

Federal Court



Cour fédérale

Date: 20230227

Docket: IMM-7179-21

Citation: 2023 FC 277

Ottawa, Ontario, February 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**GANESH GOPALAKRISHNAN
BRINDHA GANESAMOORTHY
ARUSHYA GANESH BRINDHA**

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 17, 2021, confirming the decision of the Refugee Protection Division (“RPD”) 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 found the determinative issue to be the availability of an internal flight alternatives (“*IFA*”) in Bangalore and Mumbai. The Applicants submit that the RAD unreasonably assessed the issue of the *IFA* by failing to conduct an adequate analysis of the evidence.

[3] For the reasons that follow, I find that the RAD’s decision is unreasonable. This application for judicial review is granted.

II. Facts

A. *The Applicants*

[4] Ganesh Gopalakrishnan (the “*Principal Applicant*”), Brindha Ganesamoorthy (the “*Associate Applicant*”), and their daughter (collectively the “*Applicants*”) are all citizens of India. They identify as Hindu Tamil. The Applicants resided in Kumbakonam, in the state of Tamil Nadu.

[5] The Applicants claim they fled India out of fear of persecution from Mr. Bindusadhakan Mohandas (“*BM*”), the CEO of a business enterprise in the Tamil Nadu region, and Mr. Manickam Rajendran (“*MR*”), a member of the Legislative Assembly in Tamil Nadu.

[6] In June 2016, the Principal Applicant was hired by HDB Financial Services (“HDB”), a private lending company in India, where he reviewed and approved loans of up to \$150 million rupees as a credit manager.

[7] On June 4, 2018, BM applied to HDB for a loan to finance a local housing project. The Principal Applicant denied BM’s loan application on the basis that it did not meet company standards. The Principal Applicant claims that when he informed BM of this decision, BM became angry. BM’s assistant asked the Principal Applicant to reverse his decision in exchange for a bribe. When the Principal Applicant refused, BM’s assistant told him that his wife and daughter could lose their lives as a result.

[8] On June 9, 2019, the Principal Applicant reported this threat to the Kumbakonam police. A police officer assured him that the claim would be investigated, but the complaint was not recorded in writing. The Principal Applicant claims that MR called him the same day, telling him to approve BM’s loan within 48 hours and that if he did not change his mind, he would kill the Principal Applicant and their daughter. Due to fear for their lives, the Applicants left their home to stay with the Principal Applicant’s brother in Chennai.

[9] The Applicants left India on October 24, 2018. On entry to Canada, the Principal Applicant claims they did not immediately make a claim for refugee protection out of fear of deportation.

B. *RPD Decision*

[10] In a decision dated December 23, 2020, the RPD found that the Applicants were not Convention refugees or persons in need of protection as per sections 96 ad 97 of IRPA, on the basis that they had not established a well-founded fear of persecution in India.

[11] The RPD found that while the Applicants demonstrated subjective fear, there was insufficient evidence to establish an objective basis for this fear. The RPD determined that the objective evidence proffered by the Applicants, including the letters written by the Principal Applicant's father and former colleague identified as "KK", warranted little weight because they contained generalities, were partially inconsistent with other objective evidence, and did not confirm whether the agents of persecution had been pursuing the Applicants since June 9, 2018. The RPD further noted that KK was directly involved in the loan refusal and remained in his role thereafter, making no reference to receiving a single threat from the agents of persecution for his participation in the refusal.

[12] When asked by the RPD whether KK was aware if the agents of persecution had been seeking the Applicants since then, the Principal Applicant testified that he had not asked his colleague because it did not seem important to him at the time. The RPD did not find this to be a reasonable explanation given that the allegation of an ongoing threat to the Applicants' lives by the agents of persecution was central to their claim.

[13] The RPD also found that the National Documentation Package (“NDP”) evidence for India did not establish the Applicants’ objective fear of persecution or demonstrate that the Associate Applicant would specifically be subject to gender-based violence upon return to India, beyond a generalized risk. The RPD therefore concluded that the objective evidence did not assist in establishing that the Applicants faced a forward-looking risk in India that was objectively well-founded.

C. *Decision Under Review*

[14] In a decision dated September 17, 2021, the RAD dismissed the Applicants’ appeal, confirming the RPD’s decision to deny the Applicants’ claim.

[15] The test for assessing an 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)* (C.A.), [1992] 1 FC 706) (“*Rasaratnam*”). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367).

[16] The RAD first found that the agents of persecution lacked the means and the motivation to pursue the Applicants. The RAD considered objective country evidence about state surveillance through the Crime and Criminal Tracking Network and Systems (“CCTNS”) and the National Social Registry (“NSR”), as to whether the agents of persecution had the means to pursue the Applicants. The RAD rejected the Applicants’ submission that the agents of

persecution have access to use these state resources and could use them to locate and pursue the Applicants in the IFA. The RAD noted that the Applicants did not provide evidence establishing how other state authorities could locate them through means that were not available to the police. Considering the agents' motivation, the RAD found that there was nothing more than "a mere possibility" that the agents of persecution would be motivated to pursue the Applicants, noting that a lengthy amount of time had elapsed since the agents' initial pursuit.

