

Federal Court



Cour fédérale

**Date: 20230328**

**Docket: IMM-879-22**

**Citation: 2023 FC 429**

**Ottawa, Ontario, March 28, 2023**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**ASAD ABBAS MALIK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Asad Abbas Malik is a citizen of Pakistan. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that Mr.

Malik is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Mr. Malik is a Shia Muslim. He claims to fear persecution by Sipah-e-Sahaba Pakistan [SSP], a Sunni religious extremist group. The RAD found Mr. Malik to be generally credible, but rejected his claim for refugee protection on the ground that he had internal flight alternatives [IFAs] in Islamabad and Rawalpindi.

[3] The RAD accepted that the SSP posed a “non-zero risk” to Mr. Malik in the proposed IFAs. However, the RAD reasonably concluded, based on its consideration of the evidence as a whole, that the risk to Mr. Malik was no more than a mere possibility.

[4] The application for judicial review is dismissed.

## II. Background

[5] Mr. Malik is originally from a village in Gujrat, Pakistan. In 2000, he found employment in Saudi Arabia. He often returned to Pakistan to visit his family. During these visits, he would regularly attend and make donations to the local Imam Bargah, a Shia religious study hall.

[6] On January 10, 2018, Mr. Malik travelled to Pakistan to visit his family for two months. He says that the SSP attempted to extort him for 50 lakh rupees (approximately \$25,000), and threatened to kill him if he refused. The SSP claimed to know about his donations to the Imam

Bargah, and that he was living and working in Saudi Arabia. Mr. Malik complained to the police, but he received no assistance.

[7] Mr. Malik returned to Saudi Arabia on January 21, 2018, having decided to shorten his stay in Pakistan. He says that he lost his job shortly thereafter, when his employer discovered he was a Shia Muslim. Mr. Malik fled to Canada and made a refugee claim in April 2018.

[8] On April 26, 2021, Mr. Malik submitted an additional narrative to supplement the one contained in his basis of claim [BOC] form. He stated that his family in Pakistan did not initially encounter problems with the SSP following his departure to Canada. However, in April 2021, his family began to receive threatening calls from the SSP. Mr. Malik surmised that the SSP may have wrongly believed he had returned to Pakistan and was in hiding.

[9] Mr. Malik also claims that on April 23, 2021, two unknown men on motorcycles came to his family's residence late in the evening and fired shots into the air and at the house, hitting the front door. The matter was reported to the police, but no one was arrested.

[10] The RPD heard Mr. Malik's claim on June 22, 2021 and rejected it on June 29, 2021. The RPD accepted that Mr. Malik had been extorted and threatened by the SSP. However, the RPD found he had IFAs in Islamabad and Rawalpindi. The RPD concluded that the SSP had neither the motivation nor the means to pursue him in either of those cities, and it was reasonable for him to relocate there.

[11] Mr. Malik appealed to the RAD. On December 29, 2021, the RAD confirmed the RPD's determination that Mr. Malik had viable IFAs in Islamabad and Rawalpindi.

### III. Decision under Review

[12] The RAD found that the RPD had made a factual error in finding that the SSP had not shown interest in Mr. Malik after 2018. Because the RPD found Mr. Malik to be generally credible, the RAD held there was no reason to doubt his claim that the SSP had threatened his family and shot at their house in April 2021. The RAD therefore accepted that the SSP had an ongoing motivation to harm him in the local area of Gujrat (at para 13).

[13] The RAD found that the SSP did not have the means to locate Mr. Malik outside Gujrat, because their tracking methods were unsophisticated. The RAD also found that the SSP did not have the motivation to pursue Mr. Malik outside Gujrat, because their threats abated each time he left the city. Furthermore, Mr. Malik had a low profile, and the SSP only personally tracked and targeted high-profile Shias. While Mr. Malik's risk of persecution in the IFAs was "non-zero", it was no more than a mere possibility. The majority of Pakistan's large Shia population were not personally persecuted in the IFAs.

[14] Mr. Malik did not challenge the RPD's findings regarding the reasonableness of the IFAs. The RAD nevertheless confirmed independently that it would be reasonable for him to relocate there.

IV. Issue

[15] The sole issue raised by this application for judicial review is whether the RAD's decision was reasonable.

