Federal Court  Cour fédérale

Date: 20240711

Docket: IMM-9401-22

Citation: 2024 FC 1097

Ottawa, Ontario, July 11, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

HARJINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Harjinder Singh [Applicant], seeks judicial review of a decision dated September 1, 2022, where the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] rejected his refugee claim [Decision] on the grounds that he is not a refugee or person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD confirmed the previous decision by the

Refugee Protection Division [RPD] and found that the Applicant has a viable Internal Flight Alternative [IFA] in India.

[2] For the reasons that follow, this application for judicial review is dismissed. While the RAD did not consider the most recent objective country condition evidence, this alone was not sufficient to make the Decision unreasonable as the updated information was not different, novel and significant and could change the decision.

II. Background and Decision under review

[3] The Applicant is an Indian citizen and landed in Canada in May 2019, claiming refugee protection upon arrival. The initial basis of his claim is a fear of two unknown men who had assaulted him and began making threats after he reported the assault to the police. After this alleged incident, he fled to Canada. Soon after his arrival, the Applicant's father informed him that the two men had been arrested, but the men allegedly told the police that the Applicant had been working with them, leading the police to accuse him of being a pro-Khalistani militant or a terrorist.

[4] On March 9, 2022, the RPD rejected the Applicant's claim on the basis that he had a viable IFA. The Applicant appealed the RPD's decision on March 21, 2022.

[5] The RAD considered his appeal and, on September 1, 2022, issued the Decision. The RAD evaluated the safety and reasonableness of the IFA, concluding that the Applicant did not face a serious possibility of persecution or a risk to his life or security in that location. The RAD found that the allegations of being targeted as a pro-Khalistani militant were not credible, as he failed to

mention this significant detail until much later in his testimony and not until after being prompted on that point. The RAD also found that, irrespective of the credibility findings, the alleged agents of persecution lacked the means and motivation to track him to the IFA.

[6] Furthermore, on the second prong of the IFA test, the RAD concluded that the Applicant had not met the high threshold to establish that the IFA was unreasonable and, therefore, confirmed that he was neither a Convention refugee nor a person in need of protection. The RAD found that the Applicant's concerns about employment and housing difficulties were unsubstantiated. The Applicant had more education than the average person in India, and had varied work experience, making him reasonably employable in the IFA's large labour market.

III. Issues and Standard of Review

[7] The Applicant submits that the issue on judicial review is whether the RAD's Decision was unreasonable as it relates to the second prong of the IFA test.

[8] The Applicant argues that the RAD erred in its analysis of the second prong of the IFA test, that is, the reasonableness of the suggested IFA. The Applicant states that the RAD's Decision is unreasonable because it relied upon an outdated National Documentation Package [NDP]; failed to address relevant evidence; and, failed to understand that the Applicant's Sikh identity is linked to risks identified in the IFA because no Sikh is safe in India, among other things.

[9] The parties agree, as do I, that the applicable standard of review on the merits of the RAD's Decision is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019

SCC 65 [*Vavilov*] at paras 10, 25). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). The decision must therefore bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[10] The applicable test relating to an IFA bears repeating for ease of reference. A claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the IRPA in the proposed IFA location and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances. Both prongs need to be satisfied to conclude that a claimant has an IFA (*Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 [*Bassi*] at paras 15-16, citing *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)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597-598).

[11] The Applicant did not challenge the RAD's findings under the first prong of the IFA test. Under the first prong, the RAD found that the alleged agents of persecution did not have the means or motivation to track the Applicant or cause him harm in the IFA. The Applicant's inconsistent

and contradictory testimony of when he last received threats, and from whom, undermined his credibility on the means and motivation of the agents of persecution to locate him.

[12] The same credibility issues applied to the Applicant's allegations with respect to the police, in light of prompting at the hearing, and inconsistent testimony compared to his Basis of Claim narrative. The RAD considered that there was no supporting evidence that the Applicant would be registered in any system or database that would permit his whereabouts to be tracked.

[13] The Applicant only challenges the RAD's findings on the second prong of the IFA test. The second prong of the test addresses the reasonability of refuge in other parts of the country.

[14] In the Decision, the RAD relied on documents in the NDP for India (version dated June 30, 2021). However, at the time the RAD rendered the Decision on September 1, 2022, there was a newer version available of the NDP (version dated June 30, 2022).

[15] The Applicant describes the error as one that undermines the reasonableness of the Decision because the newer version contained new and updated information that was relevant to his arguments against the second prong of the IFA test.

[16] As a starting point, I am cognizant that the RAD should consider the most recent NDP in assessing risks even if that new version only becomes available after the parties' submissions (*Kamara v Canada (Citizenship and Immigration)* 2024 FC 13 [*Kamara*] at para 31, citing *Oymali*

v Canada (Citizenship and Immigration), 2017 FC 889 [*Oymali*] at paras 28-29; see also *Siddique v Canada (Citizenship and Immigration)* 2022 FC 964 [*Siddique*] at para 21).