[17] In assessing the second prong of the test, the RAD addressed the Applicants' submissions about language barriers in the proposed IFAs, a lack of support services, and their allegation of future discrimination. The RAD noted that language barriers would not be an issue for the Applicants given their testimony that they could speak English and the objective evidence establishing that English is an official language in India, and there are large Tamil communities in both of the proposed IFAs.

[18] The RAD also found no compelling evidence demonstrating discrimination against Tamil communities. To the contrary, the evidence demonstrated support services and a number of Tamil organizations, and that the level of safety and security experienced by Tamils relocating out of Tamil Nadu is dependent on their socioeconomic standing. Given the Applicants' university education and professional experience, the RAD found they were unlikely to face greater risk in the proposed IFAs. The RAD concluded that the Applicants did not establish that it would be objectively unreasonable to relocate to either Bangalore or Mumbai. For these reasons, the RAD dismissed the Applicants' appeal and upheld the RPD's determination.

III. Issue and Standard of Review

[19] Whether the RAD's decision is reasonable.

[20] 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.

[21] 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).

[22] For a decision to be unreasonable, the applicant must establish the decision 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; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[23] The Applicants submit that the RAD conducted an unreasonable assessment of the IFA, while the Respondent maintains that the RAD carried out a reasonable IFA analysis on the basis of the available evidence. In my view, the RAD’s decision is unreasonable.

[24] The Applicants submit that the RAD misapplied the IFA test by requiring that the Applicants meet the elevated standard of showing that the agents of persecution “would be able” to locate them in the IFA, rather than showing “a serious possibility” of locating them, citing *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 483.

[25] The Applicants further submit that the RAD discounted objective evidence demonstrating that the NSR and other state databases are used illegally by Indian police and politicians, and that violence is commonly employed in the political sphere. The Applicants contend that the RAD improperly relied on NDP evidence regarding the CCTNS to conclude that Indian police in one state lack the means to search for an individual in another state, while the most recent NDP evidence for India clearly shows otherwise.

[26] The Applicants contend that the RAD further erred by failing to account for and rule in accordance with its own prior jurisprudence, where it has previously found the same NDP

evidence to demonstrate that state databases are accessible to the police and may be used to locate claimants across India.

[27] The Respondent maintains that the RAD's IFA assessment is reasonable in light of the available evidence and the relevant legal test. The Respondent contends that the Applicant incorrectly equates the evidentiary standard with the legal test for persecution, citing *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at para 28. The Respondent further submits that the RAD's reasons for its decision exhibit a thorough analysis of the objective evidence, and that the RAD's disagreement with the Applicants' position is not tantamount to a failure to consider central evidence.

[28] I find the determinative issue in this case to be the RAD's assessment of the objective evidence, the proper assessment of which points to the agents' means and motivation to pursue the Applicants. While I agree with the Respondent that the RAD is not bound by its own jurisprudence, and the determination of each case is dependent on its specific evidence and factual scenario, I find that the RAD erred in failing to account for the available objective evidence in this case. This evidence demonstrates the link between the Indian police, the corruption of political figures, and the state databases allowing for the agents of persecution to locate the Applicants in the proposed IFAs.

[29] The RAD accepted that MR contacted the Principal Applicant shortly after he reported BM's threat to the police, which further supports the interconnectedness between the police and the political arena that is demonstrated by the objective evidence. The RAD unreasonably relied

on the passage of time to rationalize the actions of irrational agents of persecution, and failed to adequately account for the extensive objective evidence, which clearly exhibits the common misuse of national databases by police and politicians in ways that could reasonably result in the agents of persecution being able to pursue the Applicants in the proposed IFAs.

[30] The Respondent's submissions focus significantly on the fact that the Applicants do not have a criminal profile and would therefore be undetectable through the CCTNS, which is a criminal database, despite considerable evidence pertaining to other resources, such as the tenant registration system or Aardhaar identification card, being similarly misused. For these reasons, I find that the RAD's selective assessment of the proposed IFAs in the Applicants' case renders the decision unreasonable as a whole.

V. Conclusion

[31] This application for judicial review is granted. The RAD's assessment of the IFA issue is not reasonable in light of the evidence on the record. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7179-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7179-21

STYLE OF CAUSE: GANESH GOPALAKRISHNAN, BRINDHA
GANESAMOORTHY AND ARUSHYA GANESH
BRINDHA v THE MINISTER OF CITIZENSHIP AND
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