V. Analysis

[16] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[17] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that

part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[19] Mr. Malik argues that the RAD made unreasonable findings regarding: (1) the SSP's means of locating him in the IFAs, (2) the SSP's motivation to locate him in the IFAs, and (3) his profile as a Shia Muslim in Pakistan.

(1) The SSP's means of locating Mr. Malik in the IFAs

[20] The RAD held that the SSP did not have the means to pursue Mr. Malik in the IFAs, because their tracking methods were not "sophisticated or reliable". The SSP's threatening telephone calls to Mr. Malik's family in April 2021 demonstrated that they did not know Mr. Malik's whereabouts and would act on incorrect rumours about his location (at para 15):

In this particular case, I note that the Appellant's own amended narrative suggests that the agent(s) of persecution do not seem to know where the Appellant is. According to the Appellant, the agent(s) of persecution appear to think that he has been back in Pakistan since April 2021. It is unclear why the agent(s) of persecution would think this, but the Appellant has suggested that this could be because "they got wrong information that I came back to Pakistan." The fact that the agent(s) of persecution appear not to know the Appellant's whereabouts, and the fact that they would act on incorrect rumours about his location suggests to me that they are not sophisticated in their ability to monitor, track, or locate the Appellant when he leaves his local community of Gujrat. I have considered the allegation that the agents of harm knew that the Appellant had been in Saudi Arabia in the past. In this case, that knowledge does not lead me to believe that the SSP could track the Appellant in Pakistan, because it was general in nature and because in any event the SSP did not know when the Appellant left Saudi Arabia and this leads me to believe that their tracking is not sophisticated or reliable.

[21] According to Mr. Malik, the documentary evidence demonstrates that the SSP and its affiliate Sunni extremist groups are a cohesive entity that operates throughout Pakistan. He relies on the National Documentation Package [NDP] for Pakistan, specifically items 1.13, 7.8, and 7.12, as evidence that the SSP is capable of locating and attacking targets anywhere in Pakistan.

[22] The documentary evidence describes the SSP's ability to carry out mass attacks, not to track or locate particular individuals. Item 7.12 of the NDP refers to the SSP's ability to attack individuals who have been targeted by Pakistan's military or Inter-Services Intelligence [ISI]: "[s]ources reported that if individuals are targeted by the ISI or military, Deobandi militants [including the SSP] will be used to conduct an attack 'anywhere in Pakistan'". The RAD reasonably found that the SSP has no documented history of targeting low-profile individuals.

[23] Mr. Malik says that the RAD ignored evidence suggesting that the SSP may be able to locate him through the mandatory tenant registration system. He maintains that the SSP could obtain this information from the police, who are notoriously corrupt and susceptible to bribery.

[24] The Minister objects that this argument was never raised before the RAD, and the RAD cannot be faulted for failing to consider an argument that was never made (*Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 [*Ogunjinmi*] at para 21, citing *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14). Mr. Malik replies that the RAD had an independent obligation to consider all issues that were reasonably apparent from the record (citing *Wu v Canada (Citizenship and Immigration)*, 2021 FC 475 [*Wu*]).

[25] In *Wu*, Justice Sandra Simpson overturned a decision of the RAD on the ground that its adverse credibility finding was premised on a factual error (at para 15):

I am exercising my discretion to consider the Factual Error as a basis for finding that the Decision was unreasonable in part because of the unusual nature of the RAD's mandate. It is to perform an independent review of the RPD's Decision and, in my view, in that context, it was required to read the BOC Narrative. Had it done so it would have discovered the Factual Error. In the alternative, the Decision was unreasonable because it was unfair due to the RAD's reliance on the Factual Error.

[26] Here, Mr. Malik asserts that the RAD was required to consider and accept an argument that he never advanced. The allegation regarding the SSP's capacity to locate him in the IFAs using the tenant registration system did not appear in his BOC or in any of his submissions to the RAD. *Wu* is therefore distinguishable. The law is clear that Mr. Malik's failure to present this argument before the RAD precludes him from advancing it for the first time in this application for judicial review (*Ogunjinmi* at para 21).

