2015 FC 772 [*Buyuksahin*] and *Li v Canada (Citizenship and Immigration)*, 2014 FC 811 [*Li*] in support for the proposition that an IFA cannot exist when the agent of harm is a state actor.

[17] In my view, these authorities are distinguishable from this case. In *Buyuksahin*, the persecution was occurring on a statewide basis by the national authorities, and was not "a local police issue" (*Buyuksahin* at para 29). The same is accurate for *Li*, where the persecution at the hand of the Kyrgyz nationalists was widely supported by the government's security forces (*Li* at para 22). On the other hand, the agent of harm in this case is a state police in India, and the objective evidence does not point to widespread persecution by the Indian state, or by local police forces in other Indian states.

[18] Moreover, this Court has previously rejected the argument that a viable IFA does not exist where the agent of harm is an Indian state police (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 12, citing *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 and *Singh v Canada (Citizenship and Immigration)*, 2010 FC 58). This line of reasoning is applicable to the case at hand. In light of the foregoing, I find that the RAD did not err in engaging in an IFA analysis in this case.

[19] On the second argument, the Applicant claims that the RAD did not conduct a proper IFA analysis because they failed to consider a crucial piece of evidence, being the Applicant's testimony that the Gujarat police had sought him in Mumbai.

[20] I agree with the Applicant.

[21] The RAD's role in reviewing an RPD decision is to conduct an independent assessment of the case and substitute its own conclusions where they differ from the RPD's (*Vidal*

Fernandez v Canada (Citizenship and Immigration), 2024 FC 3 at para 22, citing *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at para 47 and *Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 122–125). The RAD is entitled to adopt the RPD's reasoning where they deem fit, so long as the RAD conducts its own assessment of the matter (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 35). While there is a presumption that the RAD considered the evidence in its entirety (*Gomes* at para 34), their obligation does not end there. The RAD "must also deliver reasons that transparently and intelligibly justify its decision" (*Pintyi v Canada (Citizenship and Immigration)*, 2021 FC 117 at para 10, citing *Vavilov* at para 85).

[22] In my view, the RAD's failure to engage with the Applicant's testimony that the Gujarat police sought him in Mumbai renders their IFA analysis unreasonable. While the RPD rejected the Applicant's testimony on credibility grounds, the RAD did not evaluate the allegations presented by the Applicant (and dismissed by the RPD), nor conduct an independent assessment. The RAD therefore failed to evaluate this key part of the Applicant's testimonial evidence, that has an impact on the RAD's conclusion that the Gujarat police does not have the means and motivation to locate and harm the Applicant in other states. That allegation had to be duly assessed by the RAD.

[23] A reviewing Court must take a "reasons first" approach in conducting a reasonableness review; this approach requires particular attention to the decision maker's justification in their reasons (*Mason* at para 8, citing *Vavilov* at paras 84–85). In this case, the RAD completely omitted to analyze the Applicant's key testimonial evidence in relation to the Gujarat police

making efforts to find him in Mumbai. It was incumbent on the RAD to proceed to that analysis, and determine whether the Applicant's allegation was credible (and substitute its conclusion on that basis over the contrary conclusion of the RPD, if that was the case). Absent such analysis by the RAD, the Court cannot "substitute its own reasons in order to buttress the administrative decision" (*Vavilov* at para 96). This omission from the RAD's analysis causes this court to lose confidence in the administrative decision-making process, and for this reason, the Decision is unreasonable and must be sent back for redetermination.

VI. Conclusion

[24] The RAD's decision does not bear the hallmarks of a reasonableness. It is not transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[25] The Applicant's application for judicial review is granted.

[26] The parties have not proposed any question for certification and I agree that none arise in the circumstances.

JUDGMENT in IMM-1207-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1207-23
STYLE OF CAUSE:	PARTHKUMAR PRAVINKUMAR PATEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	APRIL 22, 2024
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	MAY 8, 2024

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