[17] However, jurisprudence holds that it may be reasonable for the RAD to rely on older versions of the NDP unless there is "different, novel and significant" information in the new NDP that was unavailable when the applicants made their argument (*Siddique* para 21, citing *Zhang v Canada (Citizenship and Immigration),* 2015 FC 1031 at para 60; see also *Kamara* at para 33).

[18] In the same vein, a claimant seeking to criticize the RAD for failing to consider new documentary evidence must show that the new information is "sufficiently different, novel and significant and could change the decision" (*Kamara* at para 33; see also *Oymali* at para 29). I must consider these factors in assessing the RAD's use of an older version of the NDP.

[19] The Applicant identified three documents in the updated NDP that he submits are novel, different, and significant between the June 2021 and June 2022 versions of the NDP. Two documents, tabs 12.2 and 12.8 of the NDP, were updated articles from the previous NDP. The third, tab 13.12 of the NDP, is a new document that was not found in the previous NDP and spoke to anti-minority disinformation, hate and incitement to violence and discrimination. At the hearing, counsel for the Applicant identified excerpts from the updated documents as being relevant to the Court's consideration.

[20] One set of excerpts related to suspected pro-Khalistan activists. However, the RAD found that there was no credible evidence that the Applicant is suspected of being a terrorist or a militant,

or a public supporter. Based on this uncontested finding, on a balance of probabilities, the RAD would likely have found that the updated information in tabs 12.2 and 12.8 does not apply to the Applicant. The updated references also reinforce other information already known or exhibited in the NDP.

[21] The other set of excerpts related to the Applicant's religion. The Applicant had argued that it would be unreasonable to relocate to the IFA due to his Sikh religion. The RAD considered the Applicant's arguments that he would not be safe as a Sikh minority. The RAD found that the Applicant did not provide sufficient evidence of language or religious barriers that would render the IFA unreasonable, as he only relied on general country conditions. Citing *Canada (Citizenship and Immigration) v Egemba*, 2021 FC 1184 and *Urbieta v Canada (Citizenship and Immigration)*, 2022 FC 815, the RAD stated that a claimant cannot rely solely on general country conditions to establish that an IFA is unreasonable. The claimant must also provide sufficient evidence to show that their specific situation and circumstances, in the context of or in relation to the general country conditions, will make relocation to the IFA location unreasonable.

[22] I note that tab 13.12 was a new addition to the NDP as opposed to an update to a document found in a previous version of the NDP. Tab 13.12 is an article that generally discusses online discrimination against minorities in India, and briefly mentions Sikhs facing hate campaigns over allegations of separatism. As tab 13.12 is a new addition to the NDP, I appreciate how it could be considered different and novel. However, the article discusses information that is also already known or exhibited in the NDP about the treatment of religious and ethnic minorities in India, and

which the RAD discussed in their analysis of the second prong of the IFA test. I therefore disagree with the Applicant that the contents of tab 13.12 are significant.

[23] More importantly, however, the Applicant relies on the general conditions outlined in tab 13.12 without relating those conditions to his personal circumstances and allegations. The RAD had already assessed the Applicant's religious identity in its analysis, but found that he did not submit sufficient evidence concerning his particular situation. Further, and as previously mentioned, the RAD found that the Applicant did not meet the profile of one who would be targeted for allegations of separatism or association with militants or for his religious beliefs. Given the RAD's uncontested findings, I cannot agree that the RAD's analysis would have changed with the information in tab 13.12.

[24] The RAD found that the Applicant did not submit sufficient evidence to establish that the IFA is not safe and reasonable. The same issue applies here, as the Applicant directed the Court to excerpts in the three new or updated NDP tabs at issue and stated generally that these passages apply to him as a Sikh minority. I cannot agree that this would be sufficient to warrant the Court's intervention on judicial review. It is well established that claimants cannot simply cite the general country conditions outlined in a country's NDP for which they allege an ambiguous fear of persecution or risk, but must also submit sufficient evidence relating or contextualizing these conditions to their particular circumstances (see *Kamara* at para 36).

[25] The threshold for the second prong of the IFA test is very high. Refugee protection claimants must present actual and concrete evidence of the existence of conditions that would

render relocation to the identified IFA unreasonable (*Bassi* at para 18, citing *Ranganathan v Canada (Minister of Citizenship and Immigration*) (CA), 2000 CanLII 16789 (FCA)). Once an IFA is identified, the claimant bears the burden to establish that relocation to the IFA is not safe and reasonable.

[26] With respect, while the Applicant has identified new and updated information in the NDP that was not before the RAD, this alone is insufficient to render the RAD's Decision unreasonable. I agree with the Respondent that the Applicant has not demonstrated how the newer NDP contained information sufficiently different, novel, and significant such that the RAD's analysis would have changed.

[27] Finally, on the Applicant's disagreement with the RAD's assessment of his evidence, this amounts to asking the Court to reweigh the evidence. I have not found any misapprehension of evidence. The RAD's Decision was intelligible, transparent, and justified.

V. Conclusion

[28] For the foregoing reasons, this application for judicial review is dismissed.

[29] The parties did not propose any questions for certification and I agree none arise in this case.

JUDGMENT in IMM-9401-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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