(2) The SSP's motivation to locate Mr. Malik in the IFAs

[27] While the RAD accepted that the SSP may have an ongoing motivation to target Mr. Malik in Gujrat, it concluded that the SSP had no interest in targeting him "when he moves to other locations" (at para 16). The SSP's extortion attempts tapered off when Mr. Malik left Pakistan in January 2018, and only resumed in April 2021 when the SSP erroneously believed he had returned. The RAD also noted that Mr. Malik's family continued to live in the same location, but there was no evidence that the SSP had contacted them after April 2021.



[28] Mr. Malik says the RAD conflated the SSP's motivation to target him outside Pakistan and outside Gujrat. While the threats dissipated when the SSP believed he was outside Pakistan, they resumed in April 2021 as soon as the SSP believed he had returned. He therefore argues that the SSP's motivation to target him depends on whether or not he is perceived to be accessible.

[29] A decision maker may reasonably infer from the passage of time that a criminal gang no longer has the motivation to harm a claimant (*Cherednyk v Canada (Citizenship and Immigration)*, 2021 FC 873 at para 28). At the time the RAD considered Mr. Malik's claim in December 2021, eight months had elapsed since his family was credibly threatened by the SSP. While eight months may not be a lengthy period, this was a legitimate consideration in the RAD's assessment of the SSP's ongoing motivation to target Mr. Malik in the IFAs.

[30] The burden was on Mr. Malik to demonstrate he would be at serious risk of persecution in the IFAs (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 49). The RAD's rationale for its conclusion that the SSP was no longer motivated to pursue him there was justified, intelligible and transparent. It was therefore reasonable.

(3) Mr. Malik's profile as a Shia Muslim in Pakistan

[31] The RAD found that the SSP was unlikely to pursue Mr. Malik outside of Gujrat because he does not have a prominent profile. According to the NDP for Pakistan, low-profile Shia civilians are typically targeted through mass terrorist attacks in crowded locations and gatherings. The SSP only personally targets Shia individuals who are high-profile professionals

and officials. The RAD reasonably concluded that it was unlikely the SSP would personally target Mr. Malik throughout Pakistan (at para 19):

[...] there is a complete dearth of information suggesting that the SSP has ever tracked a low-profile Shia person of the Appellant's profile (he is a donor to a local Imam Bargah and has been an ordinary mid-level IT employee at a technology company) across the country for the purposes of continuing local extortion or any other persecutory activity. Tracking of people of the Appellant's profile to potential IFA locations simply does not appear to me to be the modus operandi of this group, and the Appellant has not offered any evidence to the contrary. While I can accept that this hateful group might pose a non-zero risk, I cannot find that the risk to the Appellant would rise above the level of a mere possibility [...]

[32] Mr. Malik argues that this conclusion was speculative. Decision makers must be cautious when speculating about how or whom an irrational terrorist organization will attack (citing *Londono Soto v Canada (Citizenship and Immigration)*, 2008 FC 354 at para 26). That case concerned plausibility findings. Here, the RAD relied on the dearth of evidence to suggest that the SSP would be motivated to personally target someone of Mr. Malik's low profile in the IFAs.

[33] Ultimately, the RAD accepted that the SSP would pose a "non-zero risk" to Mr. Malik in the proposed IFAs. However, the RAD reasonably concluded, based on the evidence as a whole, that the risk to Mr. Malik was no more than a mere possibility.

## VI. Conclusion

[34] The application for judicial review is dismissed.

[35] Mr. Malik suggested that the Court consider certifying a question for appeal similar to the one certified by Justice Simpson in *Wu*. Pursuant to the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, June 24, 2022: "Where a party intends to propose a certified question, opposing counsel shall be notified at least five (5) days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question."

[36] Mr. Malik did not provide notice to opposing counsel of his proposed certified question. Furthermore, *Wu* is distinguishable from the present case. As the Federal Court of Appeal held in *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, this Court may certify a question for appeal only if: the question is a serious one of general importance; the question arises from the issues in the case and not the judge's reasons; and the question is dispositive of the appeal (at paras 28-29). None of these criteria are met in this case.

[37] The Respondent asks that he be identified in this proceeding as the Minister of Citizenship and Immigration, rather than the Minister of Immigration, Refugees and Citizenship. The style of cause will be amended accordingly.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. The style of cause is amended with immediate effect to name the Minister of Citizenship and Immigration as the sole Respondent.

“Simon Fothergill”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-879-22

**STYLE OF CAUSE:** ASAD ABBAS MALIK v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 20, 2023

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